SLOW TO ACT:
STATE RESPONSES TO 2012 SUPREME COURT MANDATE ON LIFE WITHOUT PAROLE

Two years have passed since the Supreme Court, on June 25, 2012, ruled that juveniles cannot be automatically sentenced to life without a chance at parole, striking down laws in 28 states. A majority of the states have not yet passed any statutory reform. Of the states that have done so, many require decades-long minimum sentences and few have applied the changes retroactively.

OVERVIEW

On June 25, 2012, the Supreme Court banned the use of mandatory sentences of life without parole for juveniles. The landmark ruling, *Miller v. Alabama*,[1] was the third in a recent series of juvenile sentencing decisions from the court; it built on prior rulings that banned the death penalty for juveniles[2] and banned life without parole (LWOP) sentences for non-homicide offenses.[3]

Miller struck down laws in 28 states and the federal government that required mandatory, parole-ineligible life sentences for individuals whose homicide offenses occurred before the age of 18. The Court ruled that while sentences of life without parole were still permissible, they could only be imposed after judicial consideration of the individual circumstances in a case and must consider the offender's maturity. This briefing paper reviews legislative changes in the affected states responding to the decision.

Two years later, the legislative responses to come into compliance with *Miller* have been decidedly mixed. A majority of the 28 states have not passed legislation. Frequently, the new laws have left those currently serving life without parole without recourse to a new sentence. Though 13 of the 28 states have passed compliance laws since *Miller*, the minimum time that must be served before parole review is still substantial, ranging from 25 years (Delaware, North Carolina, and Washington) to 40 years (Nebraska and Texas). Most states, not only those affected by *Miller*, still allow juveniles to be sentenced to life without a chance of parole as long as the sentence is imposed through individual review rather than as a result of a mandatory statute.

WHAT MILLER v. ALABAMA REQUIRED

The *Miller* Court noted juveniles' lessened culpability and heightened capacity for change. Adolescence is marked by "transient rashness, proclivity for risk, and inability to assess consequences,"[4] all factors that should mitigate the punishment received by juvenile defendants. Justice Kagan cited the 2010 *Graham* decision, which emphasized not only the immaturity of juvenile offenders, but their chances for rehabilitation. "Mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it."[5] The Court previously held that while there are a "few incorrigible juvenile offenders, [many] have the capacity for change."[6]

As such, an extremely long minimum sentence could be seen as disregarding the intent of *Miller* and *Graham*. To sentence young people into their elderly years amounts to a determination that some offenders permanently lack the capacity to change, which violates the spirit, if not the letter, of both Supreme Court rulings.

STATE LEGISLATIVE RESPONSES TO MILLER

In the wake of *Miller*, at least three questions arise for the 28 states found to be out of compliance with the ruling:

1. Will the state still allow juveniles to be sentenced to life without the possibility of parole?
2. What is the minimum sentence for juveniles convicted of homicide offenses?
3. Will the state apply *Miller* retroactively? (Retroactive application of *Miller* would entail resentencing for some juvenile offenders.)

Thirteen of the 28 states that previously required LWOP for juveniles convicted of homicide offenses have since passed laws to address their sentencing structures, while 15 have not. The following table summarizes the actions states have taken to address *Miller* compliance.

Will the state still allow juveniles to be sentenced to life without the possibility of parole?

At the time of the ruling, seven states – Alaska, Colorado, Kansas, Kentucky, Montana, New Mexico and Oregon – plus the District of Columbia had banned life without parole for juveniles. They have since been joined by five more states: Hawaii,* Massachusetts, Texas, West Virginia, and Wyoming. These twelve states, plus D.C., align with the overwhelming international consensus: no other country sentences people to die in prison for crimes committed as juveniles. Four other states – Maine, New Jersey, New York, and Vermont – do not ban life without parole sentences, but have shown little inclination to ever use the sentence.

On the other hand, Iowa's governor, in the wake of the ruling, commuted the sentences of juveniles serving life without parole to minimum sentences of 60 years, leaving their status essentially unchanged.

What are the new minimum sentences for juveniles?

Statutes passed since *Miller* set the minimum sentence for juveniles convicted of homicide offenses between 25 and 40 years. As a result, many offenders in these states may not be paroled until they are well into their 40s or 50s.

