

Making young people pay with their lives for certain crimes has a long history in the U.S. The practice dates back to the 17th century, when a 16-year-old boy became the first juvenile sentenced to death in colonial America. More than three centuries later, the Supreme Court established 16 as the minimum age for an offender to be sentenced to death. But despite the court's recognition of the constitutionality of the practice, opponents have vigorously called for an end to it, claiming that the juvenile death penalty constitutes cruel and unusual punishment. Christopher Simmons (photo) In 1993, Christopher Simmons, then 17, was sentenced to death for murdering a woman. The Supreme Court is considering whether that sentence is "cruel and unusual" punishment because of Simmons's age at the time of the crime. AP Photo/Missouri Department of Corrections Society has long recognized major differences between adults and juveniles, and that is especially true in the legal system. Most offenders under the age of 18 are sent to juvenile courts, which are separate from the regular criminal courts and which cannot impose the death penalty. However, for certain crimes, such as a brutal murder, juveniles can be tried in adult courts. There they are subject to adult sentences, including the death penalty. Since the first execution of a youthful offender more than 350 years ago, 365 executions for crimes committed as juveniles have been carried out in the U.S., according to the Death Penalty Information Center. Since 1976, 22 juvenile offenders have been executed (about 2% of the total executions carried out in the U.S. in that time period). Of the 38 states that allow the death penalty, 20 permit executions for crimes committed as juveniles; 15 states set the minimum age at 16, and five require the offender to have been 17 or older at the time of the crime. However, the juvenile death penalty is not widely applied throughout the country. Just 12 states have juvenile offenders on death row, and just three—Texas, Virginia and Oklahoma—are responsible for 18 of the juvenile executions carried out since 1976. Texas alone is responsible for 13 of those executions. The Supreme Court affirmed the constitutionality of the death penalty for juveniles age 16 and over in the late 1980s. However, in early 2004 the court accepted a case in which it will revisit the issue. The case, on which the court is expected to issue a ruling in early 2005, has intensified the debate over capital punishment for young offenders. Is the juvenile death penalty constitutional? Supporters say that punishment should be based not on a perpetrator's age, but on the severity of the crime. An "adult" crime requires an adult punishment, they argue. Most young people recognize that murder is wrong, they assert, and should be punished accordingly. Proponents also say that knowing they could face the death penalty acts as a strong deterrent to juveniles. Critics of the juvenile death penalty point out that society recognizes young people as less mature than adults in many instances, for example by setting a minimum age for drinking and for serving in the military. Opponents ask why it is then permissible to treat juveniles as adults when it comes to punishing them. Critics also contend that the national consensus is against the death penalty, so it should be declared unconstitutional.

### The History of Juvenile Executions

The first recorded execution of a juvenile offender in colonial America occurred in 1642, when Thomas Graunger was executed in Plymouth, Mass., for the crime of bestiality committed when he was 16. In 1885, a Native American youth, James Arcene, became the youngest juvenile offender ever executed in the U.S. when he was executed for his part in a robbery and murder committed when he was 10. Since the start of World War II (1939–45), the youngest offender to have been executed was a black juvenile, George Stinney, who was executed in 1944 for killing two white girls when he was 14.

