

**UNITED STATES V. GRANT: A STEP IN THE RIGHT
DIRECTION TO PROVIDING NON-INCORRIGIBLE JUVENILE
OFFENDERS A MEANINGFUL OPPORTUNITY FOR RELEASE**

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I. INTRODUCTION

The unique characteristics of juvenile offenders that make them inherently different from adults play a significant role under the Eighth Amendment's prohibition of cruel and unusual punishment. The Supreme Court of the United States has held that juveniles have distinctive rights and additional protections in the criminal sentencing process.¹ According to the Court, the "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."² In short, the presumption for juvenile offenders is one of second chances.

Recent legislative trends apply restrictions on sentencing juvenile offenders.³ This goes hand in hand with trends increasing due process protections for juveniles, adopting scientific screening and assessment tools to structure decision-making processes, and implementing evidence-based practices to provide treatment for youth and their families.⁴ The shift in juvenile justice policy toward a focus on the developmental needs of juvenile offenders and the encouragement of meaningful participation in the community upon release coincides with the shift toward rehabilitation as a more prominent juvenile justice goal.⁵ The Court's four key opinions⁶ on this issue largely rely on neuroscience and developmental psychology, basing its interpretation of the Eighth Amendment on factors affecting

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¹ See *infra* Part III.

² *Miller v. Alabama*, 567 U.S. 460, 472 (2012).

³ See SARAH ALICE BROWN, NAT'L CONFERENCE OF STATE LEGISLATURES, TRENDS IN JUVENILE JUSTICE STATE LEGISLATION: 2001–2011, 3 (2012), <http://www.ncsl.org/document/cj/trendsinyjuvenilejustice.pdf>.

⁴ *Id.*

⁵ See *id.*

⁶ *Roper v. Simmons*, 543 U.S. 551, 570 (2005); *Graham v. Florida*, 560 U.S. 48, 59 (2010); *Miller*, 567 U.S. at 472; *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016).

adolescent development, competency, and culpability.⁷

As research and societal expectations continue to evolve, the Supreme Court has continued to expand the rights of juvenile offenders and consider appropriate sentencing procedures in light of the four historically recognized penal justifications: deterrence, retribution, incarceration, and rehabilitation.⁸ As a result of advancing Supreme Court doctrine, state and federal courts have been presented with novel issues and arguments. In particular, the Third Circuit recently held that: (1) lengthy term-of-years sentences are equally unconstitutional as applied to non-incorrigible juvenile offenders—those capable of rehabilitation and reform—and (2) sentencing procedures must identify non-incorrigible juvenile offenders and consider the national age of retirement, in addition to life expectancy, when structuring a meaningful opportunity for release.⁹ This was a positive step toward promoting the wellness of juvenile offenders, as well as public safety and economic concerns of the nation as a whole. This Comment will discuss why the Third Circuit decision was a step in the right direction and propose theories of rehabilitation and recovery to guide better metrics for drawing lines in rule making.

Grant and its implications are relevant not only to the Third Circuit, but to the nation as a whole as well. The Third Circuit reheard oral argument en banc on February 20, 2019, but has yet to issue its final opinion.¹⁰ Simultaneously, with its granting of certiorari in *Mathena v. Malvo*, the Supreme Court is poised to decide whether its decision in an earlier case¹¹ modifies a substantive rule of constitutional law such that it must be given retroactive effect, vacating the Respondent's sentence of life without the possibility of parole for crimes committed at age seventeen.¹² This Comment

⁷ It is helpful to clarify that, although courts and researchers use the term “culpability” in this context, it is not to suggest that juveniles do not have the requisite *mens rea* to be convicted of their crimes. Rather, notions of diminished culpability indicate that juveniles’ *blameworthiness* is diminished by the attributes of youth, such that juveniles are less deserving of sentences that mirror the severity of sentences applied to adults who commit similar crimes.

⁸ See *infra* Part III.

⁹ *United States v. Grant*, 887 F.3d 131, 146–48, 151 (3d Cir. 2018).

¹⁰ *United States v. Grant*, 905 F.3d 285, 285 (3d Cir. 2018).

¹¹ *Montgomery*, 136 S. Ct. at 734 (holding that the Court’s decision in *Miller v. Alabama*—that mandatory life without parole for those who were minors at the time of their crime violates the Eighth Amendment’s prohibition against cruel and unusual punishment—must be given retroactive effect because it modifies a substantive rule of constitutional law.).

¹² *Malvo v. Mathena*, 893 F.3d 265 (4th Cir. 2018), *cert. granted*, 139 S. Ct. 1317 (Mar. 18, 2019) (No. 18-217). In 2002, Malvo and another individual, Muhammad, killed ten people in sniper attacks. Muhammad was sentenced to death and executed in 2009. Malvo, however, was seventeen at the time of the attacks and was sentenced to life in prison. He challenged these decisions, arguing that his sentence must be vacated because *Montgomery* modified a substantive rule of constitutional law and should therefore be applied retroactively

will discuss the specific issues of the Third Circuit's original opinion in *Grant*, but will assess broader theories in doing so in order to advocate for a more sound sentencing doctrine.

Part II will lay out the scope of the juvenile incarceration problem. Part III will discuss Supreme Court decisions interpreting the Eighth Amendment as applied to juvenile offenders. Part IV will analyze the *United States v. Grant* decision and its sentencing standard that builds upon Supreme Court precedent. Part V will evaluate how *Grant* was in line with the Supreme Court doctrine and was an integral step toward a sentencing scheme that accounts for retributivist and rehabilitative goals. Part V will further argue for the development of a framework that provides for a screening, assessment, and treatment model to provide non-incorrigible juvenile offenders with a meaningful opportunity for release, and account for economic and policy concerns surrounding incarceration. *Grant* develops Supreme Court precedent, but does not go far enough given insights from other fields related to juvenile justice.

II. THE SCOPE OF THE JUVENILE INCARCERATION PROBLEM AND MENTAL HEALTH AMONG OFFENDERS

The United States has one of the largest prison populations in the world.¹³ Despite the declining rate of juvenile incarceration, the United States continues to incarcerate more youth and adolescents than any other industrialized nation.¹⁴ This poses significant social and economic burdens on the nation as a whole. On average, the United States spends \$148,767 to incarcerate one juvenile for one year in the most expensive confinement system¹⁵—nearly thirteen times the \$11,454 it invests in a single child's education.¹⁶ Additionally, the United States incurs between \$7.90 billion and \$21.47 billion in long-term costs resulting from youth incarceration.¹⁷

to his own sentencing. *Id.* at 266–67.

¹³ VALERIE WRIGHT, THE SENTENCING PROJECT, DETERRENCE IN CRIMINAL JUSTICE: EVALUATING CERTAINTY VS. SEVERITY OF PUNISHMENT, (2010), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>.

¹⁴ NELL BERNSTEIN, BURNING DOWN THE HOUSE: THE END OF JUVENILE PRISON 12–13 (2016). The US incarcerates juveniles at eighteen times the rate of France, seven times the rate of Great Britain, and five times the rate of South Africa, its closest competitor. *Id.*

¹⁵ AMANDA PETTERUTI, MARC SCHINDLER & JASON ZIEDENBERG, JUSTICE POLICY INST., STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION 3 (Sarah E. Baker ed., 2014).

¹⁶ STEPHEN Q. CORNMAN ET AL., U.S. DEP'T OF EDUC., REVENUES AND EXPENDITURES FOR PUBLIC ELEMENTARY AND SECONDARY EDUCATION: SCHOOL YEAR 2014–15 (FISCAL YEAR 2015) 2 (2017).

¹⁷ PETTERUTI, *supra* note 15. This figure includes costs of recidivism, lost future earnings of confined youth, lost future government tax revenue, additional Medicare and Medicaid spending, and costs of sexual assault on confined youth. *Id.*

This figure pales in comparison to that of a juvenile with a mental disability. In 2007, a study prepared for the Chief Probation Officers of California and the California Mental Health Directors Association surveyed eighteen counties and found that a juvenile with a mental illness can cost at least \$18,800 more than other incarcerated youth.¹⁸

More than half of all incarcerated individuals have mental health disabilities.¹⁹ Approximately 50 to 75% of the two million youth encountering the juvenile justice system each year²⁰ meet criteria for a mental health disorder, and approximately 40 to 80% of incarcerated juveniles have at least one diagnosable mental health disorder.²¹ Understanding the connection between mental health and juvenile offending is a crucial component to rehabilitation, as mental health is both directly and indirectly linked to subsequent delinquency.²² Further, life-without-parole (LWOP) sentences disproportionately impact the most marginalized and vulnerable children, as juveniles who commit the most severe crimes are significantly more likely than the general population to have been exposed to adverse childhood experiences—75 to 93%²³ versus 25 to 34%, respectively.²⁴ Adverse childhood experiences include physical abuse, sexual abuse, emotional abuse, emotional neglect, physical neglect, household substance abuse, household mental illness, parental separation, and having an incarcerated household member.²⁵ Research demonstrates that exposure to trauma significantly impacts brain development and

¹⁸ EDWARD COHEN & JANE PFEIFER, CHIEF PROB. OFFICERS OF CAL. AND CAL. MENTAL HEALTH DIRS. ASS'N, COSTS OF INCARCERATING YOUTH WITH MENTAL ILLNESS vi (2008).