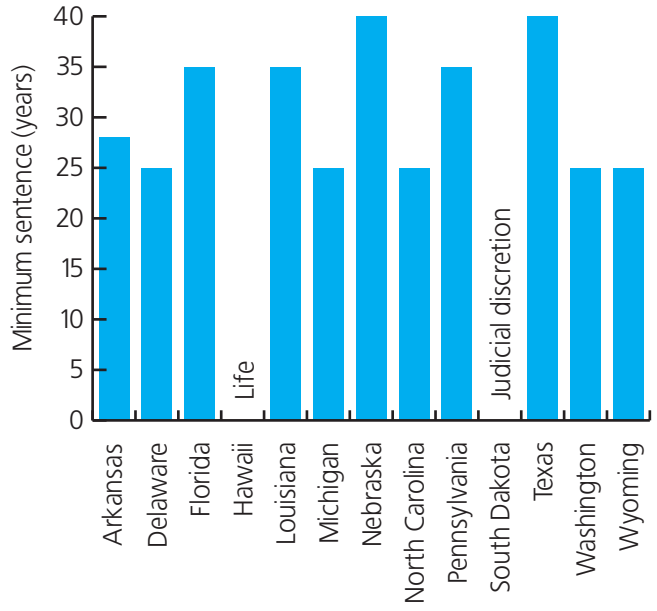
In Nebraska and Texas, the minimum sentence for juveniles convicted of homicide is 40 years. Pennsylvania, Louisiana and Florida have set the minimum sentence at 35 years. Arkansas, Delaware, Michigan, North Carolina, Washington, and Wyoming will sentence juveniles to minimum terms ranging from 25 of 30 years. Hawaii's sentence is life with parole, which has been known to occur after 25 years. In South Dakota judges are granted discretion in sentencing juveniles for homicide offenses.

Legislative Responses to Miller v. Alabama

Have passed legislation (13)	Arkansas, Delaware, Florida, Hawaii,* Louisiana, Michigan, Nebraska, North Carolina, Pennsylvania, South Dakota, Texas, Washington, Wyoming			
State	**Law (Year)**	**Minimum sentence**	**Allows LWOP?**	**Retroactive?**
Arkansas	Act 1490 (2013)	28 years	Yes	No
Delaware	SB 9 (2013)	25 years	No	Yes
Florida	HB 7035 (2014)	35 years	Yes	Not addressed
Hawaii*	HB 2116 (2014)	Life sentence (parole varies)	No	No
Louisiana	HB 152 (2013)	35 years	Yes	Not addressed
Michigan	Act 22 (2014)	25 years	Yes	No
Nebraska	LB 44 (2013)	40 years	Yes	Not addressed
North Carolina	S.L. 2012-148 (2012)	25 years	Yes	Yes
Pennsylvania	Act 204 (2012)	Under age 15: 25 years Age 15-17: 35 years	Yes	No
South Dakota	SB 39 (2013)	Judicial discretion	Yes	Not addressed
Texas	SB 2 (2013)	40 years	No	No
Washington	SB 5064 (2014)	25 years	Yes	Yes
Wyoming	HB 23 (2013)	25 years	No	Yes
Have not passed legislation (15)	Alabama, Arizona, Connecticut, Idaho, Illinois, Iowa, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, Ohio, Vermont, Virginia			

* Awaits governor's signature, which is expected.

New minimum sentences for juveniles after Miller



Will the state apply Miller retroactively?

Miller left unstated whether the estimated 2,000 people already mandatorily sentenced to life without parole for crimes committed as juveniles could be resentenced. Most of these juveniles are denied the opportunity to apply for a new sentence. Of the 13 states that have passed legislation, only four – Delaware, North Carolina, Washington, and Wyoming – allow for resentencing among the current JLWOP population.

Some state courts have responded to the question of retroactivity.

State Supreme Courts in Illinois, Iowa, Massachusetts, Mississippi, Nebraska, and Texas have ruled that *Miller* applies retroactively; some people will attain a new sentencing hearing. Supreme Courts in Louisiana, Minnesota, and Pennsylvania have ruled that *Miller* does not apply retroactively. Cases pushing the question of retroactivity remain before Supreme Courts in Alabama, Colorado, Florida, and North Carolina; these and other states have not yet issued rulings.

Twice this year, the U.S. Supreme Court has rejected the opportunity to revisit *Miller* to settle the question of retroactive application.[7] As such, juveniles will be treated differently based on whether their conviction was final before or after June 25, 2012, and in which state the offense took place.

STATES ARE NOT NECESSARILY REQUIRED TO PASS NEW LAWS TO COMPLY WITH MILLER

The elimination of the harshest sentencing structures does not mean that states are required to pass new laws. In Massachusetts, for example, the *Miller* decision, combined with the state supreme court's interpretation, means that some juveniles convicted of homicide offenses in the past are already receiving parole hearings -- if they have served at least 20 years. In situations like this, there may be no need to take further action.

