

18th ANNUAL LJC/NBA CRIMINAL LAW UPDATE

Juvenile Offenders...Parole Eligibility

Code of Criminal Procedure

The progeny of *Miller v. Alabama*

Sentencing hearing for juvenile offenders

In any case where an offender is to be sentenced to life imprisonment for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. 17 14:30.1) where the offender was under the age of eighteen years at the time of the commission of the offense, hearing shall be conducted prior to sentencing to determine whether the sentence shall be imposed with or without parole eligibility pursuant to the provisions of R.S. 15:574.4(E).

Code of Criminal Procedure

The progeny of *Miller v. Alabama*

At the hearing, the prosecution and defense shall be allowed to introduce any aggravating and mitigating evidence that is relevant to the charged offense or the character of the offender, including but not limited to the facts and circumstances of the crime, the criminal history of the offender, the offender's level of family support, social history, and such other factors as the court may deem relevant

Miller v. Alabama

The Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders...The Eighth Amendment's prohibition of cruel and unusual punishment "guarantees individuals the right not to be subjected to excessive sanctions." *Roper v. Simmons*, 543 U. S. 551, 560. **That right "flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned'**

Miller v. Alabama

Roper and Graham emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, **even when they commit terrible crimes.**

Miller v. Alabama

This contravenes Graham's (and also Roper's) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children. ***Adult sanctions should never be imposed on children***

Miller v. Alabama

We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s “moral culpability” and enhanced the prospect that, as the years go by and neurological development occurs, his “**deficiencies will be reformed.**

Miller v. Alabama

Roper and Graham emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because “[t]he heart of the retribution rationale” relates to an offender’s blameworthiness, “the case for retribution is not as strong with a minor as with an adult.’”

Miller v. Alabama

The Purpose of Punishment

Retribution

‘[t]he heart of the retribution rationale’” relates to an offender’s blameworthiness, “the case for retribution is not as strong with a minor as with an adult.’

Deterrence

‘the same characteristics that render juveniles less culpable than adults’” —their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment

Miller v. Alabama

The Purpose of Punishment

Incapacitation

a “juvenile offender forever will be a danger to society” would require “mak[ing] a judgment that [he] is incorrigible” —but ““incorrigibility is inconsistent with youth.””

Rehabilitation

Life without parole “forswears altogether the rehabilitative ideal.” It reflects “an irrevocable judgment about [an offender’s] value and place in society,” at odds with a child’s capacity for change.

Miller v. Alabama

THE PROBLEM WITH MANDATORY SENTENCING LAWS

By removing youth “*and thereby*” subjecting a juvenile to the same life-without-parole sentence applicable to an adult— prohibit a sentencing authority from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender.

That contravenes Graham’s (and also Roper’s) foundational principle: that imposition of a State’s most severe penalties on juvenile offenders cannot proceed **as though they were not children.**

Miller v. Alabama

“youth is more than a chronological fact.” It is a time of immaturity, irresponsibility, “impetuosity[,] and recklessness.” It is a moment and “condition of life when a person may be most susceptible to influence and to psychological damage.

“[J]ust as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered” in assessing his culpability.

Miller v. Alabama

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The Teenage Brain

The teenage brain undergoes disorganization and reorganization from the onset of puberty into the early twenties.

Natural developmental milestones and life challenges coincide with sensitive periods of neural development and enhanced plasticity.

The Teenage Brain

- The changes in the brain are required for new attachments during adolescence
- The changes can lead to confusion, disorientation and depression
- There is increased vulnerability to risky behaviors, poor judgment, and lack of adequate impulse control.