¹⁹ SAMHSA Awards Nearly \$21.6 Million in Grants to Help People Transition from the Criminal Justice System to the Community, SAMHSA (Oct. 13, 2010), http://www.icfhinc.org/news_details.asp?news=50. [hereinafter SAMHSA Awards Grants for Transition Services].

²⁰ Lee A. Underwood & Aryssa Washington, *Mental Illness and Juvenile Offenders*, 13 INT'L J. OF ENVTL. RES. & PUB. HEALTH 228, 229–30 (2016). Demographers predict that one in three American children will be arrested by age twenty-three. Robert Brame et al., *Cumulative Prevalence of Arrest from Ages 8 to 23 in a National Sample*, 129 PEDIATRICS 21, 25 (2012).

²¹ Underwood & Washington, *supra* note 20, at 229–30; *see also* BROWN, *supra* note 3, at 8.

²² Underwood & Washington, *supra* note 20, at 230.

²³ Michelle Evans-Chase, *Addressing Trauma and Psychosocial Development in Juvenile Justice-Involved Youth: A Synthesis of the Developmental Neuroscience, Juvenile Justice and Trauma Literature*, 3 LAWS 744, 745 (2014). Among children sentenced to LWOP, 79% have witnessed violence in their homes, almost 46.9% have been physically abused, and 20.5% have been sexually abused. ASHLEY NELLIS, THE LIVES OF JUVENILE LIFERS: FINDINGS FROM A NATIONAL SURVEY 2 (2012).

²⁴ THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, TIPPING POINT: A MAJORITY OF STATES ABANDON LIFE-WITHOUT-PAROLE SENTENCES FOR CHILDREN 8 (2018).

²⁵ *Id.*

chemistry²⁶ and is associated with a lessened capacity for emotional self-regulation, increased violent behavior,²⁷ increased impulsive behavior, increased risk-taking behavior, and decreased self-control.²⁸

Both the prefrontal cortex of the brain, which controls executive functioning, and the limbic system, which processes emotions, rewards, and punishments, continue to develop through adolescence.²⁹ Eighteen is “the peak age for criminal behavior, and 90[%] of all juvenile offenders desist from crime by their mid-[twenties], evidencing likely rehabilitation for children and teenagers who commit serious crimes.”³⁰ Thus, “while the impacts of trauma provide critical context for children who commit serious crimes, the plasticity of children’s brains makes them especially amenable to rehabilitation, therapy, and positive growth.”³¹

Offenders with mental health and substance use disorders have difficulty accessing quality behavioral health services due to a lack of health care, job skills, education, stable housing, and connections with community behavioral health providers.³² Most juvenile justice systems do not have the facilities to properly screen or treat youth with mental health disorders; risks of victimization, self-injury, and suicide are high among those who become incarcerated.³³ Further preventing access to needed services jeopardizes recovery and increases the likelihood of relapse or re-arrest.³⁴ As a result of this realization, state policies have had an increased focus on providing proper screening, assessment, and treatment services for young offenders with mental health needs.³⁵ Still, only about one-third of state prisoners and

²⁶ Michael T. Baglivio et al., *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, 3 J. JUV. JUST. 3 (2014).

²⁷ Evans-Chase, *supra* note 2323, at 745.

²⁸ Annette Streeck-Fischer et al., *Down Will Come Baby, Cradle and All: Diagnostic and Therapeutic Implications of Chronic Trauma on Child Development*, 34 AUSTL. & N.Z. J. PSYCHOL. 903, 915 (2000).

²⁹ LAURENCE STEINBERG, *AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE* 70 (2014).

³⁰ THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, *TIPPING POINT: A MAJORITY OF STATES ABANDON LIFE-WITHOUT-PAROLE SENTENCES FOR CHILDREN* 4 (2018) (citing ELIZABETH SCOTT ET AL., *THE SUPREME COURT AND THE TRANSFORMATION OF JUVENILE SENTENCING* 7 (2015)).

³¹ *Id.*

³² *Reentry Resources for Individuals, Providers, Communities, and States*, SAMHSA (Apr. 1, 2016), https://www.samhsa.gov/sites/default/files/topics/criminal_juvenile_justice/reentry-resource-s-for-consumers-providers-communities-states.pdf. [Hereinafter *Reentry Resources*].

³³ NAT’L MENTAL HEALTH ASS’N, *MENTAL HEALTH TREATMENT FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM: A COMPENDIUM OF PROMISING PRACTICES* 3 (2004).

³⁴ *Id.* at 1.

³⁵ BROWN, *supra* note 3, at 8, 10 (providing highlights of significant juvenile mental health laws in Arizona, Connecticut, California, Georgia, New Jersey, Colorado, Montana, Tennessee, and Iowa).

one-sixth of local jail inmates with mental health disabilities have received treatment since admission.³⁶

This poses a significant barrier to rehabilitation and the opportunity to prove that an inmate is capable of reform and thus deserving of release. Without sufficient services and treatment programs, offenders will continue to demonstrate symptoms that affect behavior and hinder rehabilitation. For example, rule violations and injuries from physical altercations are more common among inmates with mental health diagnoses.³⁷ Additionally, offenders that serve longer sentences are more likely to become institutionalized, lose supportive contacts in the community, and become removed from recovery opportunities; each of these considerations promote recidivism.³⁸ Retributivism appropriately stresses the notion that criminal offenders deserve punishments proportional to the crimes committed and the circumstances surrounding each offense. Rehabilitative goals, however, must work in collaboration with retributivist notions to lessen the detrimental effects of incarceration of juvenile offenders, both on the individual offenders and on society as a whole.

III. THE EIGHTH AMENDMENT: HOW IT APPLIES TO JUVENILE OFFENDERS

Adolescence is a period of heightened neuroplasticity, meaning that the brain has a heightened capacity for positive change.³⁹ This is the foundation for the Supreme Court's decisions interpreting the Eighth Amendment and applying its protections to juvenile offenders, as the Court recognized that a child's traits are less fixed than an adult's.⁴⁰

A. *Supreme Court Cases Interpreting the Eighth Amendment and Establishing Guidelines for Sentencing Juvenile Offenders*

The Eighth Amendment demands adherence to these familiar words: “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”⁴¹ Under the Eighth Amendment, “the State must respect the human attributes even of those who have committed

³⁶ DORIS J. JAMES & LAUREN E. GLAZE, NCJ 213600, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES (2006).

³⁷ *Id.*

³⁸ Wright, *supra* note 1313, at 7.

³⁹ Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 451 (2013); ELIZABETH SCOTT ET AL., THE SUPREME COURT AND THE TRANSFORMATION OF JUVENILE SENTENCING 9 (2015).

⁴⁰ See e.g., *Miller v. Alabama*, 567 U.S. 460, 471 (2012); *Graham v. Florida*, 560 U.S. 48, 72 (2010).

⁴¹ U.S. CONST. amend. VIII.

serious crimes.”⁴² Further, to determine whether a punishment is cruel and unusual, courts must account for societal changes.⁴³ “The concept of proportionality is central to the Eighth Amendment.”⁴⁴ The punishment should be graduated and proportional to the offense committed.⁴⁵

In 2005, the Supreme Court addressed whether the death penalty was an appropriate sentence for a seventeen-year-old boy who planned and committed murder in the first degree.⁴⁶ Despite evidence that the murder was “wantonly vile,”⁴⁷ the *Roper v. Simmons* opinion recognized that children and adolescents are inherently different than adults, and granted juveniles additional constitutional protections under the Eighth Amendment.⁴⁸ Therefore, the Court held that the Eighth Amendment’s ban against cruel and unusual punishment prohibits juveniles from being sentenced to death for crimes they committed before age eighteen.⁴⁹ The Court cited studies evidencing that only a small portion of adolescents who engage in illegal activity develop fixed patterns of criminal behavior.⁵⁰ Because adolescents’ brains are not fully developed, mental abilities such as self-control and the ability to take responsibility for one’s actions are affected.⁵¹ The Court further found an existing “consensus” in society that juveniles are not as blameworthy as adults guilty of similar crimes,⁵² noting that “[r]etribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.”⁵³ The Court relied upon evidence that the majority of States rejected the juvenile death penalty, and the punishment was infrequently used even where it remained a viable punishment.⁵⁴ Thus, the Court held that the “differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability.”⁵⁵

⁴² *Graham*, 560 U.S. at 59.

⁴³ *Id.* at 58.

⁴⁴ *Id.* at 59.

⁴⁵ *Id.*

⁴⁶ *Roper v. Simmons*, 543 U.S. 551, 557–60 (2005).

⁴⁷ *Id.* at 557.

⁴⁸ *Id.* at 561–62.

