

Supreme Court Jurisprudence on Adolescence

Implications for Juvenile Justice
Advocacy

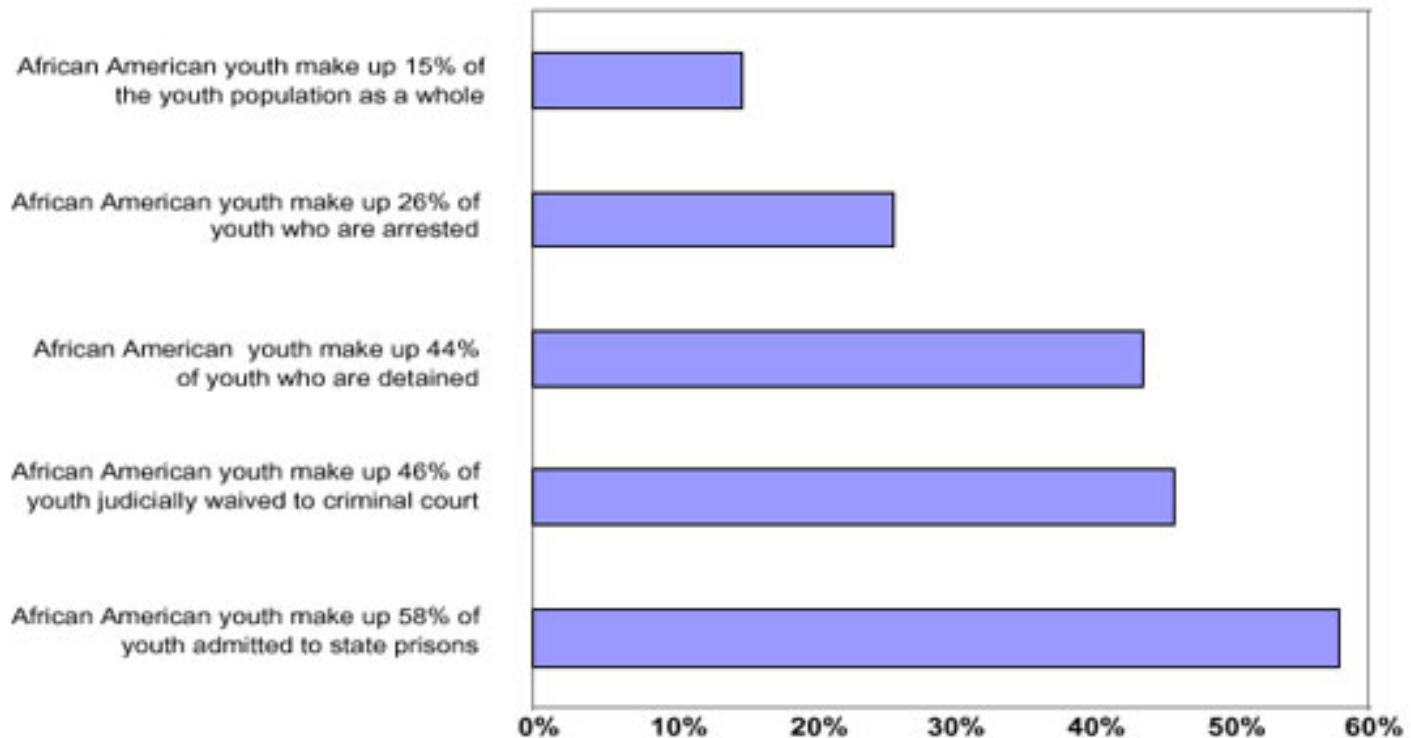
Background



Juvenile Justice Issues

Who Enters the System

Figure 1: The Proportion of African American Youth Increases at Every Stage of Involvement in the Justice System