The Supreme Court first took on the issue of the death penalty in 1972, striking down most state death penalty statutes. However, the court did not rule that capital punishment itself was unconstitutional but rather that the death sentences were too arbitrarily imposed and amounted to "cruel and unusual punishment." After the states revised their laws, the court in 1976 upheld many of those revisions, effectively reinstating the death penalty. The Supreme Court specifically considered the issue of the juvenile death penalty in a 1988 case, *Thompson v. Oklahoma*. In that case, the court ruled that the execution of a person for crimes committed at age 15 and under violated the Eighth Amendment. The following year, the court further clarified its stance in two cases, *Wilkins v. Missouri* and *Stanford v. Kentucky*, ruling that it was constitutional to execute juvenile offenders for crimes committed at age 16 or 17. In those cases, the court upheld the death sentences of Heath Wilkins, who had committed murder when he was 16, and Kevin Stanford, who had committed murder at age 17. (Despite the court's ruling in *Stanford*, Kentucky Gov. Paul Patton (D) eventually commuted Stanford's sentence to life in prison because of his age at the time he committed the crime.) In January 2004, the Supreme Court accepted a case, *Roper v. Simmons*, in which it will once again consider the constitutionality of juvenile executions. The case concerns Christopher Simmons, who was sentenced to death for killing a woman during a burglary in 1993, when he was 17. The Missouri state Supreme Court in 2003 stayed his execution, claiming that the juvenile death penalty is cruel and unusual punishment. The Missouri court based its decision on a 2002 Supreme Court case, *Atkins v. Virginia*, in which the court ruled that executing the mentally retarded constituted cruel and unusual punishment because there was an emerging "national consensus" against the practice. The Supreme Court's ruling in *Simmons* is likewise expected to hinge on whether the national consensus is against juvenile executions. In the 1989 *Stanford* decision, the Supreme Court had found no such consensus. The court's decision in *Simmons* could affect the fate of the 72 juvenile inmates on death row nationwide as of late 2004. However, just as the court's ruling on the death penalty in 1976 has not quelled debate over capital punishment for adults, the decision in *Simmons* is unlikely to end the debate over sentencing young people to death. Minimum Age for Death Penalty Juvenile Executions since 1976 (map) Jeremy Eagle Supporters Argue: Juvenile Death Penalty is Constitutional Supporters of the juvenile death penalty assert that the U.S. justice system is based on the idea of the punishment fitting the crime. There is nothing "cruel and unusual" about assessing the ultimate punishment for a gruesome murder, whether the perpetrator is an adult or a juvenile, they argue. Nancy Arias, whose sister, Patricia Baeuerlen, was killed by a 16-year-old boy, says: "[Patricia] was begging for her life. She was crying, telling him that she had kids. The only cruel and unusual punishment in this case was the...brutal way that he killed her." Proponents reject the argument that the brain is not fully developed in juveniles so they should be held less responsible for their actions. Even with brains not fully developed, there is "little room for doubt that at least some adolescent killers most assuredly have the mental and emotional wherewithal to plot, kill and cover up in cold blood," argues Alabama Attorney General Troy King in a brief in *Roper v. Simmons*. "They should not evade full responsibility for their actions by the serendipity of chronological age," he continues. Supporters accuse critics of misrepresenting recent brain studies to further their anti-death penalty agendas. "There is science, and then there is junk science," says Dianne Clements, president of victims' rights group Justice