⁴⁹ *Id.* at 578.

⁵⁰ *Id.* at 570 (citing Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003)).

⁵¹ *See id.* at 569–70.

⁵² *Roper*, 543 U.S. at 567.

⁵³ *Id.* at 571.

⁵⁴ *Id.* at 567.

⁵⁵ *Id.* at 572–73.

In 2010, the Supreme Court again expanded the doctrine promulgated in *Roper* when a sixteen-year-old boy was charged as an adult, pleaded guilty to armed burglary with assault and attempted battery, and received the maximum sentence of life imprisonment without parole.⁵⁶ In *Graham v. Florida*, the court sentenced the adolescent offender to the maximum sentence on each charge, which was life imprisonment for armed burglary and fifteen years for attempted armed robbery.⁵⁷ “Because Florida ha[d] abolished its parole system. . . a life sentence [allowed] no possibility of release.”⁵⁸ On appeal, the Supreme Court held that the imposition of LWOP on a juvenile offender for a non-homicide crime constitutes cruel and unusual punishment, and is therefore prohibited by the Eighth Amendment.⁵⁹ None of the recognized goals of penal sanctions—retribution, deterrence, incapacitation, and rehabilitation—provided an adequate justification for such a sentence.⁶⁰ Significantly, the Court further held that while the Eighth Amendment does not require a State to release an offender during his lifetime, it must provide each individual with “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”⁶¹ It could not be conclusively determined at the time of sentencing that the juvenile offender would be a danger to society for the rest of his life.⁶²

The categorical rule developed by the *Graham* decision provides all juvenile non-homicide offenders “a chance to demonstrate maturity and reform,” as they should not be deprived of hope, the chance for fulfillment outside prison walls, the chance for reconciliation with society, or “the opportunity to achieve maturity of judgment and self-recognition of human worth and potential.”⁶³ The Court noted that international opinion also weighs overwhelmingly against LWOP sentences for non-homicide offenses committed by juveniles.⁶⁴ Determining that a juvenile offender will continue to be a danger to society throughout his life is determining that the juvenile is “incorrigible.”⁶⁵ Incorrigibility, however, is “inconsistent with youth.”⁶⁶ “Maturity can lead to that considered reflection which is the foundation for

⁵⁶ *Graham v. Florida*, 560 U.S. 48, 57 (2010).

⁵⁷ *Id.* at 57. The sentencing judge tried the juvenile offender as an adult, reasoning that the adolescent’s escalating pattern of criminal conduct suggested that deviant behavior would continue throughout his life, and the court should try to protect the community from the defendant’s future criminal actions. *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 81–82.

⁶⁰ *Id.* at 71.

⁶¹ *Id.* at 75.

⁶² *Graham*, 560 U.S. at 73.

⁶³ *Id.* at 79.

⁶⁴ *Id.* at 81 (quoting *Roper v. Simmons*, 543 U.S. 551, 578 (2005)).

⁶⁵ *Id.* at 72.

⁶⁶ *Id.* at 73 (quoting *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. App. 1968)).

remorse, renewal, and rehabilitation.”⁶⁷ Inmates not eligible for parole consideration are often deprived of counseling, education, and rehabilitation programs.⁶⁸ Thus, a LWOP sentence improperly denied the offender an opportunity to demonstrate growth, maturity, and rehabilitation.⁶⁹

Shortly after *Graham*, the Supreme Court expanded upon this doctrine yet again in *Miller v. Alabama*, where two fourteen-year-old boys were convicted of murder and sentenced to LWOP.⁷⁰ This “landmark”⁷¹ decision announced that mandatory LWOP sentencing schemes for juvenile offenders are unconstitutional violations of the Eighth Amendment.⁷² The Court reasoned that allowing such sentencing schemes to exist poses too great a risk of disproportionate punishment.⁷³ Punishment must be appropriate to the crime committed, and proportionality must take into account “the mitigating qualities of youth.”⁷⁴ The Court found fault in such mandatory sentencing schemes, noting that the decision-maker who originally sentenced the two defendants had no discretion to impose different punishments because state law mandated that each juvenile serve a LWOP sentence, “even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of this crime, made a lesser sentence . . . more appropriate.”⁷⁵

The Court’s rationale originated from the previous *Roper* and *Graham* decisions. A mandatory LWOP sentencing scheme prevents consideration of an offender’s “lessened culpability” and greater “capacity for change”⁷⁶ by precluding consideration of an offender’s age and its “hallmark” features, such as immaturity, impulsiveness, and failure to appreciate risks and consequences⁷⁷—qualities that make youth less culpable for their crimes.⁷⁸ Mandatory LWOP schemes prevent sentencing courts from taking into account the family and surrounding environment from which a juvenile offender cannot usually extricate himself.⁷⁹ The mandatory sentencing practice in *Miller* forced the sentencing court to neglect the circumstances of the homicide offense, including the extent of the offender’s participation in

⁶⁷ *Id.* at 79.

⁶⁸ *Graham*, 560 U.S. at 79.

⁶⁹ *Id.* at 73.

⁷⁰ 567 U.S. 460, 465 (2012).

⁷¹ BROWN, *supra* note 3, at 4.

⁷² *Miller v. Alabama*, 567 U.S. 460, 502 (2012).

⁷³ *Id.* at 479.

⁷⁴ *Id.* at 476.

⁷⁵ *Id.* at 465.

⁷⁶ *Id.* (quoting *Graham v. Florida*, 560 U.S. 48, 68, 74 (2010)).

⁷⁷ *Id.* at 477.

⁷⁸ *Miller*, 567 U.S. at 472 (citing *Graham*, 560 U.S. at 72).

⁷⁹ *Id.* at 477.

the conduct and the way familial and peer pressures may have affected him.⁸⁰ The Court further noted that mandatory LWOP schemes also ignore that an offender might have been convicted of a lesser crime if not for attributes related to maturity associated with youth, such as the inability to deal with police officers or prosecutors, to negotiate a plea agreement, or to assist defense attorneys.⁸¹ This puts youth at a significant disadvantage in criminal proceedings.⁸² Courts must examine all circumstances of a case, including youth and its attendant characteristics, in order to initiate an appropriate sentence.⁸³ Thus, mandatory LWOP sentencing schemes that apply to juvenile offenders violate the Eighth Amendment's prohibition on cruel and unusual punishment.⁸⁴

In 2016, the *Montgomery v. Louisiana* held that, because the *Miller* decision declared a new substantive rule of constitutional law, it thus applies retroactively on collateral review.⁸⁵ This does not mean that states must re-sentence each offender.⁸⁶ Rather, states may remedy *Miller* violations by considering juvenile homicide offenders for parole.⁸⁷

B. How Other Courts Apply the *Graham* and *Miller* Doctrine

Several circuit courts have similarly applied the *Graham* and *Miller* doctrine to cases of *de facto* LWOP sentences—those which are not technically mandatory but are functionally mandatory.⁸⁸ In *McKinley v. Butler*, the Seventh Circuit applied *Miller* to invalidate a *de facto* life sentence in the form of a 100-year sentence with no chance of early release imposed on a non-incorrigible juvenile offender.⁸⁹ The court emphasized the importance of the logic behind *Miller*'s finding that children are inherently different than adults, and held that this consideration “cannot logically be limited to *de jure* life sentences, as distinct from sentences denominated in numbers of years yet highly likely to result in imprisonment for life.”⁹⁰ The Seventh Circuit further stated that this logic applies whether or not the legislature has made the life sentence discretionary or mandatory, holding that “even discretionary life sentences must be guided by consideration of

⁸⁰ *Id.*

⁸¹ *Id.* at 477–78.

⁸² *Id.* at 478 (quoting *Graham*, 560 U.S. at 78).

⁸³ *Id.* at 477, 483.

⁸⁴ *Miller*, 567 U.S. at 465.

⁸⁵ *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016).

⁸⁶ *Id.* at 736.

⁸⁷ *Id.*

⁸⁸ See e.g., *McKinley v. Butler*, 809 F.3d 908 (7th Cir. 2016).

⁸⁹ *Id.* at 911.