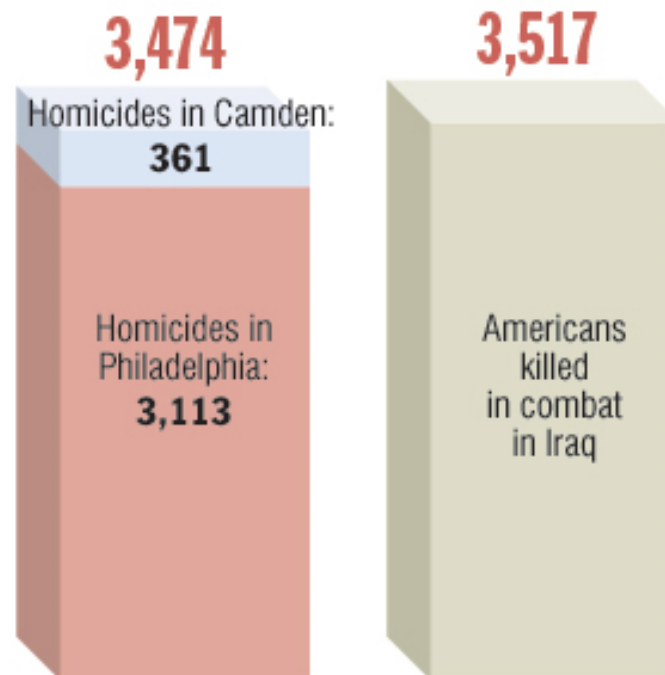
Source: Yamagata, Eileen Poe and Michael A. Jones. *And Justice for Some: Differential Treatment of Minority Youth in the Justice System*. Washington, DC: Building Blocks for Youth, April, 2000.

High Rates of Trauma

As Deadly as Iraq

During the span of the Iraq war, there were nearly as many homicides in Philadelphia and Camden as combat deaths in Iraq.

