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A newsletter from the Center for Law, Brain & Behavior

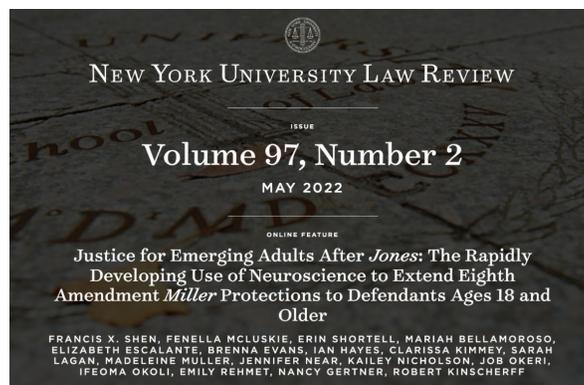
June 02, 2022

CLBB Publishes **"Justice for Emerging Adults After Jones"** in the *New York University Law Review*

The Center for Law, Brain and Behavior published a co-authored article, "Justice for Emerging Adults After *Jones*: The Rapidly Developing Use of Neuroscience to Extend Eighth Amendment *Miller* Protections to Defendants Ages 18 and Older" in the May 2022 Issue of the *New York University Law Review*.

During his tenure as CLBB Executive Director, Dr. Francis Shen teamed with CLBB student research assistants to provide the first empirical analysis of how courts are receiving arguments favoring raising the age above 18 for Eight Amendment constitutional protections.

Authors: Francis X. Shen, Fenella McLuskie, Erin Shortell, Mariah Bellamoroso, Elizabeth Escalante, Brenna Evans, Ian Hayes, Clarissa Kimmey, Sarah Lagan, Madeleine Muller, Jennifer Near, Kailey Nicholson, Job Okeri, Ifeoma Okoli, Emily Rehmet, Nancy Gertner, Robert Kinscherff



Abstract: Federal and state court decisions over the past year are reshaping the contours of juvenile justice litigation. At the federal level, the Supreme Court's recent decision in *Jones v. Mississippi* left intact the Court's current commitment to treating age 18 as the dividing line between youth and adult criminal sentencing. If a youth commits a crime at age 17 years, 364 days, 23 hours, 59 minutes, and 59 seconds old, that youth cannot be put to death or receive mandatory life without parole (LWOP). One second later, these constitutional protections disappear.

Calling into question this line drawing, litigants across the country are actively leveraging neuroscientific research to argue that emerging adults ages 18 through early 20s should receive the same constitutional protections as those under 18. While federal courts have not been receptive to this argument, some state courts are. Groundbreaking recent cases in Washington, Illinois, and Massachusetts state courts may signal a potential path forward. In light of these many recent developments, this Essay provides the first empirical analysis of how courts are receiving the argument to raise the age for constitutional protections and introduces a publicly accessible, searchable database containing 494 such cases. The data suggest that at present, Eighth Amendment arguments to categorically extend federal *Miller* protections to those 18 and above are unlikely to win. At the same time, however, state constitutions and state-level policy advocacy provide a path to expand constitutional protections for emerging adults.

We discuss the implications of these trends for the future use of neuroscientific evidence in litigation concerning the constitutionality of the death penalty and LWOP for emerging adults. As this litigation moves forward, we recommend further strengthening connections between litigants and the scientific and forensic communities. Whether at the state or federal level, and whether in courts or legislatures, the record should contain the most accurate and applicable neuroscience.

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