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Juvenile Sentencing in Illinois: Addressing the Supreme Court Trend away from Harsh Punishments for Juvenile Offenders

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Juvenile Sentencing in Illinois: Addressing the Supreme Court Trend away from Harsh Punishments for Juvenile Offenders

MAUREEN DOWLING*

*The United States Supreme Court has steadily been changing the way it approaches juvenile sentencing since 2005. This ideological shift has occurred as a response to the increase in biological and sociological studies, which point toward fundamental differences between juveniles and adults. This Note addresses how the new mandates by the Supreme Court have been implemented around the country, with a focus on statutory changes Illinois should make moving forward. Specifically, this Note argues that there are several adjustments Illinois will have to make in regards to the way it sentences juvenile homicide offenders, in order to be considered Constitutional based on the analysis set forth by the Supreme Court in *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama*. First, lengthy, consecutive term-of-years sentences should be abolished because it does not give juvenile offenders the “meaningful opportunity for release” required by *Graham*. This Note suggests that courts need to look at the idea of a “meaningful opportunity for release” differently when sentencing juveniles as opposed to adult offenders, because studies have shown that adolescents who are imprisoned have a much lower life expectancy than average. Second, Illinois should amend its sentencing statutes to require judges to consider several factors, while on record at a sentencing hearing, before sentencing a juvenile homicide offender to life in prison. These factors, laid out within this Note, will put Illinois at the forefront of ethical juvenile sentencing, while also ensuring that it does not violate the authority of *Miller*. Admittedly, these theories have been criticized for being too ‘soft’ on punishment for juveniles who are convicted of felony murder. However, the suggestions in this Note are meant to allow for the protection of the adolescent’s Eighth Amendment right to be free of cruel and unusual punishment, while also considering the severity and nature of the offense.*

* Juris Doctor candidate, May 2016, Northern Illinois University College of Law. I would like to dedicate this article to my husband, Patrick Dowling, for his loving support and patience. I would also like to thank the entire Northern Illinois University Law Review for their tireless efforts and careful review.

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I. INTRODUCTION

At five feet and one hundred pounds, Addolfo Davis was newly fourteen when he was arrested for home invasion and double homicide.¹ The crime and his subsequent conviction were a shock to those closest to him. But, to the probation officers who had dealt with him before, it was only a matter of time before something like this happened.²

Davis was eight years old when his drug-addicted mother lost custody of him.³ He was sent to live with his elderly grandmother in a one-room, basement apartment.⁴ At nine years old, Davis had committed his first rob-

1. Linda Paul, *Addolfo Davis' Story*, WBEZ91.5 (Apr. 9, 2008), <http://www.wbez.org/story/news/local/addolfo-davis-story>.

2. *Id.*

3. *Id.*

4. *Id.*

bery.⁵ While pumping gas to make some money, he stole a girl's purse in order to buy food.⁶ By the time Davis was thirteen years old, he had joined a gang and was selling drugs.⁷

At the age of fourteen, Davis was made a ward of the state and removed from his grandmother's custody when it was determined that she could not provide the discipline or stability that he needed.⁸ A probation officer, who had been working with Davis, asked that he not be placed in a temporary group home because the officer knew that without the necessary structure and discipline, Davis would run away.⁹ The probation officer's prediction came true when Davis ran away almost immediately after being placed in a temporary shelter.¹⁰ Five days later, Davis accompanied some members of his gang to a home where he was told a drug deal would be happening.¹¹ Tragically, some of the older gang members fatally shot two men.¹² Even though he did not personally shoot anyone that day, Davis was charged and found guilty of two counts of first degree murder, two counts of attempted first degree murder, and home invasion.¹³ Davis was sentenced to a term of natural life, without the possibility of parole.¹⁴

A. PURPOSE

This Note will examine the shift in attitude by the United States Supreme Court in regards to juvenile sentencing and how Illinois should reform its statutory juvenile sentencing scheme with a focus on felony murder. First, it will look at the Supreme Court's analysis of several cases involving juveniles and what each means in regards to sentencing. Then it will briefly discuss how states have applied these new sentencing standards. Additionally, it will look at how Illinois has dealt with juvenile sentencing currently and in the past. Finally, it will suggest a new approach to juvenile sentencing in Illinois and how those changes should be implemented.

5. *Id.*

6. Linda Paul, *Addolfo Davis' Story*, WBEZ91.5 (Apr. 9, 2008), <http://www.wbez.org/story/news/local/addolfo-davis-story>.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Linda Paul, *Addolfo Davis' Story*, WBEZ91.5 (Apr. 9, 2008), <http://www.wbez.org/story/news/local/addolfo-davis-story>.

12. *Id.*

13. *Illinois v. Davis*, 2014 IL 115595, ¶ 5, 6 N.E.3d 709, 714.

14. *Id.*

B. IMPORTANCE

Beyond the analysis and justification from the United States Supreme Court for differences in juvenile and adult sentencing, juvenile sentencing can primarily be viewed as a morality issue. The United States is one of only two nations (the other being Somalia) that has not ratified a United Nations convention requiring a minimum age of criminal culpability.¹⁵ Furthermore, the United States is the only country that sentences children to life imprisonment without the possibility of parole.¹⁶ Even if one ignores the clear directives from the United States Supreme Court on sentencing differences for juveniles and adults, it is striking that this nation stands alone on this issue.