Deaths, March 21, 2003, to Dec. 15, 2011



SOURCES: Phila. Police Dept.; Census Bureau

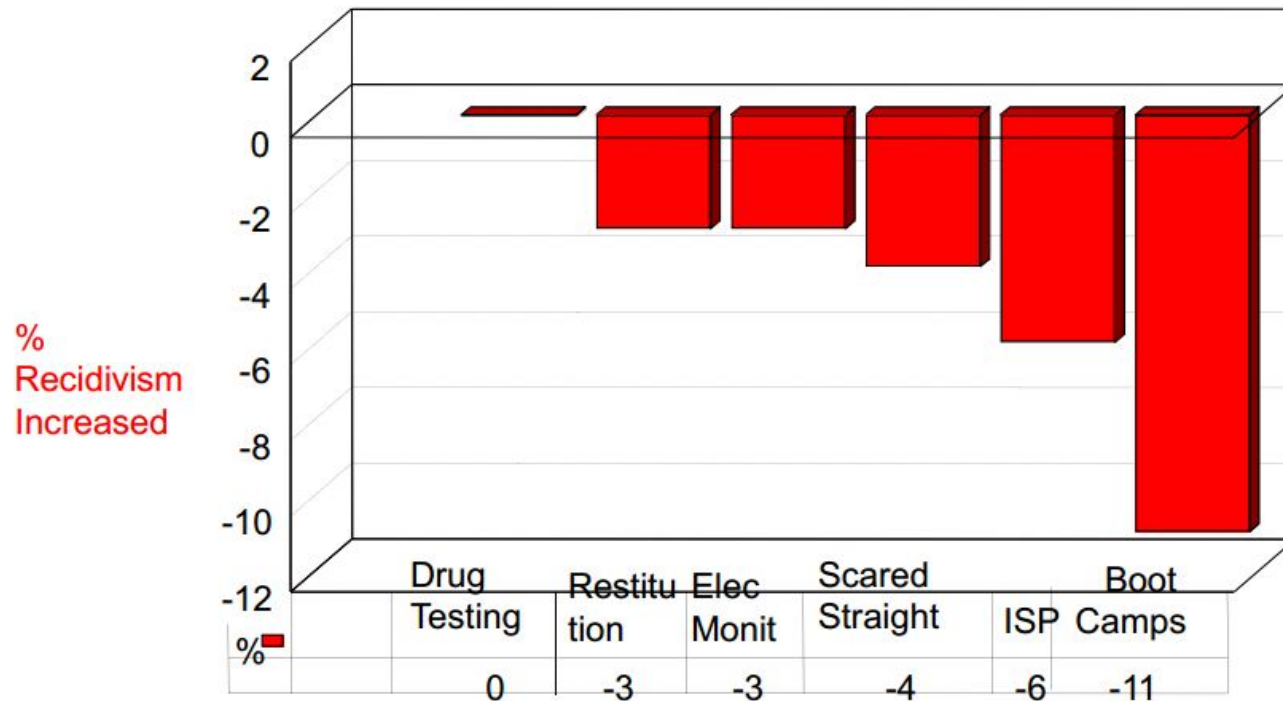
JOHN DUCHNESKIE / Staff Artist

Juvenile Court Processes



Juvenile Dispositions - Effectiveness

PROGRAMS THAT DON'T WORK OR DO HARM



Sources: Gendreau et al (2000). The Effects of Community Sanctions and Incarceration on Recidivism, FORUM; Aos et al (1999). The Comparative Costs and Benefits of Programs to Reduce Crime, Washington State Institute for Public Policy.

Multiple Public Systems



Child Welfare 25% - 70%



Special Education 70%



Mental Health 50-70%



North Carolina Issues?

- (1) Use the handout to complete the list of possible issues lawyers for juveniles face in NC.
- (2) Rank the issues from most important/problematic to least.

Historical Context



The Juvenile Justice Pendulum

History of Juvenile Justice

DISTINCT ERAS IN JUVENILE JURISPRUDENCE:

- Common Law
- Rehabilitation - 1899 →
- Constitutional rights - 1966 →
- Punishment - 1980s →



NEW FOCUS: 2005

- Adolescent development/brain science

Common law

- Under 7 – can't be guilty of a felony
- Older than 14 – treated as an adult
- 7-14 – “if it appear to the court and jury, that he . . . could discern between good and evil, he may be convicted and suffer death.”

Common Law

- But by the law, as it now stands, . . . the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment. For one lad of eleven years old may have as much cunning as another of fourteen; and in these cases our maxim is, that *malitia supplet aetatem* ["malice supplies the age"].

○ **Blackstone**

1899 – First Juvenile Court



8-year-old boy charged with stealing a bicycle – 1910.

1960s - Constitutionalization

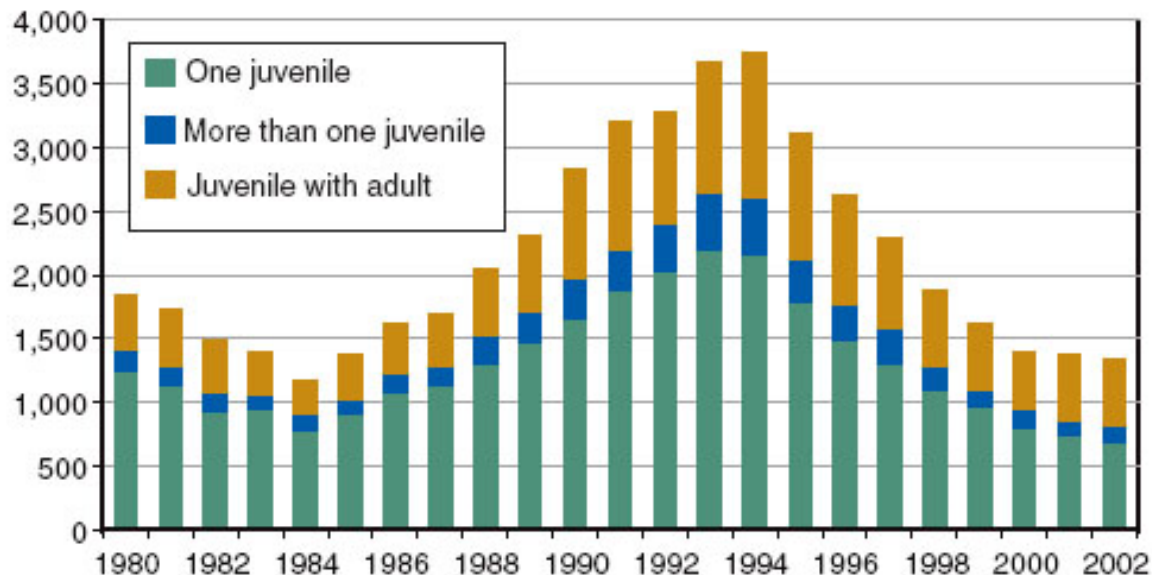
- Kent v. United States, 383 U.S. 541 (1966)
- In re Gault, 387 U.S. 1 (1967)
- McKeiver v. Pennsylvania, 403 U.S. 528 (1971)