⁹⁰ *Id.*

age-relevant factors.”⁹¹ Similarly, the Ninth Circuit applied *Graham* to hold a 254-year sentence unconstitutional on the grounds that both LWOP and de facto LWOP “deny the juvenile the chance to return to society.”⁹² The sentence was deemed “irreconcilable with *Graham*’s mandate that a juvenile nonhomicide offender must be provided with ‘some meaningful opportunity’ to reenter society.”⁹³ The court noted that *Graham*’s focus was not on the label of a “life sentence,” but “rather on the difference between life in prison with, or without, possibility of parole.”⁹⁴ The Tenth Circuit ruled similarly in *Budder v. Addison*, holding that a sentence of 155 years violated the Eighth Amendment under *Graham*.⁹⁵ “*Graham* addressed any sentence that would deny a juvenile nonhomicide offender a realistic opportunity to obtain release, regardless of the label a state places on that sentence.”⁹⁶ The court refused to permit states to escape *Graham*’s categorical rule merely because a punishment is not labeled “life without parole.”⁹⁷

District and state courts have also followed suit, recognizing that there is no meaningful difference between a mandatory LWOP sentence and a sentence styled as a mere mandatory term of years that effectively obtains the same result.⁹⁸ For example, *State v. Null* held that “[t]he prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a ‘meaningful opportunity’ to demonstrate the ‘maturity and rehabilitation’ required to obtain release and reenter society as required by *Graham*.”⁹⁹ The court reasoned that the *Miller* doctrine is neither crime-specific nor punishment-specific, as the notions “that ‘children are different’ and that they are categorically less culpable than adult offenders apply as fully in this case [involving a lengthy term-of-years sentence] as in any other.”¹⁰⁰ “After the juvenile’s transient impetuosity ebbs and the juvenile matures and reforms, the incapacitation objective can no longer seriously be served, and the statutorily mandated delay of parole” purposelessly causes

⁹¹ *Id.*

⁹² *Moore v. Biter*, 725 F.3d 1184, 1192 (9th Cir. 2013) (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010)).

⁹³ *Id.* at 1194 (quoting *Graham*, 560 U.S. at 75).

⁹⁴ *Id.* at 1192. The court noted that “‘there are no constitutionally significant distinguishable facts’ between *Graham*’s and *Moore*’s sentences.” *Id.* at 1191 (quoting *Cudio v. Ayers*, 698 F.3d 752, 763 (9th Cir. 2012)).

⁹⁵ 851 F.3d 1047, 1059 (10th Cir. 2017).

⁹⁶ *Id.* at 1053 n.4.

⁹⁷ *Id.* at 1056.

⁹⁸ *See e.g.*, *State v. Null*, 836 N.W.2d 41 (Iowa 2013).

⁹⁹ 836 N.W.2d 41, 71 (Iowa 2013) (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010)).

¹⁰⁰ *Id.* (holding that all mandatory minimum sentences imprisoning juvenile offenders are unconstitutional under the cruel and unusual punishment clause of Iowa’s state constitution because mandatory minimum sentences for juveniles are too punitive and inhibit the rehabilitative ideal).

continued pain and suffering.¹⁰¹ Similarly, *Funchess v. Prince* held that Louisiana's parole procedure did "little in the way of actually making parole a possibility" and, as such, did not provide a meaningful opportunity for release under *Miller*.¹⁰² *State v. Pearson* went a step further and held that a thirty-five-year sentence without the possibility of parole "violates the core teachings of *Miller*,"¹⁰³ "effectively depriv[ing] [the defendant] of any chance of an earlier release and the possibility of leading a more normal adult life."¹⁰⁴ One judge opined that "limiting the techniques and protections of these recent cases to only the harshest penalties known to law is as illogical as it is unjust."¹⁰⁵ The court further directed sentencing courts to consider rehabilitation¹⁰⁶ as well as the mitigating features of youth pursuant to *Miller* when sentencing juvenile offenders.¹⁰⁷ More recently, *People v. Holman* held that both mandatory and discretionary life sentences for juvenile offenders are disproportionate and unconstitutional, unless mitigating factors such as youth and its attendant characteristics are appropriately considered at the time of sentencing.¹⁰⁸ The Supreme Court of Illinois stated that a juvenile offender may be sentenced to LWOP "only if the trial court determines that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation."¹⁰⁹

Today, a majority of states ban LWOP sentences for children or have no one serving the sentence.¹¹⁰ Since the Court decided *Montgomery* in 2016, the number of individuals serving LWOP for offenses committed as children has been reduced by 60% because of judicial advances and

¹⁰¹ *State v. Lyle*, 854 N.W.2d 378, 400 (Iowa 2014) (citing *Coker v. Georgia*, 433 U.S. 584, 592 (1977)).

¹⁰² No. 14-2105, 2016 U.S. Dist. LEXIS 23131, at *15 (E.D. La. Feb. 25, 2016) (holding that, because of these obstacles, the sentencing court imposed what amounted to a mandatory life sentence with no *meaningful* opportunity to obtain release, regardless that the prisoner would be eligible for parole in 40 years).

¹⁰³ 836 N.W.2d 88, 96 (Iowa 2013).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 98 (Cady, C.J., concurring).

¹⁰⁶ *Id.* at 97. "To predict that a juvenile cannot be rehabilitated is very difficult." *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ 91 N.E.3d 849, 861 (Ill. 2017).

¹⁰⁹ *Id.* at 863.

¹¹⁰ The number of states that do not allow LWOP to be imposed on children has increased from five states in 2012 to twenty-six states and the District of Columbia in 2019. *States That Ban Life Without Parole for Children*, THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, <https://www.fairsentencingofyouth.org/mediaresources/states-that-ban-life/> (last visited Feb. 15, 2019). In at least six additional states (Maine, Minnesota, Missouri, New Mexico, New York, and Rhode Island), no one is serving LWOP for an offense committed as a child. THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, TIPPING POINT: A MAJORITY OF STATES ABANDON LIFE-WITHOUT-PAROLE SENTENCES FOR CHILDREN 5, 12 n.18 (2018).

legislative reform,¹¹¹ and for those whose LWOP sentences have been reformed as a result, the median sentence nationwide is twenty-five years before parole or release eligibility, which means that “most individuals who were sentenced to die in prison as children now have an opportunity for release, but they will not be eligible for a review opportunity or release until they are at least in their [forties] or older.”¹¹² This demonstrates that states are beginning to move in the right direction to provide opportunities for release at younger ages; yet, many individuals are still serving lengthy sentences that may not allow or effectively provide for meaningful reentry into society, especially since there remains a lack of a rehabilitation focus to promote wellness, recovery, and meaningful participation in the community.

IV. THE THIRD CIRCUIT’S APPROACH: *UNITED STATES V. GRANT*

Following the Supreme Court’s direction, the Third Circuit focused squarely on the plight of non-incorrigible juvenile offenders facing constructively LWOP sentences—a result that *Miller* and *Graham* suggest is rarely permissible.¹¹³ In response to issues surrounding *de facto* LWOP, the Third Circuit approached *de facto* LWOP as equally unconstitutional in light of Supreme Court doctrine.¹¹⁴ Despite its allegedly horrific facts, *United States v. Grant* attempted to effectuate Supreme Court doctrine, examining the constitutionality of lengthy term-of-year sentences and the contours of the an offender’s right to a meaningful opportunity for release.¹¹⁵ In *Grant*, Corey Grant, a member of an organized gang of teenagers called the E-Port Posse, was convicted of RICO conspiracy, racketeering,¹¹⁶ various drug trafficking charges, and possession of a weapon in relation to a crime of violence or drug trafficking—crimes committed between ages thirteen and sixteen.¹¹⁷ Although “the District Court determined that Grant’s upbringing,

¹¹¹ THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, TIPPING POINT: A MAJORITY OF STATES ABANDON LIFE-WITHOUT-PAROLE SENTENCES FOR CHILDREN 6 (2018). Still, children continue to receive LWOP at a disproportionate rate in several jurisdictions. *Id.* at 7.

¹¹² *Id.* at 6.

¹¹³ See *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48, 72–73 (2010).

¹¹⁴ *United States v. Grant*, 887 F.3d 131, 142 (3d Cir. 2018).

¹¹⁵ See generally *United States v. Grant*, 887 F.3d 131 (3d Cir. 2018).

¹¹⁶ As predicates for the racketeering charge, a jury found that Grant murdered one individual and attempted to murder another. *Id.* at 136. On one occasion, Grant encountered a group of rival drug dealers while delivering drugs for the E-Port Posse and confronted a former member of the E-Port Posse, Dion Lee; Grant and an associate shot Dion in the leg. *Id.* Later that month, Grant encountered Dion’s brother, Mario, another independent drug dealer who was warned not to operate within the Posse’s territory. *Id.* Grant confronted Mario, who began to retreat. *Id.* Grant ordered his associate to shoot Mario to prevent escape, and the associate killed Mario. *Id.*

¹¹⁷ *Id.* at 134–35.

debilitating characteristics of youth, and post-conviction record demonstrated that he had the capacity to reform and that a LWOP sentence was therefore inappropriate under *Miller*,” Grant received a term of sixty-five years without parole.¹¹⁸ Grant challenged the constitutionality of this sentence, contending that he would be released at age seventy-two at the earliest—the same age as his life expectancy—which “constitutes *de facto* LWOP and therefore fails to account for his capacity for reform and to afford him a meaningful opportunity for release.”¹¹⁹

Relying on the Supreme Court doctrine as established, the Third Circuit extended *Miller*, holding that a term-of-years sentence that meets or exceeds the life-expectancy of a non-incorrigible juvenile offender violates the Eighth Amendment.¹²⁰ For the same reasons that mandatory LWOP sentences are unconstitutional as applied to children and adolescents, the court found *de facto* LWOP sentences inherently disproportionate for juveniles still capable of reform.¹²¹ Three considerations led the court to its conclusion: (1) *Miller* reserves the sentence of LWOP only for permanently incorrigible juvenile homicide offenders; (2) the Supreme Court’s justifications for its position on LWOP sentences apply equally to *de facto* LWOP sentences; and (3) *de facto* LWOP sentences are irreconcilable with the *Graham* and *Miller* requirement that non-incorrigible juvenile offenders be provided with a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”¹²² *De facto* LWOP sentences “cannot possibly provide a meaningful opportunity for release” because the offender effectively spends the rest of his life in prison, prevented from ever reentering society.¹²³

Like the *de jure* LWOP sentence, a *de facto* LWOP sentence lacks proportionality.¹²⁴ Each consideration supporting the *Graham* decision applies with equal strength to the Third Circuit’s treatment of non-incorrigible juvenile offenders.¹²⁵ These include “the impotence of deterring juveniles, the shortcomings of retribution as a result of diminished culpability, the increased opportunity for reform that vitiates incapacitation, and the irreconcilable tension between LWOP sentences and rehabilitation.”¹²⁶ As a result of this decision, the court instructed sentencing

¹¹⁸ *Id.* at 135.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 142.

