

## ***Hairston v. State: Capital punishment for youthful offenders***

Practitioner Comment  
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The recent *Hairston* appeals demonstrate that though the death penalty is not often applied or implemented in Idaho (particularly for youthful defendants at the time of their offense, such as Mr. Hairston), its ramifications leave lasting impacts. Mr. Hairston was sentenced to death several decades ago, and no one within six years of his age has received the same punishment since.<sup>1</sup> These appeals, much like all other capital appeals, are incredibly costly and time-consuming; they further carry an emotional toll for all involved. Moreover, the impact on the community can prompt consideration of difficult issues.

First, this case brings to mind a number of questions relating to fairness that concern community values. If a 17-year-old is ineligible for capital punishment due to their immaturity, lack of brain development, and susceptibility to peer pressure, why has the line been drawn at 18 to stop providing these same justifications? With the growing body of research showing that brain development does not stop at age 18, but rather continues as people age into their mid-20s<sup>2</sup>, our community might also ask whether we could and/or should extend the same protection to other young people. In fact, some legal scholars have noted that the age of majority has historically been based more on political viewpoints and conventional knowledge, rather than robust scientific evidence.<sup>3</sup> As perceptions of what it means to be an “adult” have changed, we as a community may also need to reconsider at what age we truly find someone fully responsible for criminal conduct such that they are eligible for the state to legally end their life.

Second, the community as a whole is always affected by violent crime, and capital punishment is meant to serve several purposes including general deterrence for other potential offenders, specific deterrence for the offender in question, public safety, and retribution. Empirical evidence for a general deterrent effect of the death penalty is rather limited,<sup>4</sup> and when its use is so infrequent and its implementation so lengthy, especially for a class of people such as young adults, one might ask whether any goals of punishment are served. Is our community any safer through the execution of 18–21-year-olds? Or would the community be better served

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<sup>1</sup> Michael Jauhola was 25 at the time of his offense in 1998 and was sentenced to death in 2001 and again in 2010. *Inmate death at ISMI*, IDAHO DEP’T CORRECTION, (July 9, 2014),

[https://www.idoc.idaho.gov/content/story/inmate\\_death\\_at\\_imsi](https://www.idoc.idaho.gov/content/story/inmate_death_at_imsi). Azad Abdullah was 25 at the time of his offense and was sentenced to death in 2004. *State v. Abdullah*, 158 Idaho 386 (2015).

<sup>2</sup> Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESC. HEALTH 216 (2009); Catherine Lebel & Christian Beaulieu, *Longitudinal Development of Human Brain Wiring Continues from Childhood to Adulthood*, 31 J. OF NEUROSCI. 10937 (2011).

<sup>3</sup> See, e.g., Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 TEMP. L. REV. 769 (2016); Andrew Michaels, *A Decent Proposal: Exempting Eighteen- to Twenty-Year-Olds From the Death Penalty*, 40 N.Y.U. REV. L. & SOC. CHANGE 139 (2016).

<sup>4</sup> See, e.g., John J. Donohue & Justin Wolfers, *Estimating the Impact of the Death Penalty on Murder*, 11 AM. L. & ECON. REV. 249 (2009); DANIEL S. NAGIN & JOHN V. PEPPER, *DETERRENCE AND THE DEATH PENALTY* (2012).

through incarcerating such offenders? A true “life” sentence was rare at one time in Idaho when indeterminate sentencing dominated the criminal sentencing structure. However, as life without parole is now a viable sentencing option, it might be worth asking which goals of punishment are most important to the community and how those can best be achieved.