for All. "This is an effort by those in the scientific community who oppose the death penalty to use science to argue their position." Supporters also say that knowing they could be put to death for murder serves as a very strong deterrent to juveniles. According to Mitch Brim, a Los Angeles lawyer for Justice for All, Simmons "told his friends he could get away with it because of his age." Brim adds, "If he knew he was going to receive the ultimate punishment, an innocent woman would be alive today. We need to send a message to juveniles who understand right from wrong and the consequences of their actions. They better think twice or they'll pay the ultimate price." Supporters also criticize the notion of basing the constitutionality of the juvenile death penalty on whether there is an evolving national consensus against it. Justice for All claims that the Supreme Court's determination of evolving standards is arbitrary and subjective because no set guidelines exist on which to base their decision. Rather, supporters say, the decision should be left to juries. "Juries have an amazing ability to distinguish between horrible acts of murder and immaturity," Joshua Marquis, Oregon district attorney, asserts. Finally, some supporters point out that in considering the death penalty, courts and juries must make their determination on an individual basis, with consideration of each crime and all the mitigating factors in the crime. In considering juvenile offenders as a group based on age, such individual consideration is lost, they assert. "Instead of grouping juveniles together as a class and drawing a bright line rule based on age, this court should look at juveniles individually and respect them as human beings with unique characteristics, life experiences, personal responsibilities and moral blameworthiness," Justice for All contends in a brief for *Roper v. Simmons*. Opponents Argue: Juvenile Death Penalty is Unconstitutional Critics contend that executing young offenders is cruel and unusual punishment, a violation of the Eighth Amendment. Young people lack the maturity of adults, they argue, and therefore should not be punished as adults. "Teenagers may look like, act like and even shoot like adults, but they think like children," says James Alan Fox, a professor of criminal justice at Northeastern University in Boston, Mass. Critics point out that society generally recognizes the lack of maturity in juveniles by setting age limits in such matters as voting, drinking and serving in the military. They argue that capital punishment should be treated the same way. "As a society, we don't let adolescents consume alcohol, and we have different restrictions on them because we know they don't have the best judgment," Dale Baich, an attorney specializing in capital punishment cases, asserts. "I think we have to hold that view when we make them eligible for the death penalty." To back up their assertions, critics point to recent research showing that the human brain continues to develop into the 20s. According to the studies, the frontal lobe of the brain, which is responsible for controlling impulses and making decisions, is the last part of the brain to develop. In an American Medical Association (AMA) brief in *Roper v. Simmons*, the AMA discussed the impact of late cognitive development on juveniles. "From a biological perspective, an anxious adolescent with a gun in a convenience store is more likely to perceive a threat and pull the trigger than is an anxious adult with a gun in the same store," David Fassler, a psychiatrist at the University of Vermont in Burlington, wrote in the brief. Opponents draw parallels to the execution of the mentally retarded, which the Supreme Court in *Atkins* found to be cruel and unusual punishment. The court determined that the national consensus had turned against executing the mentally retarded, and critics of the juvenile death penalty say that public opinion is similarly against executing juveniles. They point to a trend in decreasing death

sentences for juveniles. In 1999, 15 juveniles were sentenced to death, while seven were sentenced to death in both 2000 and 2001, four in 2002 and just two in 2003. They also note that, since 1976, just seven states have executed juvenile offenders. Critics of the juvenile death penalty also contend that there are similarities in the cognitive functioning of juveniles and of the mentally retarded. In *Atkins*, Justice John Paul Stevens wrote in the majority opinion that "because of their disabilities in areas of reasoning, judgment, and control of their impulses" the mentally retarded "do not act with the level of moral culpability that characterizes the most serious adult criminal conduct." Critics say the same reasoning can be applied to juveniles. "If you just look at the *Atkins* decision, almost everything they say about mentally retarded people applies to children," says Stephen Bright of the Southern Center for Human Rights. Opponents also assert that juveniles are among society's most victimized and vulnerable individuals. For instance, they point out, 60% of juveniles sentenced to death were neglected or abused growing up. Death is too extreme a punishment for young people who are victims of their circumstances, critics argue. Finally, opponents question how the U.S. can continue to execute young people when most other countries in the world have ceased the practice. Since 2000, only three other countries have executed youthful offenders, they note, putting the U.S. in same category as the Democratic Republic of Congo, Iran and Pakistan—and all three of those countries have either abolished the juvenile death penalty or are in the process of doing so. Supreme Court to Determine the Future of Juvenile Executions

Opinion polls show that much of the public is opposed to the juvenile death penalty, even among those who support the death penalty in general. In a 2002 Gallup poll, while 72% of respondents said they favored the death penalty, 69% said they were opposed to sentencing juveniles to death. And, states are increasingly taking action on their own against the juvenile death penalty. Wyoming and South Dakota both abolished the juvenile death penalty in 2004, and eight other states are currently considering such legislation. However, the fate of juvenile executions in large part rests with the Supreme Court's upcoming decision in *Roper v. Simmons*. In a separate concurring opinion in the 1989 *Stanford* decision, Justice Sandra Day O'Connor wrote, "The day may come when there is such general legislative rejection of the execution of 16- or 17-year-old capital murderers that a clear national consensus can be said to have developed. Because I do not believe that day has yet arrived, I concur." Whether that day has finally come is once again up to the Supreme Court to determine.