1980s-90s - Criminalization

Between 1994 and 2002, the number of murders involving a juvenile offender fell 65%, to its lowest level since 1984

Homicide victims of juvenile offenders



- In the 1980s, 25% of the murders involving a juvenile offender also involved an adult offender. This proportion grew to 31% in the 1990s and averaged 36% for the years 2000–2002.

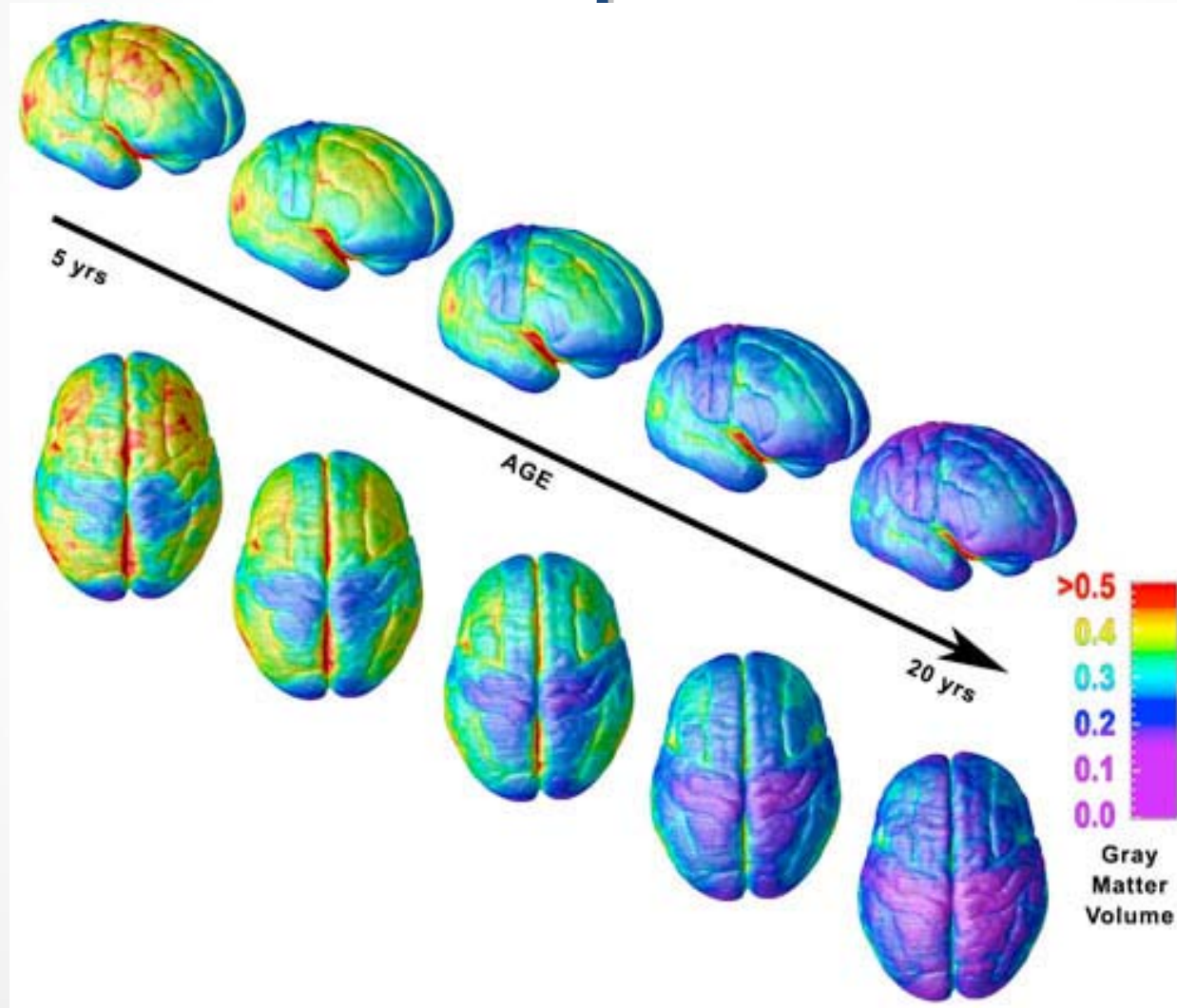
Source: Authors' analyses of the FBI's *Supplementary Homicide Reports* for the years 1980 through 2002 [machine-readable data files].