¹²¹ *Grant*, 887 F.3d at 142.

¹²² *Id.* (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010)); *see also Miller v. Alabama*, 567 U.S. 460, 479 (2012).

¹²³ *Id.* at 145.

¹²⁴ *Id.* at 143–44.

¹²⁵ *Id.* at 144.

¹²⁶ *Id.*

judges to conduct individualized evidentiary hearings to determine each non-incorrigible homicide offender's life expectancy before sentencing the individual to a term-of-years sentence that may meet or exceed his mortality.¹²⁷ A constitutional punishment must "fit[] the offender and not merely the crime."¹²⁸

The Third Circuit further held that the national age of retirement, in addition to a juvenile offender's life expectancy, must be considered as a sentencing factor in order to properly structure a meaningful opportunity for release.¹²⁹ "Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope."¹³⁰ Similarly, hope for the potential of only a few years in the community is not an appropriate standard for a meaningful opportunity for release.¹³¹ To effectuate this opinion, the *Grant* Court sought to develop a legal framework to carry out the Supreme Court doctrine by providing guidance for giving minimum constitutional protections.¹³² Structuring a meaningful opportunity for release must begin with a factual determination of the juvenile offender's life expectancy so that an offender who is capable of reform is not sentenced to a term-of-years beyond his expected mortality.¹³³ This will also allow sentencing courts to calculate the amount of time the offender will have to reenter society after an opportunity for release.¹³⁴

Next, sentencing courts must "shape a sentence that properly accounts for a meaningful opportunity for release," which must provide for hope, a chance for fulfillment outside of incarceration, reconciliation with society, and the opportunity to achieve maturity of judgment and self-recognition of human potential.¹³⁵ This poses the issue of determining at what age an offender should be able to meaningfully reenter society.¹³⁶ Because society accepts the national age of retirement as "a transitional life stage where an individual permanently leaves the work force after having contributed to society over the course of his or her working life," the Third Circuit

¹²⁷ *Grant*, 887 F.3d at 149. "Critically, in addition to actuarial tables, lower courts should consider any evidence made available by the parties that bears on the offender's mortality, such as medical examinations, medical records, family medical history, and pertinent expert testimony." *Id.* at 150.

¹²⁸ *Id.* at 150 (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949)).

¹²⁹ *Id.* at 153.

¹³⁰ *Id.* at 147 (quoting *Graham v. Florida*, 560 U.S. 48, 79 (2010)).

¹³¹ *Id.* at 148.

¹³² *Id.* at 148–49.

¹³³ *Grant*, 887 F.3d at 149.

¹³⁴ *Id.*

¹³⁵ *Id.* at 150 (citing *Graham v. Florida*, 560 U.S. 48, 79 (2010)).

¹³⁶ *Id.*

mandated that sentencing processes consider the national age of retirement as an additional factor for sentencing determinations.¹³⁷

This decision furthers the individualized sentencing approach promulgated in *Miller*,¹³⁸ which requires consideration of a juvenile offender's age and its attendant characteristics that diminish culpability, in order to determine whether or not LWOP is a proportionate sentence.¹³⁹ *Miller* determined that sentencing a child to LWOP is excessive for all but the "rare juvenile offender whose crime reflects irreparable corruption."¹⁴⁰ For the majority of juvenile offenders, whose crimes instead reflect the "transient immaturity"¹⁴¹ of youth, LWOP is an unconstitutional penalty. For the same reasons, *de facto* LWOP that provides a non-incorrigible juvenile offender with little or no time to meaningfully engage in society outside of incarceration—due to a term-of-years sentence that ends close to the offender's life expectancy—should also be recognized as penalty in violation of the Eighth Amendment.

V. *GRANT*: A STEP IN THE RIGHT DIRECTION FOR NON-INCORRIGIBLE JUVENILE OFFENDERS

United States v. Grant is consistent with Supreme Court doctrine. But where *Grant* falls short is in its range of analysis surrounding incorrigibility and juveniles' capability for reform. Moving forward, courts should consider the interaction of retributive and rehabilitative ideals to construct individualized sentences relating to key recovery themes, principles for effective treatment programs, and vocational rehabilitation.

A. *Grant* is Consistent with the Established Supreme Court Doctrine

Notably, the Supreme Court based its decisions not only on common sense—on what "any parent knows"—but on science and social science realities as well.¹⁴² The evidence supporting the *Roper* and *Graham* decisions has become more strongly supported by research in developmental

¹³⁷ *Id.* at 150–51.

¹³⁸ *Id.* at 141.

¹³⁹ *Miller v. Alabama*, 567 U.S. 460, 474 n.6. (2012).

¹⁴⁰ *Id.* at 479–80 (quoting *Roper v. Simmons*, 543 U.S. 551, 573 (2005)).

¹⁴¹ *Graham*, 560 U.S. at 72–73. The phrase "transient immaturity" is not used to minimize the severity of crimes committed. Rather, it is used to emphasize that the signature qualities of youth are transient (temporary); dominating characteristics such as recklessness and impulsivity subside with maturity. "Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persists into adulthood." *Roper*, 543 U.S. at 570 (quoting Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003)).

¹⁴² *Miller*, 567 U.S. at 471 (citing *Roper*, 543 U.S. at 569).

psychology and neuroscience, which demonstrates that “adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance.”¹⁴³ The retribution rationale of the criminal justice system relates to a person’s blameworthiness. Therefore, although sentences should reflect the severity of the crime committed, the case for retribution is weaker for minors than for adults.¹⁴⁴ Similarly, deterrence is less effective because the characteristics that render youth less culpable than adults also render youth less likely to consider consequences.¹⁴⁵

With this, the *Miller* Court took the notion of distinguishing between incorrigible and non-incorrigible offenders one step further than the *Graham* decision, noting that rehabilitation similarly could not justify a mandatory sentence of LWOP.¹⁴⁶ The *Miller* decision retained the distinction between homicide and non-homicide offenses committed by youth; while *Graham* established a flat ban for non-homicide offenses, the *Miller* decision called for *individualized* sentencing for homicide offenses,¹⁴⁷ holding that the Eighth Amendment forbids a sentencing scheme that *mandates* LWOP for juvenile offenders.¹⁴⁸ Significantly, “[e]ven if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child” capable of reform.¹⁴⁹ *Miller* does not foreclose a judge’s ability to make the judgment, in homicide cases, that a juvenile offender whose crime reflects irreparable corruption deserves a LWOP sentence.¹⁵⁰ The Supreme Court doctrine, however, *does* require judges to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison without an opportunity to meaningfully reenter and participate within the community.¹⁵¹

In accordance with the Supreme Court doctrine, the *Grant* decision similarly does *not* bar judges from utilizing discretion to direct sentences, including LWOP or lengthy term-of-years sentences. Such sentences may be constitutional under extreme circumstances as applied to non-incorrigible

¹⁴³ *Id.* at 471 n.5 (quoting Brief for the American Psychological Association et al. as Amici Curiae in Support of Petitioners at 4, *Miller v. Alabama*, 567 U.S. 460 (2012) (Nos. 10-9646, 10-9647) [hereinafter Brief for APA]).

¹⁴⁴ *Id.* at 472 (citing *Graham*, 560 U.S. at 71).

¹⁴⁵ *Id.* (citing *Graham*, 560 U.S. at 72).

¹⁴⁶ *Id.* at 472–73.

¹⁴⁷ *Id.* at 474 n.6.

¹⁴⁸ *Miller*, 567 U.S. at 479.

¹⁴⁹ *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016).

¹⁵⁰ *Miller*, 567 U.S. at 479–80.