However, absent legislation, some states have little guidance as to what the appropriate minimum sentence should be for juveniles who commit homicide. In Iowa, for example, the legislature has failed to pass compliance legislation since 2012. As a result, Assistant Attorney General Kevin Cmelik told the *Sioux City Journal*, "There is no clear answer as to what is required by the law right now because we don't have a statute that's applicable anymore."[8]

WHICH JUVENILES ARE SENTENCED TO LIFE WITHOUT PAROLE?

As of the date of the Court's ruling in *Miller v. Alabama*, there were more than 2,500 people serving life sentence without parole for crimes committed when they were under 18 years old. Two-thirds of these sentences occurred in just five states: Pennsylvania, Michigan, Florida, California, and Louisiana.

The life experiences of these individuals vary, but they are often marked by very difficult upbringings with frequent exposure to violence; they were often victims of abuse themselves. Justice Kagan, in the *Miller* ruling, ruled that Alabama and Arkansas erred because a mandatory sentencing structure does not "tak[e] into account the family and home environment."[9] The petitioners in the cases, Kuntrell Jackson and Evan Miller, both 14 at the time of their crimes, grew up in highly unstable homes. Evan Miller was a troubled child; he attempted suicide four times, starting at age 6.[10] Kuntrell Jackson's family life was "immers[ed] in violence: Both his mother and his grandmother had previously shot other individuals."[11] His mother and a brother were sent to prison.[12] The defendant in *Graham*, Terrance Graham, had parents who were addicted to crack cocaine.[13]

In 2012, The Sentencing Project surveyed people sentenced to life in prison as juveniles and found the defendants in the above cases were not atypical.[14]

- 79% witnessed violence in their homes
- 40% had been enrolled in special education classes
- Fewer than half were attending school at the time of their offense
- 47% were physically abused

There are more than 2,500 people sentenced to die in prison for crimes committed before turning 18. While some states have reformed their laws toward a common-sense approach, many of these states were rarely using life without parole for juveniles in the first place. This was likely due to their small population, such as in Hawaii and South Dakota, plus the fortunate rarity of homicides that involve juveniles. The fact that Florida, Louisiana and Pennsylvania still plan to sentence juveniles to very long terms and that their courts have ruled against a retroactive application of *Miller* is deeply troubling. Together, these three states account for about 40% of the total population of juveniles serving life without parole in the U.S.

CONCLUSIONS

Together, the *Miller*, *Graham*, and *Roper* decisions demonstrate an evolving recognition that juveniles are not simply little adults. Awareness of important differences is not new: juveniles are treated differently than adults in voting eligibility, obtaining a driver's license, the ability to buy alcohol and cigarettes, and the right to get married. In *Miller* Justice Kagan quoted *Eddings v. Oklahoma* (1982), "[o]ur history is replete with laws and judicial recognition" that "children cannot be viewed simply as miniature adults."[15]

At least three states have revised their juvenile sentencing laws, even though they were not among the 28 states required to do so by the Court. California (SB 9, 2013) permits parole review for juveniles after 15 years (and release after 20). West Virginia (HB 4210, 2014) banned life with parole entirely, and now allows parole after 15 years. Utah (SB 228, 2013) allows parole after 25 years.

All states have the opportunity to revise their sentencing practices to align with international norms and the growing consensus among the states. Children are uniquely capable of change and require a second look down the road. Juveniles have a capacity for rehabilitation that should not be ignored.

ENDNOTES

1 *Miller v. Alabama* and *Jackson v. Hobbs*, 132 S. Ct. 2455 (2012).
2 *Roper v. Simmons*, 543 U.S. 551 (2005).
3 *Graham v. Florida*, 130 S. Ct. 2011 (2010).
4 *Miller* slip op., at 9.
5 *Miller* slip op., at 15.
6 *Graham* at 2032.
7 *Louisiana v. Tate* (Docket No. 13-8915), cert. denied on May 27; and *Cunningham v. Pennsylvania* (Docket No. 13-1038), cert. denied on June 9.
8 Boshart, R. (2014, June 8). Iowa juvenile sentencing rules in legal limbo. *Sioux City Journal.*
9 *Miller* slip op., at 15.
10 *Miller* slip op., at 4.
11 *Miller* slip op., at 16.
12 Denniston, L. (2012). Argument Preview: Youthful crimes, life sentences. http://www.scotusblog.com/2012/03/argument-preview-youthful-crimes-life-sentences/
13 *Graham* slip op., at 1
14 Nellis, A. (2012). The lives of juvenile lifers: Findings from a national survey. Washington, D.C.: The Sentencing Project.
15 *Miller* slip op., at 19.

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Revised June 2014

This briefing paper was written by Joshua Rovner, State Advocacy Associate and published on June 25, 2014.

The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.