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## In the Courts: Extending Sentencing Protections for Young Offenders

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*In the Courts:*  
**Extending Sentencing Protections for Young Offenders**

*By: Sarah Sewell*

**I. INTRODUCTION**

In 2012, the United States Supreme Court banned mandatory sentences of life without parole for juvenile offenders in the case of *Miller v. Alabama*. The petitioners, two 14-year-old boys, were convicted of murder. Alabama’s mandatory sentencing scheme required both boys to serve life sentences without the possibility of parole. In a 5-4 decision, the Court held that such sentences were in violation of the Eighth Amendment’s prohibition on cruel and unusual punishment. Justice Kagan, writing for the majority, noted that mandatory sentences precluded judges from considering the “hallmark features” of a defendant’s young age: “immaturity, impetuosity, and failure to appreciate risks and consequences.” Citing research which shows that brain development continues into the early 20s, Kagan found that juveniles were better situated for rehabilitation and, thus, more likely to experience a meaningful reentry to society. Further, harsh sentences like the ones mandated by Alabama law prevented judges from considering mitigating factors in juvenile cases, such as familial and home environment, the extent of the defendant’s participation in the offense, and peer pressure.

However, the *Miller* holding was narrow and only prohibits mandatory sentences of life without parole to juveniles. The decision did not prohibit states from trying juveniles as adults, nor did it forbid sentences other than life without parole. Since the Court’s decision in *Miller*, lower courts and lawmakers are increasingly faced with questions concerning the extent to which juvenile offenders can be sentenced. Particularly, the question of whether lengthy sentences, which essentially amount to life without parole, or *de facto* life sentences, are held to the same standard set forth in *Miller*.

**II. EXTENDING JUVENILE PROTECTIONS IN THE ILLINOIS SUPREME COURT**

On May 15, 2018, the Illinois Supreme Court heard oral arguments in the case of *People v. Harris*. Darien Harris, who turned 18 just three months before the offense was committed, was sentenced to an aggregate of 71 years in prison for first degree murder and attempted murder. In 2016, the Illinois Appellate Court found that Harris’ sentence violated the Illinois Constitution, stating that Harris received what essentially amounted to a life sentence.

The Appellate Court explained in their decision that the United States Supreme Court drew a bright line rule in *Miller* in extending protections only to those who were under the age of 18. The Appellate Court recognized that, while *Miller* could not directly apply in this case due to Harris’ age, the court could apply *Miller*’s analysis under the Illinois State Constitution. Article I, section 11 (otherwise known as the “Rehabilitation

Clause”) provides that penalties should have the objective of restoring the offender to useful citizenship. The court decided that lengthy sentences for young offenders violated the Rehabilitation Clause, citing research which showed that young offenders had the best chance of re-entry when they did not spend most of their lives in prison.

Ultimately, the Appellate Court determined that, because Harris would likely die in prison, his 71-year sentence shocked “the moral sense of the community” and would take away any chance for Harris to rehabilitate himself into a useful member of society. Because Harris was 18 when he was tried and arrested, the Illinois Supreme Court’s decision may effectively extend the protections provided in *Miller* even further. At oral arguments, Harris’ appellate defender asked the Illinois Supreme Court to create a rule requiring judges to consider the youth of offenders who are under the age of 21 when deciding a sentence.

The Illinois Supreme Court, however, did not grant the defender’s request. In an opinion issued on October 18, 2018, Justice Thomas L. Kilbride wrote for the court, stating that, for sentencing purposes, the age of 18 makes the present line between adults and juveniles for sentencing purposes. The appellate court ruling was reversed, and Harris’ sentence of 71 years without the possibility of parole was reinstated. Justice Kilbride observed that Harris’ Eighth Amendment claim failed because United States Supreme Court precedent drew a clear line distinguishing adults and juveniles at the age of 18.

The court also declined to decide whether Harris’ sentence violated the Rehabilitation Clause. Because there was insufficient information in the record regarding Harris’ personal history, the evolving research which supported the ruling in *Miller* could not be applied in Harris’ case. Declining to remand the case for further proceedings, the court stated that a post-conviction hearing should be held to resolve this issue and introduce evidence relevant to Harris’ case.