¹⁵¹ *Id.* at 480.

juvenile offenders.¹⁵² The *Grant* decision merely fleshes out the Supreme Court doctrine to further direct sentencing decision-makers charged with the responsibility of determining how to frame a meaningful opportunity for release. In its Petition for Rehearing, the government argued that the *Grant* Court's identification of retirement age was arbitrary and an issue for the legislature.¹⁵³ The court, however, adopted only a rebuttable presumption that juvenile offenders capable of rehabilitation and reform should be afforded opportunities for release before the national age of retirement; it did not adopt a "hard and fast rule."¹⁵⁴ This was necessary "to give life to the Supreme Court's holdings in *Graham* and *Miller*."¹⁵⁵

The Third Circuit ensured that lower courts retain discretion "to depart from [this presumption] in the *exceptional circumstances* where a juvenile offender is found to be capable of reform but the [United States Code] factors still favor a sentence beyond the national age of retirement."¹⁵⁶ The court made clear that such instances will be rare and unusual, but relied on the strengths that district courts possess to provide for individualized sentencing when prudence calls for a departure from this presumption, so long as "their departure is consistent with *Miller*'s Eighth Amendment guarantee for a meaningful opportunity for release."¹⁵⁷

Additionally, as *Grant* argued on appeal, consideration of the national age of retirement was only one component of a thoughtful framework, which also included consideration of life expectancy, any factors set forth in relevant statutes and legal standards, and the need to provide a chance for "fulfillment outside prison walls" based on the unique facts of each case.¹⁵⁸ The court's line-drawing was not without logic, as retirement is a late transitional point that society accepts as providing an "opportunity . . . to attend to other endeavors in life."¹⁵⁹ This line therefore permits long sentences that retributivism deems applicable in view of the severity of the crime committed, while ensuring the requisite chance for fulfillment outside prison walls.

Indeed, the *Grant* Court conceded that there is no "precise line" marking "at what age [an offender is] still able to meaningfully reenter society," and therefore failed to provide courts and sentencing decision-

¹⁵² United States v. *Grant*, 887 F.3d 131, 152 (3d Cir. 2018).

¹⁵³ Petition for Rehearing *En Banc* by Appellee the United States of America at 15, United States v. *Grant*, 887 F.3d 131 (3d Cir. 2018) (No. 16-3829).

¹⁵⁴ *Grant*, 887 F.3d at 152.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* (emphasis added).

¹⁵⁷ *Id.* at 152–53.

¹⁵⁸ *Id.* at 150–51 (quoting *Graham*, 560 U.S. at 79) (emphasis added).

¹⁵⁹ *Grant*, 887 F.3d at 150.

makers with clear guidelines.¹⁶⁰ But the Third Circuit's ruling is consistent with Supreme Court doctrine, which suggests individualized assessments. As such, the *Grant* decision gave standards, but not clear rules, because the Supreme Court has implied that these are necessary to account for the uniqueness of juveniles. Just as other courts have applied the *Miller* doctrine to cases of *de facto* LWOP, the *Grant* decision appropriately applied the same logic to cases of *de facto* LWOP, while building upon the framework to incorporate consideration of the age of retirement in order to effectuate the Supreme Court's instruction that courts effectively provide non-incorrigible juveniles with a "realistic" and "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."¹⁶¹

B. What's Deserved and What's to Come: Grant is Grounded in Sound Policy Logic Behind Retribution and Rehabilitation Sentencing and Reentry Theories

According to one Bureau of Justice Statistics study, approximately 63% of prisoners will be rearrested for a felony or serious misdemeanor, and 41% will be sent back to prison within three years.¹⁶² This "revolving door" has led to substantial reconsideration of the reentry process.¹⁶³ "In 2015, federal efforts focused on reentry services and supports for justice-involved individuals with mental and substance use disorders have driven an expansion of programs and services."¹⁶⁴ For example, because incarceration worsens the problems that often contribute to juvenile crime, increases the odds of recidivism, and undermines public safety in the long term, "[m]odels exist—carefully designed and extensively studied—that improve the prospects of virtually all juvenile offenders, including the most serious,"¹⁶⁵ by providing a relationship-focused network of support and supervision.¹⁶⁶ Incorporating sentencing and reentry procedures that ensure punishment for wrongdoing, yet do so in a more humane manner, can benefit the nation's overall wellness, economy, and public safety.

Research indicates that a punitive focus fails to adequately address both public safety and economic concerns in addition to the rehabilitation needs

¹⁶⁰ *Id.*

¹⁶¹ *Graham v. Florida*, 560 U.S. 48, 74 (2010); *see also Miller v. Alabama*, 567 U.S. 460, 479 (2012).

¹⁶² Doris Layton Mackenzie, *Sentencing and Corrections in the 21st Century: Setting the Stage for the Future*, NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE 52–53 (2001), <https://www.ncjrs.gov/pdffiles1/nij/189106-2.pdf>.

¹⁶³ *Id.* at 36.

¹⁶⁴ Reentry Resources, *supra* note 32.

¹⁶⁵ NELL BERNSTEIN, *BURNING DOWN THE HOUSE* 10 (2016).

¹⁶⁶ *Id.*

of offenders.¹⁶⁷ Criminological research has determined that deterrent effects of the criminal justice system demonstrate that the certainty of punishment is more effective than the severity of punishment.¹⁶⁸ Research indicates that reduced sentences may reduce recidivism rates.¹⁶⁹ These findings suggest that the deterrent effect of lengthy prison terms will not be diminished if sentences are reduced.¹⁷⁰ In fact, they suggest that shorter punishments reduce rates of criminal behavior and recidivism. Thus, there should instead be a greater focus on rehabilitation, particularly in the juvenile population, as youth are more capable of reform. Freeing up resources devoted to incarceration would allow for an increase in services that focus on prevention and treatment.¹⁷¹

Public opinion regarding the juvenile justice system has been shifting from a punitive approach toward a rehabilitative model of care, as evidenced by recent legislative trends and the shift in juvenile courts.¹⁷² The mental health services typically offered, however, are often inadequate or unavailable due to insufficient resources, inadequate administrative capacity, lack of appropriate staffing, and lack of staff training.¹⁷³ Rehabilitation is crucial to effective reintegration into society and to seeking fulfillment outside prison walls. Charging and sentencing juveniles as adults hinders rehabilitative objectives. “The rising number of juvenile prosecutions in the adult criminal courts conflicts with the basic philosophy of the juvenile justice system: that juvenile offenders, given the appropriate treatment and support, are capable of rehabilitation.”¹⁷⁴ Treating juveniles as adults removes the opportunity for rehabilitation, focusing on punishment instead.

Offenders serving LWOP sentences are often denied access to vocational and other rehabilitation services available to other inmates.¹⁷⁵ For juvenile offenders, “the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence . . . all the more evident.”¹⁷⁶ The *Graham* Court held that it could not be conclusively determined at the time of sentencing that a juvenile offender would be a danger to society for

¹⁶⁷ *Id.* at 236–37.

¹⁶⁸ Wright, *supra* note 13, at 1.

¹⁶⁹ *Id.* at 7.

¹⁷⁰ *Id.* at 9.

¹⁷¹ *Id.*

¹⁷² Underwood & Washington, *supra* note 20, at 229.

¹⁷³ *Id.*

¹⁷⁴ Robert Anthonson, *Furthering the Goal of Juvenile Rehabilitation*, 13 J. GENDER, RACE & JUST. 729, 730 (2010) (quoting Gail B. Goodman, *Arrested Development: An Alternative to Juveniles Serving Life Without Parole in Colorado*, 78 U. COLO. L. REV. 1059, 1084 (2007)).

¹⁷⁵ *Graham v. Florida*, 560 U.S. 48, 74 (2010).

¹⁷⁶ *Id.*

the rest of his life, and a sentence of LWOP improperly denied the offender a chance to demonstrate growth, maturity, and rehabilitation. Relying on these principles, the *Grant* Court created a framework for sentencing courts to consider to further these objectives and to ensure a meaningful opportunity for release based upon demonstrated rehabilitation. In doing so, the *Grant* Court recognized that, in many circumstances, a sentence beyond the age of retirement similarly denies an offender who is no longer a danger to society, and who demonstrates maturity and rehabilitation, the opportunity to meaningfully reenter and participate within the community. Therefore, concepts of rehabilitation and retribution should work hand in hand throughout sentencing to ensure that each sentence reflects the severity of the crime, yet provides sufficient opportunity for each individual to demonstrate the ability for reform.

Significantly, despite the severe decrease in educational opportunities available to incarcerated youth, more than 66% aspire to higher education and 88% aspire to maintain steady employment in the future.¹⁷⁷ This statistic, as well as research supporting juveniles' neurological capacity for recovery and growth, supports the integration of services, such as vocational rehabilitation, to effectuate successful reentry and promote meaningful opportunities to participate within the community. Incarceration, therefore, should not be the default response to juvenile crime. When incarceration is appropriate, however, a sentencing scheme that considers the age of retirement,¹⁷⁸ in conjunction with vocational rehabilitation services, offers hope that juvenile offenders will dedicate time to achieving their educational and employment goals within the community.