Advocacy Framework



Supreme Court Cases Addressing Adolescent Development

Adolescent Development and the Supreme Court

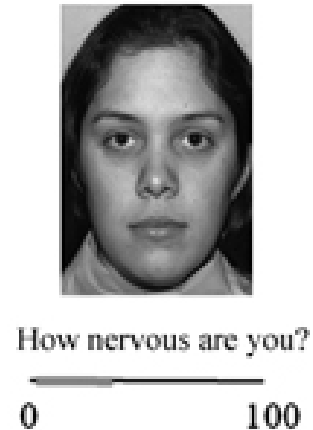
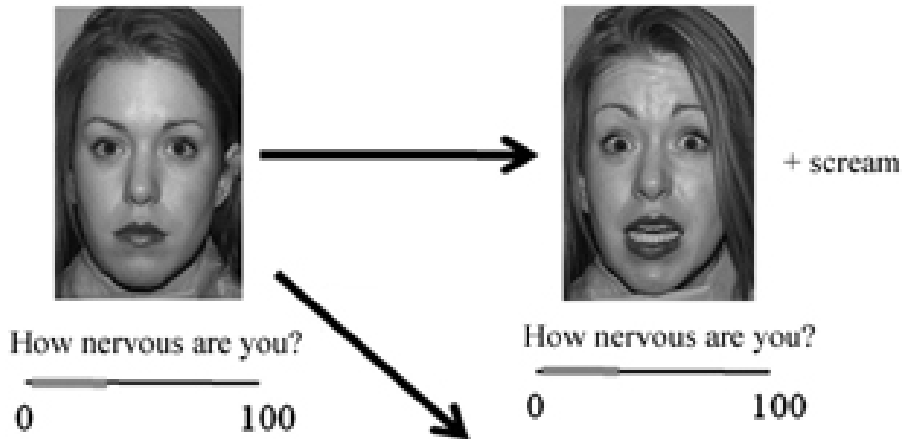


Source: Paul Thompson, Professor of Neurology, UCLA School of Medicine

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

- Categorical rule under the **Eighth Amendment**.
- No death penalty for offenders under 18 at time of crime
- Opens the door to **adolescent development** arguments. Characteristics of youth:
 1. Immaturity of judgment
 2. Susceptibility to peer pressure
 3. Transient developmental phase

Immaturity of Judgment: Perceptions of threat



Lau JY, et al. [Distinct neural signatures of threat learning in adolescents and adults.](#)
Proc Natl Acad Sci U S A.
2011

Susceptibility to Pressure



Margo Gardner & Laurence Steinberg, "Peer Influence on Risk-Taking, Risk Preference, and Risky Decision-Making in Adolescence and Adulthood: An Experimental Study." 14 *Developmental Psychology* 625-35 (2005) .

Susceptibility to Pressure



Growth and Development

- The period is **transitional** because it is marked by rapid and dramatic change within the individual in the realms of biology, cognition, emotion, and interpersonal relationships....
- The criminal careers of most violent juvenile offenders span only a single year.
 - Laurence Steinberg and Elizabeth Scott, Rethinking Juvenile Justice (2000).
 - Richard A. Mendel, *Less Hype, More Help: Reducing Juvenile Crime, What Works – and What Doesn't* 15 (2000).

