

1-1-2013

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### Recommended Citation

Kelcy Whitaker, *Legislative Update: A Look at Juvenile Life Without Parole Post-Miller*, 34 CHILD. LEGAL RTS. J. 139 (2013).  
Available at: <http://lawcommons.luc.edu/clrj/vol34/iss1/12>

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## **Legislative Update: A Look at Juvenile Life Without Parole Post-*Miller***

*By Kelcy Whitaker*

### **Background and Case History**

In the United States, more than 2,100 inmates are serving mandatory juvenile life without parole (“JLWOP”) sentences for murders they committed when they were under the age of eighteen. On June 25, 2012, the United States Supreme Court declared such sentences unconstitutional under the Eighth Amendment’s cruel and unusual punishment clause in *Miller v. Alabama* and its companion case, *Jackson v. Hobbs*. The 5-4 ruling held twenty-nine states’ laws in violation of the Constitution by imposing mandatory JLWOP sentences without providing trial judges the authority to exercise discretion. Significantly, however, the *Miller* decision does not ban all JLWOP sentences, but rather requires trial judges to weigh several mitigating factors before imposing a lifetime sentence on juveniles without the possibility of parole.

The Court’s holding in *Miller* extended its previous rulings from *Roper v. Simmons* in 2005, and *Graham v. Florida* in 2010. In *Roper*, the Court held that under the Eighth Amendment, juveniles cannot be sentenced to death for crimes committed before they reach the age of eighteen. The Court reasoned that because juveniles have diminished culpability and a heightened capacity for reform and rehabilitation, “they are less deserving of the most severe punishments.” In *Graham*, the Court held that juveniles who committed non-homicidal offenses could not be subject to LWOP sentences. It explained that JLWOP sentences share some characteristics with death sentences, including the permanent deprivation of basic liberties with no hope for reprieve in the future, and are therefore unconstitutional. *Miller* takes the next step and firmly establishes that for sentencing purposes, children are constitutionally different from adults.

The Court highlighted several instances in which children differ from adults. First, children have a lack of maturity and an underdeveloped sense of responsibility. Second, a child’s character is not as well formed as an adult’s. Finally, children are more vulnerable to negative influences and outside pressures because they do not have the ability to control their own environment and extricate themselves from horrific, crime-producing settings.

Nearly eighty percent of youths sentenced to LWOP reported witnessing violence in their homes, and more than half witnessed weekly violence in their neighborhoods. Most of these children never received treatment for the trauma they experienced at a young age. With these concerns in mind, the Court declared that a child charged with murder must have the opportunity to benefit from a judge or jury’s meaningful consideration of these circumstances before receiving the harshest possible penalty available for juveniles. Particularly, the sentencing judge must consider not only the youth’s age and its attendant circumstances, but also the youth’s family and home environment and potential for rehabilitation.

### **Court and Legislative Action**

The Supreme Court provides no specific guidance on whether *Miller* applies retroactively to those already serving JLWOP sentences. In spite of that, courts in Illinois, Iowa, Louisiana, Michigan, and Mississippi, have ruled that the high court’s decision is applicable to all prisoners serving such sentences. In Pennsylvania, which has the largest number of inmates serving JLWOP sentences, the state supreme court recently held that *Miller* should not be retroactively applied to

cases on collateral review, rather, only to cases on direct appeal. Still, courts in Florida and Minnesota have held that *Miller* applies only to future cases.

Legislatures in California and North Carolina have also taken action by determining that *Miller* is applicable to cases on collateral review. California responded to *Miller* with a progressive view on juvenile sentencing by eliminating JLWOP. Its law effectively ensures that all those sentenced to life in prison as juveniles, will have the opportunity to reduce their sentences to a term of twenty-five years after serving at least fifteen, if they can demonstrate remorse and rehabilitation. In North Carolina, a new law provides that “life with parole” means that juvenile offenders will be eligible for parole after twenty-five years of incarceration and that parole will be for a term of five years. Further, juveniles convicted under the felony-murder doctrine are afforded a life-with-parole sentence.