Juvenile offenders are most in need of, and most receptive to, rehabilitation.¹⁷⁹ Research that attempts to identify and understand traits that explain criminal behavior and shed light on interventions that positively modify behavior is premised upon theories of learning, cognition, and human development.¹⁸⁰ "Although there is still some debate about the effectiveness of rehabilitation, recent literature reviews and meta-analyses demonstrate that rehabilitation can effectively change some offenders and reduce their criminal activities."¹⁸¹ These reviews reveal that 48% to 86% of studies examining rehabilitation programs reported treatment effectiveness, and identified which treatment programs are more effective than others.¹⁸²

¹⁷⁷ BERNSTEIN, *supra* note 165, at 16.

¹⁷⁸ Namely, *Grant's* step in the right direction.

¹⁷⁹ *Graham*, 560 U.S. at 74.

¹⁸⁰ Mackenzie, *supra* note 162, at 25.

¹⁸¹ *Id.*

¹⁸² *Id.*

C. *The Uniqueness of Juveniles and Miller's Proportionality Rule:
Why Rehabilitation and Retribution as the Primary Penological
Goals Produce a Sounder Doctrine*

1. Key Recovery Themes, Four Basic Principles for Effective
Treatment Programs, and Vocational Rehabilitation

Recovery is a process of change through which individuals improve health and wellness, live self-directed lives, and strive to reach their full potential.¹⁸³ According to the Substance Abuse and Mental Health Services Administration (SAMHSA), the agency within the United States Department of Health and Human Services that leads public health efforts to advance the country's behavioral health, recovery-oriented services are built on access to evidence-based clinical treatment and support services, which help individuals successfully manage mental health conditions.¹⁸⁴ The value of recovery is widely accepted by the United States Surgeon General, the Institute of Medicine, and other organizations.¹⁸⁵

Recovery focuses on four dimensions: health, home, purpose, and community.¹⁸⁶ Helping individuals learn to manage symptoms and make informed choices that support physical and emotional well-being is essential to meeting health goals.¹⁸⁷ Services should also focus on the importance of having a stable and safe place to live, as well as having relationships that provide support, love, and hope.¹⁸⁸ Crucial to the *Grant* decision and its implications on services for offenders in pursuance of a meaningful opportunity for release, however, is the recovery goal of having a purpose in life. The concept of purpose is unique to each individual; a person's purpose may consist of engaging in meaningful daily activities such as work, school, volunteering, family caretaking, or creative activities.¹⁸⁹ Crucial to achieving and maintaining purpose is independence, income, and accessible resources to participate in society.¹⁹⁰

"Hope is the foundation of recovery,"¹⁹¹ and, as the *Grant* Court indicated—in keeping with the Supreme Court's rationale—juvenile offenders should not be deprived of hope that they will demonstrate the

¹⁸³ *Recovery and Recovery Support*, SAMHSA, <https://www.samhsa.gov/recovery> (last updated Jan. 15, 2019). [Hereinafter *Recovery and Recovery Support*].

¹⁸⁴ *About Us*, SAMHSA, <https://www.samhsa.gov/about-us> (last visited Jan. 25, 2019).

¹⁸⁵ *Id.*

¹⁸⁶ *Recovery and Recovery Support*, *supra* note 183.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

2019]

COMMENT

611

capacity for reform and achieve a meaningful opportunity for release.¹⁹² Resilience is a key component to recovery and to success upon reentry into the community. The ability to cope with adversity and adapt to change better prepares individuals for the next stressful situation.¹⁹³ Reintegration into the community poses a variety of obstacles to becoming a meaningful, contributing member of society; resilience is essential to this process. Effective recovery goals focus not only on fostering health and resilience, but also on reducing barriers to employment, education, and other life goals through treatment, services, and community-based programs.¹⁹⁴ Such services have a demonstrated improvement on quality of life¹⁹⁵ and recidivism rates,¹⁹⁶ further supporting the argument for considering sentencing protocols that afford non-incorrigible offenders the opportunity to reenter the community prior to the age of retirement.

Effective treatment programs consist of four basic principles. First, treatment must directly address criminogenic factors, particularly dynamic factors (changeable characteristics) directly associated with criminal behavior, such as attitudes, thoughts, behaviors regarding employment, education, peers, authority, substance abuse, and interpersonal relationships.¹⁹⁷ Second, programs must foster therapeutic integrity through professionally tailored design and delivery.¹⁹⁸ “Poorly implemented programs delivered by untrained personnel, in which offenders spend only a minimal amount of time, can hardly be expected to successfully reduce recidivism.”¹⁹⁹ Third, effective rehabilitation programs target offenders who are at sufficient risk for recidivism so that reduction in recidivism rates is measurable; the most intensive programs should be offered to offenders with the highest risk of recidivism.²⁰⁰ “Many offenders are at low risk for future recidivism” and treatment programs geared towards such offenders will have minimal impact on future criminal activities because few of those offenders would have recidivated anyway.²⁰¹ The *Grant* decision is therefore a to encourage rehabilitation-focused programs for non-incorrigible youth, as the Third Circuit recognized that even youth who commit crimes worthy of lengthy sentences are capable of rehabilitation and reform.²⁰² It is this

¹⁹² *Graham v. Florida*, 560 U.S. 48, 79 (2010).

¹⁹³ *Recovery and Recovery Support*, *supra* note 183.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Mackenzie, *supra* note 162.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *See generally* *United States v. Grant*, 887 F.3d 131 (3d Cir. 2018).

population that needs rehabilitation services in order to effectuate a reduction in rates of recidivism and incarceration.²⁰³ Lastly, effective treatments must be delivered in “modes that address the learning styles and abilities of offenders.”²⁰⁴ Several programs have been identified as those likely to reduce recidivism, including cognitive behavioral therapy, community employment programs, and vocational education programs.²⁰⁵

Recovery focuses on an individual’s strengths, abilities, resources, and values; it is a holistic approach that addresses the whole person and the surrounding community.²⁰⁶ Vocational rehabilitation practices mirror these factors. Because gainful employment impacts all areas of an individual’s life and wellness, effective vocational rehabilitation services could be crucial to successful reentry.

A large portion of offenders with disabilities do not receive vocational rehabilitation services.²⁰⁷ The psychological effects of being an ex-offender, aside from the effects of disability, suggest the need for rehabilitation counseling to assist transition into the community.²⁰⁸ It is not surprising, therefore, that prisons that fail to provide vocational rehabilitation services have high recidivism rates.²⁰⁹ Research suggests that this is a consequence of depriving inmates of sufficient resources to develop the education and skills necessary to become productive members of society.²¹⁰ Without such skills, individuals lose hope and motivation and tend to display chronic criminal behavior.²¹¹

Vocational rehabilitation promotes higher rates of successful follow-up with community-based services and lower rates of recidivism. It also promotes wellness in each of the four dimensions of recovery: health, home, purpose, and community. Work is a critical social role. It “provides economic security, intellectual or physical challenge . . . friendships and . . . helps to promote life satisfaction.”²¹² Further, work consumes more time than any other activity, except for sleep.²¹³ The importance of work does not diminish with age; however, older individuals, and especially those with

²⁰³ See Mackenzie, *supra* note 162162.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Recovery and Recovery Support, supra* note 183.

²⁰⁷ Debra A. Harley, *Vocational Rehabilitation Services for an Offender Population*, 62 J. REHAB. 45, 45 (1996).

²⁰⁸ *Id.* at 46–47.

²⁰⁹ *Id.* at 45.

²¹⁰ *Id.*

²¹¹ *Id.* at 45–46.

²¹² Bryan Kemp & Fae Kleinplatz, *Vocational Rehabilitation of the Older Worker*, 39 AM. J. OCCUPATIONAL THERAPY 322, 322 (1985).

²¹³ *Id.*

2019]

COMMENT

613

disabilities, have less success obtaining employment.²¹⁴ Empirical evidence supports the efficacy, clinical utility, and cost effectiveness of vocational rehabilitation and its ability to help individuals with disabilities obtain competitive employment.²¹⁵ A sentencing framework that implements vocational rehabilitation services should be presented to non-incorrigible offenders who have been afforded lesser sentences, as both the individual offender and society as a whole may benefit from meaningful contributions to the workforce.

Rehabilitation counselors are central to the effective delivery of vocational rehabilitation services, as counselors with graduate training in rehabilitation counseling are moderately more effective than those without graduate rehabilitation degrees.²¹⁶ Strong empirical evidence supports the efficacy of the working alliance and skills training as key factors in the counseling process.²¹⁷

Despite evidence suggesting that only a modest number of individuals in vocational rehabilitation sustain competitive employment, around 40% of individuals with psychiatric disabilities work steadily in competitive jobs after engaging in vocational rehabilitation services.²¹⁸ Research indicates that significant non-monetary incentives exist for adults to maintain employment as they age, such as greater social contact and support, greater physical and mental activity, increased morale, a greater sense of purpose, and increased life satisfaction.²¹⁹ This evidence emphasizes the importance of vocational rehabilitation in sentencing considerations and the prison setting and demonstrates why services should be provided to incarcerated individuals as early as possible. It might be argued that the Third Circuit acknowledged that individuals are still afforded the opportunity “to attend to other endeavors in life”²²⁰ after retirement, and therefore a meaningful opportunity for release need not require the opportunity to reenter society before retirement age. A meaningful opportunity for release, however, must provide an offender with the opportunity to contribute productively to society, a concept that inherently provides individuals with hope to reconcile with society and achieve fulfillment.²²¹ A chance to pursue meaningful work is critical to that notion, and vocational rehabilitation services will aid in that

²¹⁴ *Id.*

²¹⁵ Steven R. Pruet et al., *Empirical Evidence Supporting the Effectiveness of Vocational Rehabilitation*, 74 J. REHAB. 56, 61 (2008).

