

Cruel and Unusual Punishment: The Juvenile Death Penalty

A Deadly Contradiction: The Juvenile Death Penalty's Inconsistency with Legal Protections for Minors

Overwhelmingly, state and federal laws reflect society's conclusion that those under 18 require protections that adults do not. Laws regarding the death penalty should be no different. Repealing the juvenile death penalty will not excuse violent crime,

but will underscore what we already know—that minors are not adults. An adolescent who society considers too immature to vote or serve on a jury is too immature to receive the death penalty—the harshest punishment at our disposal.

Only at age 18 or older can a citizen:

Vote	The Constitution requires the federal and state governments to permit citizens age 18 or older to vote. No state has lowered its voting age below 18. ¹
Serve on a jury	No state allows anyone under the age of 18 to serve on a jury. Most states allow 18-year-olds to serve, but four require jurors to be 19 ² or 21 ³ years old.
Serve in armed combat	Federal law forbids anyone under the age of 18 from engaging in military combat. ⁴
Purchase or use tobacco	Forty-seven states prohibit the sale of tobacco products to minors under 18, ⁵ the other three set the age at 19. ⁶
Marry	Forty-nine states and the District of Columbia do not allow marriage until age 18 unless the child has parental consent, a court order or proof of pregnancy. ⁷
Purchase or consume alcohol	Under federal law, only after reaching age 21 can one purchase alcohol in all 50 states and the District of Columbia. ⁸
Hold hazardous employment	The child labor provisions of the federal Fair Labor Standards Act prohibit employers from placing employees under age 18 into jobs that are classified as hazardous or dangerous. ⁹
Purchase pornography	The laws of all 50 states and the District of Columbia prohibit anyone below age 18 from purchasing pornographic materials. ¹⁰
Own a handgun	Federal law prohibits children under age 18 from possessing handguns. ¹¹
View movies for mature audiences	According to the Motion Picture Association of America, children under 17 should not attend R-rated movies without a parent or guardian; children under 18 are prohibited from attending NC-17-rated movies. ¹²
Enter into a contract	Under the common law, which has been codified by statute in several states, those who have not reached age 18 are not bound by their contractual agreements. ¹³
Not be supported by a parent	Under a general rule of common law, parents have an obligation to financially support their children until age 18. ¹⁴
Consent to medical, medical treatment, abortion, tattooing, etc.	Under a general rule of common law, those who have not reached 18 may not receive medical treatment, tattoos or piercings without parental consent. Physicians may be liable for non-emergency treatment without parental consent. ¹⁵ Forty-four states require parental consent or notice or judicial waiver for girls under 18 who seek abortions. ¹⁶

American Bar Association Juvenile Justice Center

Notes

¹ For a comprehensive listing of state and federal provisions that set the age for jury service at or above eighteen, see *Thompson v. Oklahoma*, 487 U.S. 815, 840-42 (1988).

² Alabama and Nebraska set the age for jury service at nineteen. Ala. Code § 12-16-60; NEB. REV. STAT. § 25-1601.

³ Florida and Missouri set the age for jury service at twenty-one. FLA. STAT. ch. 40.01 (WESTLAW through chapters in effect from 2003 Reg. Sess.); MO. ANN. STAT. § 494.425.

⁴ 10 U.S.C. § 505(a) (WESTLAW through P.L. 108-69).

⁵ See generally RJ Reynolds Tobacco Co., *Tobacco Issues*, at <http://www.rjrt.com/TI/TIStateViewMap.asp> (last visited Aug. 14, 2003). The State of Missouri allows family members to distribute tobacco to minors under age eighteen when they are in a private home. *Id.*

⁶ Alabama, Alaska, and Utah require tobacco purchasers to be at least nineteen years old. RJ Reynolds Tobacco Co., *Tobacco Issues*, at <http://www.rjrt.com/TI/TIStateViewMap.asp> (last visited Aug. 14, 2003).

⁷ Arkansas, Oklahoma, and Virginia allow children of any age to be married with proof of pregnancy. ARK. CODE ANN. § 9-11-102); OKLA. STAT. tit. 43, § 3; VA. CODE ANN. § 20-48. Florida allows children sixteen or older to marry with proof of pregnancy. FLA. STAT. ch. 741.0405. Maryland allows children fifteen or older to marry with proof of pregnancy. MD. CODE ANN., Fam Law § 2-301. North Carolina allows children twelve or older to marry with proof of pregnancy. N.C. GEN. STAT. § 51-2.

⁸ National Minimum Drinking Age Act, 23 U.S.C. § 158. Although Congress does not have the authority to legislate a national minimum drinking age, the U.S. Supreme Court has said that it may use its spending power to withhold federal highway funds from states that do not raise their

drinking ages to twenty-one. *South Dakota v. Dole*, 483 U.S. 203 (1987). Every state and the District of Columbia have followed that federal directive.

⁹ Fair Labor Standards Act, 29 U.S.C. §§ 203, 212.

¹⁰ For a comprehensive listing of state and federal provisions that set the age for purchase of pornographic materials at eighteen, see *Thompson v. Oklahoma*, 487 U.S. 815, 845-46 (1988).

¹¹ 18 U.S.C. § 922(x).

¹² Motion Picture Association of America, Movie Ratings, at <http://www.mpa.org/movieratings/about/index.htm> (last revised Dec. 2000).

¹³ See generally 43 C.J.S. Infants § 166 (2003).

¹⁴ See generally Alice M. Wright, Annotation, *What Voluntary Acts of Child, Other Than Marriage or Entry into Military Service, Terminate Parent's Obligation to Support*, 55 A.L.R. 5th 557 (1998).

¹⁵ See, e.g., Danny R. Veilleux, Annotation, *Medical Practitioner's Liability for Treatment Given Child Without Parent's Consent*, 67 A.L.R. 4th 511, § 2 (1989).

¹⁶ Utah does not allow judicial waiver to substitute for parental notice. Alaska and South Carolina require parental notice or consent or judicial waiver only until age seventeen. All other states require notice, consent, or waiver until age eighteen. See generally Planned Parenthood Fed'n of Am., *Laws Requiring Parental Consent or Notification for Minors' Abortions*, at <http://www.plannedparenthood.org/library/abortion/statelaws.html> (current as of July 28, 2003). See also William H. Danne, Jr., *Annotation, Validity, Construction, and Application of Statutes Requiring Parental Notification of or Consent to Minor's Abortion*, 77 A.L.R. 5th 1 (2000).

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