Similarly, Wyoming passed legislation providing that juveniles convicted of murder are eligible for parole after serving twenty-five years of incarceration.

Nebraska responded by abolishing JLWOP sentences altogether. Accordingly, state law now instructs trial courts to impose a maximum sentence of life imprisonment and a minimum sentence of thirty years—a term five years longer than the minimums imposed in California, North Carolina, and Wyoming.

Louisiana adopted a similar, yet unique approach to the states noted above by requiring that juvenile offenders serve at least thirty-five years of their sentence and meet additional criteria to be eligible for parole consideration. However, once eligible, a three-member panel is required to consider a written statement by an expert in adolescent brain development and behavior in determining whether to grant parole release.

Iowa initially reacted by essentially removing the trial court’s discretion regarding the imposition of JLWOP sentences that *Miller* had just established. Immediately following the Court’s decision, Iowa’s Governor commuted the sentences for thirty-eight Iowans who were serving JLWOP sentences to a mandatory sixty-year life sentence with no possibility of parole. The move prompted a state Supreme Court case holding *Miller* to be retroactive, and consequently, all individuals serving JLWOP sentences are now entitled to a hearing before a judge to consider the factors set forth in *Miller*.

In comparison, inmates sentenced in Texas to LWOP as juveniles will still suffer a mandatory harsh sentence post-*Miller*. Although the state legislature abolished JLWOP in 2009, a child becomes an adult at age seventeen in Texas. As a result, seventeen-year-olds who committed a murder after the *Miller* decision were subject to an unconstitutional sentence. The legislature responded by converting the law from one of mandatory LWOP to a mandatory life sentence with the possibility of parole. The law effectively filled the age gap *Miller* created and removed JLWOP as a sentencing possibility for any juveniles under the age of eighteen convicted of murder. Still, it is important to note that a person in Texas must serve forty years of his or her sentence before parole release will be considered.

Delaware and Pennsylvania still leave JLWOP as an option available to judges after consideration of the factors set forth in *Miller*. Delaware enacted a new law requiring juveniles convicted of first-degree murder to serve a minimum twenty-five years incarcerated and those sentenced to a longer term are entitled to a sentence review after serving thirty years. Pennsylvania reacted with legislation that grants future juveniles convicted of first- and second-degree murder the chance for release after serving between twenty and thirty-five years, depending on the age of the killer at the time of the crime. Further, parole hearings are only guaranteed to occur every five years following completion of the minimum term of years.

## Conclusion

While some states have taken steps that reflect the reasoning in *Roper*, *Graham*, and *Miller*, others still hold onto the mandatory, harsh sentences criticized in these cases. At least fifteen states have not yet eliminated mandatory JLWOP sentences. Alabama, where the Supreme Court case originated, is one of them.

States must recognize, as the Supreme Court has done, that due to the developmental and psychological differences between children and adults, children are, at a minimum, entitled to individualized sentencing. Appropriate consideration must be given to the child's maturity, sense of responsibility, understanding of the consequences of his or her actions, and potential for rehabilitation—as well as the family and community environment the child was raised in.

## Sources:

Commonwealth v. Cunningham, 38 EAP 2012, 2013 WL 5814388 (Pa. Oct. 30, 2013).

Elizabeth Imbarlina, *Extending Miller v. Alabama to All Juvenile Homicide Offenders*, JURIST – DATELINE (June 26, 2012), <http://jurist.org/datetime/2012/06/elizabeth-imbarlina-juvenile-parole.php>.

Graham v. Florida, 560 U.S. 48 (2010).

Grant Rodgers, *Update: Hundreds of Juveniles Could Appeal Felony Sentences Under Iowa Court Rulings*, Des Moines Register (Aug. 16, 2013), [http://www.desmoinesregister.com/article/20130816/NEWS01/130816010/0/ENT/?odyssey=nav%7Chead&nclick\\_check=1](http://www.desmoinesregister.com/article/20130816/NEWS01/130816010/0/ENT/?odyssey=nav%7Chead&nclick_check=1).