The Teenage Brain Exposed to Violence

- ▶ Childhood exposure to violence and maltreatment negatively impacts neurobiological development and psychological and social functioning
- ▶ The number of risk factors a child experiences is the most relevant predictor of outcomes for young children.
- ▶ Recent research suggest that the impact of risk exposure in early childhood is highly predictive of adolescent behavioral outcomes.
- ▶ Children's exposure to family violence can result in negative social emotional and behavioral outcomes.
- ▶ Chronic exposure to family violence and other traumatic events impacts neurobiological development with negative effects on cognitive functioning and emotion regulation

Montgomery v. Louisiana

Petitioner Montgomery was 17 years old in 1963, when he killed a deputy sheriff in Louisiana. The jury returned a verdict of “guilty without capital punishment,” which carried an automatic sentence of life without parole.

A State may remedy a *Miller* violation by extending parole eligibility to juvenile offenders. This would neither impose an onerous burden on the States nor disturb the finality of state convictions. And it would afford someone like Montgomery, who submits that he has evolved from a troubled, misguided youth to a model member of the prison community, the opportunity to demonstrate **the truth of *Miller*’s central intuition—that children who commit even heinous crimes are capable of change.**

Montgomery v. Louisiana

Parole Eligibility

Notwithstanding any provision of law to the contrary, any person serving a sentence of life imprisonment for a conviction of first degree murder (R.S. 11 14:30) or second degree murder (R.S. 14:30.1) who was under the age of eighteen years at the time of the commission of the offense shall be eligible for parole consideration pursuant to the provisions of this Subsection if a judicial determination has been made that the person is entitled to parole eligibility

Montgomery v Louisiana

Parole Eligibility

A Defendant is entitled to parole eligibility if

The offender has served thirty-five years of the sentence imposed.

(b) The offender has not committed any disciplinary offenses in the twelve consecutive months prior to the parole eligibility date.

(c) The offender has completed the mandatory minimum of one hundred 20 hours of prerelease programming in accordance with R.S. 15:827.1. 21

(d) The offender has completed substance abuse treatment as applicable.

Montgomery v Louisiana

(e) The offender has obtained a GED certification, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED certification due to a learning disability. If the offender is deemed incapable of obtaining a GED certification, the offender shall complete at least one of the following:

- (i) A literacy program.
- (ii) An adult basic education program.
- (iii) A job skills training program

Sentencing Law and Policy

But one argument that is surprisingly absent from these conversations is an epistemic one that has to do with us. For natural life sentences say to all involved that there is no possible piece of information that could be learned between sentencing and death that could bear in any way on the punishment the convicted is said to deserve, short of what might ground an appeal. Nothing. So no matter how much a juvenile is transformed behind bars, and no matter how unrecognizable an elderly prisoner is from his earlier self, this is utterly irrelevant to whether they should be incarcerated. **Our absence of knowledge about the future, our ignorance of what is to come, our lack of a crystal ball, is in no way a barrier to determining now what someone's life ought to be like decades from now.**

Sentencing Law and Policy

At 69, Henry Montgomery does not have the luxury of time. Yet he is among the lucky ones – at least he has representation. For other prisoners, finding a lawyer to challenge their continued incarceration is the first in a daunting series of hurdles. According to [Sister Alison] McCrary, word at Angola is that local attorneys will soon be visiting the prison to instruct “offender counsel substitutes” – jailhouse lawyers – on how to begin filing petitions on behalf of fellow inmates. But juvenile lifers must also wait for the state to decide on the legal venue for such a challenge. Then, ultimately, they must convince the state’s chosen decision-makers that they are worthy of early release.

Sentencing Law and Policy

In New Orleans, the Louisiana Center for Children’s Rights was quick to embrace this suggestion. The state “has a choice to make,” the legal nonprofit explained...It can offer prisoners “costly, lengthy, substantive hearings” to the tune of \$3 million to fund the first year of defense attorneys alone, according to an estimate by the Louisiana Public Defender Board. Or it can grant juvenile lifers some shot at release by allowing them to go before a parole board – an option the group’s director argues saves money, preserves public safety (“by ensuring that nobody is released without review”), and is “fairer for victims, because it will mean that they d not have to go through the difficulties of a new court hearing.”...o