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Charles E. Drebing et al., *Vocational Rehabilitation and Older Adults: Patterns in Participation and Outcome*, 68 J. REHAB. 24, 24 (2002).

²¹⁹ *Id.* at 25.

²²⁰ *United States v. Grant*, 887 F.3d 131, 150 (3d Cir. 2018).

²²¹ *Id.* at 150–51.

effort.

2. An Argument for a Sentencing Protocol and Integrative Transition Programs

Sentencing systems should include assessment, screening, and the development of a time-sensitive rehabilitation plan. There is a recent trend to adopt scientific screening and assessment tools to structure decision-making and identify the needs of juvenile offenders.²²² “Competency statutes and policies have become more research-based, and youth interventions are evidence-based across a range of programs.”²²³ The social, economic, and psychological role of work changes with age.²²⁴ For example, there is an increased incidence of medical problems amongst older adults, which may impact the ability to perform certain job functions.²²⁵ Individuals require different levels of care; thus, an effective screening, assessment, and treatment process is critical. A constitutional punishment must “fit[] the offender and not merely the crime.”²²⁶

When youth must be placed in more restrictive settings in order to receive basic mental health services, the likelihood of future delinquency increases, as does criminal behavior and arrests as adults.²²⁷ As Supreme Court decisions have indicated, the characteristics of the individual offender and the circumstances surrounding the crime committed should enlighten decision-makers at the sentencing stage. These factors should also indicate the importance of treatment planning for efficient reintegration in order to promote successful participation in the community as law-abiding citizens upon release. For example, state prisoners with mental health diagnoses are twice as likely as those without to have been homeless in the year before their arrest,²²⁸ and local jail inmates with mental health diagnoses are three times as likely to report a history of physical or sexual abuse.²²⁹ Encouraging earlier releases for offenders capable of reform and rehabilitating those who may return to the community at an age when work is a practical goal,²³⁰ would not only help alleviate the recidivism problem, but would also promote wellness among offenders and realize the Supreme Court’s goal of ensuring a *meaningful* opportunity for release.

²²² BROWN, *supra* note 3, at 3.

²²³ *Id.*

²²⁴ Drebing et al., *supra* note 218, at 25.

²²⁵ *Id.*

²²⁶ *Grant*, 887 F.3d at 150 (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949)).

²²⁷ Underwood & Washington, *supra* note 20, at 234.

²²⁸ JAMES & GLAZE, *supra* note 36.

²²⁹ *Id.*

²³⁰ *Grant*, 887 F.3d at 151.

Nearly half of all arrests occur within the first twelve months of release. Thus, effective transition planning is essential. The time following release is a critical time for healthcare and self-management interventions. Even facilities that provide adequate treatment see those efforts derailed when inmates are released without adequate discharge planning to transition their care, or without financial or other supports. Universal integration of pre-release programs will decrease difficulties with finding employment, thus increasing access to healthcare and other services. Research indicates that the criminal justice system should collaborate with the community to more effectively meet the needs of youth with mental health disorders.²³¹ Evidence further shows that, although rehabilitation methods in secure settings effectively change behavior within the setting, the skills do not transfer to the community setting.²³² The most effective models of treatment include psychosocial interventions and an after-care plan with services to help the offender transfer and maintain learned skills.²³³ Further, lower-risk offenders are more negatively affected by incarceration.²³⁴ Conducting thorough assessments at the sentencing phase and at intervals throughout the incarceration period is therefore critical. Risk factors and capacity for rehabilitation and reform must be identified and attended to in order to ensure that incarceration does not negatively affect inmates, doing more harm than good by increasing the likelihood of longer sentences (and the additional financial burdens that go with it) as well as recidivism.²³⁵ Although the Third Circuit was correct to encourage a sentencing scheme that contemplates release before the age of retirement for non-incorrigible offenders, the court did not go far enough. Promise of an earlier release, without efficient services promoting success within the community, does not guarantee an offender his or her best chance to achieve fulfillment outside prison walls.

The criminal justice system can impose high economic costs.²³⁶ Federal, state, and local governments spend about \$68 billion on incarceration each year.²³⁷ Additionally, increased life expectancies have created a need for greater financial resources to support adults as they continue to age.²³⁸ “The very difficult budget climate in states recently has prompted questions about the effectiveness of punitive reforms and the high economic costs they can impose.”²³⁹ States are seeking ways to produce

²³¹ Underwood & Washington, *supra* note 20, at 237.

²³² *Id.* at 235.

²³³ *Id.* at 237.

²³⁴ Wright, *supra* note 13.

²³⁵ *Id.*

²³⁶ BROWN, *supra* note 3, at 3.

²³⁷ *Id.*

²³⁸ Drebing et al., *supra* note 218, at 25.

²³⁹ BROWN, *supra* note 3, at 3.

better results for juvenile offenders at a lower cost.²⁴⁰ This has contributed to a state legislative trend to realign fiscal resources from state institutions toward more effective community-based services.²⁴¹

Reducing the number of incarcerated non-violent offenders by half could save taxpayers \$16.9 billion annually without compromising public safety.²⁴² Additionally, the costs associated with treatment services are lower than costs associated with long-term sentences that fail to adequately deter future offenses.²⁴³ The financial benefit of adequate transition services as part of treatment plans is also evident. For example, one study found that one dollar spent on treatment in prison yields about six dollars of savings, while a one dollar investment in community-based treatment yields about twenty dollars in savings.²⁴⁴

There is a recent state trend to treat and rehabilitate youth in the juvenile justice system rather than the more punitive-oriented adult system.²⁴⁵ Research shows that moving sixteen and seventeen year old youth out of the adult system and into the juvenile system will return about three dollars in benefits for every one dollar in cost.²⁴⁶ Additionally, extending the age limit in juvenile court has the added benefit of affecting the lives of hundreds of thousands of young individuals.²⁴⁷

It is a common (and understandable) argument that releasing offenders has social costs, and that these costs must be weighed against the costs of incarceration.²⁴⁸ Recidivism causes the criminal justice system to incur costs related to arrests, hearings, court proceedings, and causes victims to incur costs as the result of property loss or the need for additional security, for example.²⁴⁹ It is unclear how to adequately calculate costs, as well as the number of crimes prevented by incarceration; research suggests, however, that the estimates of criminal activity will drastically differ if offenders are given a sentence of community supervision.²⁵⁰ Others reject social cost calculations and argue that the imputed costs of pain and suffering do not take into account the suffering of offenders, or their partners, children, and

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Wright, *supra* note 13. For example, non-violent offenders convicted of drug-related crimes comprise a large percentage of the prison population; this population could be significantly reduced if more treatment alternatives were available. *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ BROWN, *supra* note 3, at 5.

²⁴⁶ *Id.* at 4–5.

²⁴⁷ *Id.* at 5.

²⁴⁸ Mackenzie, *supra* note 162.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

2019]

COMMENT

617

communities.²⁵¹ From this perspective, “cost-benefit assessments require weighing inherently incommensurable values, and attempts to do so have reached a dead-end . . . [and] that it may be more productive to compare the costs and benefits of alternative crime prevention policies.”²⁵² The financial benefit, combined with the benefit of improving the health and wellness of such a significant population within the nation, supports an argument for shorter sentences for individuals that successfully engage in rehabilitation programs and demonstrate capacity for reform.

VI. CONCLUSION

Successful reentry and maintenance of positive supports within the community are essential to reduced rates of delinquent behavior and recidivism. There is little evidence that confining youth does anything to advance rehabilitative ideals. Instead, an overwhelming amount of evidence indicates that incarceration is tremendously detrimental to the juvenile offenders themselves, as well as the national society as a whole. Developmental and social psychology indicate that children and adolescents are inherently capable of positive reform, and thorough assessment, rehabilitation, and transition services may promote rehabilitation among offenders who commit even the most serious offenses. Incarceration, however, remains the default response to juvenile crime. The *Grant* decision was a step in the right direction to ensure that providing non-incorrigible juvenile offenders with a meaningful opportunity for release based on demonstrated ability for reform, can be done as effectively as possible in view of the needs for each individual offender and society overall. Recovery-oriented vocational rehabilitation services can elicit positive change and prepare offenders to reenter the community and meaningfully participate within the workforce, giving back to, rather than taking from, society.

²⁵¹ *Id.*

²⁵² *Id.*