James Swift, *Miller v. Alabama: One Year Later*, Juvenile Justice Information Exchange (June 25, 2013), <http://jjie.org/miller-v-alabama-one-year-later/>.

Jeff Adelson, *Juveniles Serving Life Sentences Could Become Parole Eligible Under Bill Headed to Louisiana Senate*, NOLA.COM – TIMES-PICAYUNE (May 21, 2013, 4:09 PM), [http://www.nola.com/politics/index.ssf/2013/05/juvenile\\_offenders\\_serving\\_lif.html](http://www.nola.com/politics/index.ssf/2013/05/juvenile_offenders_serving_lif.html).

Joanna L. Visser & Jeffrey J. Shook, *The Supreme Court's Emerging Jurisprudence on the Punishment of Juveniles: Legal and Policy Implications*, 49 CT. REV. 24 (2013), available at <http://aja.ncsc.dni.us/publications/courtrv/cr49-1/CR49-1Visser.pdf>.

Jody Kent Lavy, *Life without Parole? No Child Deserves That.*, WASHINGTON POST (June 27, 2013), [http://articles.washingtonpost.com/2013-06-27/opinions/40231037\\_1\\_life-without-parole-sentences-youths-crimes](http://articles.washingtonpost.com/2013-06-27/opinions/40231037_1_life-without-parole-sentences-youths-crimes).

*Juvenile Life without Parole in Pennsylvania*, Juvenile Law Ctr., <http://jlc.org/current-initiatives/promoting-fairness-courts/juvenile-life-without-parole/jlwop-pennsylvania> (last updated Mar. 26, 2013).

*LB 44: Eliminating Juvenile Life without Parole (JLWOP)*, Voices for Children in Neb. (June 17, 2013), <http://voicesforchildren.com/2013/06/lb-44-eliminating-juvenile-life-without-parole-jlwop/>.

*Legislative Update: Successful Change to Juvenile Life without Parole Law (JLWOP)*, Juvenile Justice Project of La., <http://jjpl.org/2013/newsletter/legislative-update-successful-change-to-juvenile-life-without-parole-law-jlwop/> (last visited Sept. 8, 2013).

Maggie Clark, *After Supreme Court Ruling, States Act on Juvenile Sentences*, STATELINE – DAILY NEWS SERV. OF THE PEW CHARITABLE TRUSTS (Aug. 26, 2013), <http://www.pewstates.org/projects/stateline/headlines/after-supreme-court-ruling-states-act-on-juvenile-sentences-85899500111>.

Maggie Mulvihill, *Juvenile Life without Parole: Massachusetts Moves Cautiously Toward Reform*, Ctr. for Public Integrity (Nov. 29, 2012, 2:44 PM), <http://www.publicintegrity.org/2012/11/21/11837/juvenile-life-without-parole-massachusetts-moves-cautiously-toward-reform>.

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

*Opposition to Mandatory Minimum Sentences for Juveniles and Alternative Suggestions*, Am. Civil Liberties Union of Iowa, <http://www.aclu-ia.org/opposition-to-mandatory-minimum-sentences-for-juveniles-and-alternative-suggestions/> (last visited Sept. 8, 2013).

Paola Salazar, *Updated Legislation Would Restrict Harsh Sentences for Youth*, DAILY FREE PRESS (Jan. 31, 2013), <http://dailyfreepress.com/2013/01/31/updated-legislation-would-restrict-harsh-sentences-for-youth/>.

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

State v. Ragland, No. 12-1758, 2013 WL 4309970 (Iowa Aug. 16, 2013).

Susan Haigh, *Prompted by Court Rulings and Attitude Changes, States Revisit Life Sentences for Juveniles*, Daily Reporter (Aug. 18, 2013, 1:15 PM), <http://www.greenfieldreporter.com/view/story/ae806b4fedb24627b73b21fe1b6ddbc0/US--Juvenile-Sentencing>.

*Texas Changes Sentencing for Juveniles Convicted of Homicide*, Children at Risk (July 17, 2013), <http://childrenatrisk.org/2013/07/17/texas-changes-sentencing-for-juveniles-convicted-of-homicide/>.