The Illinois Supreme Court will consider juvenile sentencing again in fall of 2018 when they hear arguments in the case of Dimitri Buffer, who was sentenced to 50 years in prison without the possibility of parole for murder and the use of a firearm – an offense he committed when he was 16 years old. One question before the court in Buffer’s case will be whether his sentence constitutes an unconstitutional *de facto* life sentence. The Illinois Appellate Court held that, under *Miller*, Buffer’s sentence was unconstitutional. The majority opinion took into consideration that the average life expectancy for inmates was, at best, 64 years. According to the court, this meant Buffer would have little opportunity left for a meaningful reentry to society upon release, if he survived to see his release at all.

In the majority opinions for both *Buffer* and *Harris*, the Illinois Appellate Court called on the state legislature to provide more guidance to courts in the area of juvenile sentencing. In *Buffer*, the majority opinion suggested that reallocating resources toward the rehabilitation of juvenile offenders could incentivize good behavior and eventually provide the outcome of higher rates of successful reinstatement to society. It’s important to recognize the Appellate Court’s and the United States Supreme Court’s focus on reentry.

*Buffer* and *Harris* both call into question the fact that, under Illinois' sentencing guideline, a young offender may spend most of their life in prison, facing the possibility of dying in there. Aside from missing the chance to experience life outside a prison cell, advocates and judges alike have looked to the fact that lengthy sentences only cause young offenders to languish in prison and provide little incentive for offenders to meaningfully engage in rehabilitation programs.

### III. EXTENDING SENTENCING PROTECTIONS THROUGH LEGISLATION

In 1978 a change in Illinois corrections laws eliminated the opportunity for inmates convicted of murder to have their prison sentences shortened for good behavior. This means that, currently, offenders convicted of first degree murder in Illinois are required to serve 100% of their sentence. As of last December, at least 167 inmates in Illinois were arrested for crimes they committed as juveniles and are set to serve 50 years or more without parole eligibility. A 50-year sentence is not life without parole per se, but the United States Sentencing Commission considers a 39-year sentence equivalent to life in prison. Combined with the aforementioned life expectancy for inmates and the research which shows a lessened chance of successful reentry following a lengthier stay in prison, the chance of rehabilitation for these young offenders is grim.

Illinois is not alone in considering this issue. Increasingly, courts are faced with the question of how long is too long for a young offender to spend in prison. The Iowa Supreme Court found a state law requiring young offenders to spend 52 ½ years in prison before becoming eligible for parole. The Wyoming Supreme Court made a similar decision concerning a requirement that young offenders serve 45 years of their sentence before seeking parole. But Illinois courts have been split on this issue. In *People v. Reyes*, the Illinois Supreme Court held that a 97-year sentence for a 16-year-old offender was a *de facto* life sentence. However, in *People v. Jackson*, an Illinois Appellate Court refused to find that a 15-year-old's 50-year-sentence constituted a *de facto* life sentence, stating that such a question involved policy considerations that were better left to the legislature.

At least 13 states have passed laws giving young offenders the chance to ask for parole or sentence reduction after serving part of their sentence. In California, all young offenders are eligible for parole after serving 15 years for less serious offenses, and 25 years for homicides. Attempts to provide parole eligibility to juvenile offenders in Illinois, however, have been unsuccessful in recent years. One such attempt, a senate bill, stalled in 2017 and again in the 2018 legislative session. The bill, which will be introduced again in 2019, provides that a person under the age of 21 at the time of the commission of an offense, other than first degree murder, would be eligible for parole review by the Prisoner Review Board after serving at least 10 years of their sentence. Young offenders who are convicted of first degree murder could become eligible for parole after serving 20 years. The Illinois legislature's attempts have been met with opposition – some believe the proposed law should be stricter, while other critics posit that the legislature should be seeking ways to further incapacitate violent offenders, regardless of their age.

#### IV. CONCLUSION

Despite the Illinois Supreme Court's reinstatement of Harris' sentence, the conversation surrounding sentencing of young offenders has not ended. By affirming the Appellate Court's decision in *Buffer*, the Illinois Supreme Court might provide the legislature with further guidance on the tailoring of the upcoming bill. Even if the upcoming legislation is unsuccessful, the state's highest court has the chance to provide clearer rules for lower courts to follow when examining the sentences of the state's youngest offenders.

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