Graham v. Florida

130 S.Ct. 2011 (2010)

- No juvenile life without parole in non-homicide cases
- Reiterates the three characteristics of youth raised in *Roper*
- Underscores scientific underpinning, influence of adolescent development
- Focus on capacity of youth to **grow** and **mature**.

Miller v. Alabama, 132 S. Ct. 2455 (2012)

- Statutory scheme can't **mandate** life without parole sentences for juveniles.
- Such sentences should be "uncommon."
- "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."

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Miller v. Alabama, 132 S. Ct. 2455 (2012)

- Mandatory JLWOP “precludes consideration of his chronological age and its **hallmark features** — among them, immaturity, impetuosity, and failure to appreciate risks and consequences.”

Miller v. Alabama, 132 S. Ct. 2455 (2012)

- “It prevents taking into account the **family and home environment** that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.”
- It neglects the **circumstances** of the homicide offense, including the extent of his participation in the conduct and the way **familial and peer pressures** may have affected him.
- it ignores that he might have been charged and convicted of a lesser offense if not for **incompetencies** associated with youth

Safford v. Redding, 129 S.Ct. 2633 (2009)

- Strip search for Prescription Ibuprofen violates 4th Amendment
- Court underscores adolescent vulnerability



http://www.youtube.com/watch?v=t9QQCiT1e_w

J.D.B. v. North Carolina



The Reasonable Juvenile



“[A] *reasonable child* subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.”

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Advocacy Opportunities



Relying on Adolescent
Development Research

Assault

- Citing J.D.B.: "Officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult."

In re S.C.W., C.A. No. 25421, 2011 WL 2565623 (June 29, 2011 Ohio Ct. App.).

Running Away from Placement

- "Arguably, the placement language ... may be sufficient to put an adult on notice of what is expected. But applying such unclear terms to a child is problematic"(citing *J.D.B.*)

***D.V. v. State ex rel. D.V., 265 P.3d 803
(Utah Ct. App. 2011)***

Threats

- *"An objective observer might perceive a teenager engaged in jesting, teasing, mocking, even insult and humiliation – but would not reasonably perceive that S.W. posed an actual threat of arson."*

***In re S.W.*, 45 A.3d 151 (D.C. 2012).**

Other opportunities

- **Reasonable person** standard (self-defense, defense of property, defense of others, duress)
- **Knowledge** standard for intent
- **“Cooling off”** period for manslaughter

Self Defense Jury Instruction

- In determining the defendant's position under the circumstances that existed at the time of the alleged offense you should consider all the circumstances that relate to the defendant's situation, **including his age at the time.**

Self-Defense Jury Instruction

- The standard involving children relates to a **reasonable person of like age, intelligence and experience**. You can draw upon your **common knowledge and experience** as well as the **testimony** received during the trial, in determining whether the beliefs of the defendant were reasonable for a person of his age at the time of the alleged offense.

School Arrests and Searches

- 1. KEEP CHEERING POSITIVE.**
- 2. DISPLAY COURTESY TO OUR VISITORS.**
- 3. RESPECT THE INTEGRITY AND JUDGEMENT OF THE GAME OFFICIALS.**
- 4. SHOW APPRECIATION OF GOOD PLAY BY BOTH TEAMS.**
- 5. ACCEPT VICTORY AND DEFEAT WITH DIGNITY.**



Trauma and Adolescent Development

- Heightened stress impairs development of the **prefrontal cortex** critical for the emergence of executive function tasks such as:
 - making, following, and altering plans;
 - controlling and focusing attention;
 - inhibiting impulsive behaviors;
 - developing the ability to hold and incorporate new information in decision-making.

- National Scientific Council on
the Developing Child, 2010

Trauma and Hyper-Arousal

- Trauma can have physiological consequences:
- Traumatized youth may:
 - Be on constant alert
 - Over-react to signs of danger
 - Overreact to normal situations
 - Have difficulty with attachment and trust
 - Have difficulty focusing or complying with expectations and instructions

Applications of Trauma Research

- Likely not as useful in “reasonable person” standard
- May be useful as applied to offenses with *mens rea* of intent, knowledge, recklessness.
- May be useful at disposition.

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