The Supreme Court has repeatedly highlighted the differences between juveniles and adults as justification for sentencing differences.¹⁷ This Note will argue that implementing a new style of juvenile sentencing is especially important in the State of Illinois because Illinois faces unique challenges involving crime and gangs. There are a number of factors that have caused Chicago to continually struggle with high rates of crime, especially homicide.¹⁸ These factors include: poverty, gang activity, political corruption, and struggling public schools.¹⁹ However, there is a general consensus among many criminal theorists that the key to reducing crime is in how we deal with juvenile offenders.²⁰

Sadly, Addolfo Davis's story is far too common among young criminals. Many of these children find love and acceptance in gangs, which they did not find at home.²¹ Like Davis, these kids do not receive consistent discipline or stability.²² Young gang members end up involved in situations,

15. Hanna Kozłowska, *Should a Child Offender be Treated as an Adult?*, N.Y. TIMES (Oct. 24, 2014, 11:33 AM), http://op-talk.blogs.nytimes.com/2014/10/24/should-a-child-offender-be-treated-as-an-adult/?_r=0.

16. *Id.*

17. *E.g.*, Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012).

18. Steve Bogira, *The Root Cause of Chicago's Glut of Murders*, CHI. READER (July 10, 2012, 12:33 PM), <http://www.chicagoreader.com/Bleader/archives/2012/07/10/the-root-cause-of-chicagos-glut-of-murders>.

19. See Noah Berlatsky, *How Bad is Violence in Chicago? Depends on Your Race*, THE ATLANTIC (Sept. 26, 2013, 11:21 AM), <http://www.theatlantic.com/national/archive/2013/09/how-bad-is-violence-in-chicago-depends-on-your-race/280019/>.

20. See WASH. ST. INST. FOR PUB. POLICY, *Benefits and Costs of Prevention and Early Intervention Programs For Youth* (2004), http://www.wsipp.wa.gov/ReportFile/881/Wsipp_Benefits-and-Costs-of-Prevention-and-Early-Intervention-Programs-for-Youth_Summary-Report.pdf.

21. See JUVENILE JUSTICE BULLETIN, *Why Do Youth Join Gangs?* (1998), <http://www.ojjdp.gov/jjbulletin/9808/why.html>.

22. *See id.*

without understanding the consequences, until they are sentenced to pay for those mistakes for the rest of their lives.²³ It seems as though a day does not go by without a news article decrying the rate of homicides in Chicago.²⁴ This Note will argue that juvenile sentencing changes are especially important in Illinois because of the crime issues this state faces. Since 2000, Illinois has seen higher rates of homicide committed by juveniles ages twelve to seventeen and eighteen to twenty-four than many of the surrounding Midwestern states.²⁵ For that reason, it is imperative that Illinois lead the way for other states in more effective juvenile sentencing.

II. BRIEF OVERVIEW OF THE EIGHTH AMENDMENT

The Eighth Amendment prohibits the use of cruel and unusual punishment.²⁶ The United States Supreme Court in *Roper v. Simmons* found that this “guarantees individuals the right not to be subjected to excessive sanctions.”²⁷ That right is derived from the idea that a punishment should be proportional “to both the offender and the offense.”²⁸ For adult offenders, the Supreme Court has frequently upheld the death penalty, natural life sentence without the possibility of parole, and lengthy, consecutive term-of-years sentences, as consistent with the Eighth Amendment. However, during the past decade, the Supreme Court has called the constitutionality of these sentences into question in regards to juvenile offenders.²⁹

III. RECENT TRENDS IN THE SUPREME COURT

In a series of cases beginning in 2005, the United States Supreme Court has begun to shift the way it addresses juvenile sentencing. The following three cases will set up the basis for this Note’s argument.

23. *See id.*

24. *See, e.g.,* Steve Bogira, *The Root Cause of Chicago’s Glut of Murders*, CHICAGO READER (July 10, 2012, 12:33 PM), <http://www.chicagoreader.com/Bleader/archives/2012/07/10/the-root-cause-of-chicagos-glut-of-murders>; Berlatsky, *supra* note 19; Tricia Escobedo, *Despite Bloody Weekend, Chicago’s Murder Rate is Down, Police Chief Says*, CNN (Apr. 25, 2014, 2:38 AM), <http://www.cnn.com/2014/04/24/us/chicago-violence/>.

25. FBI, *Supplementary Homicide Reports 1980-2012*, http://www.ojjdp.gov/ojstatbb/ezashr/asp/off_selection.asp (last visited Jan. 5, 2015). This online table allows user to search the number of homicides per state by age. *Id.* A search by this author revealed that Illinois has seen a total of 3,290 homicides by offenders between the ages of twelve to twenty-four. *Id.* In contrast, in that same time period Iowa had 303 homicides, Wisconsin had 1,414, and Indiana had 1,233. *Id.*

26. U.S. CONST. amend. VIII.

27. *Roper v. Simmons*, 543 U.S. 551, 560 (2005).

28. *Miller v. Alabama*, 132 S. Ct. 2455, 2463 (2012).

29. *E.g., Roper*, 543 U.S. 551.

A. *ROPER V. SIMMONS*

In this 2005 case, the Supreme Court held that a death penalty sentence violates a minor's Eighth and Fourteenth Amendment rights.³⁰ At the age of seventeen, Simmons and two others broke into a woman's home at two in the morning and kidnapped her.³¹ The three teenagers put duct tape over the woman's eyes and mouth, bound her hands together, and drove her to a state park.³² Once there, they walked her to a railroad trestle and threw her off the bridge.³³ Following a jury trial, Simmons was found guilty and given the death penalty.³⁴

The Court examined whether the death penalty was constitutional in this case by comparing it to similar, previously decided cases and state statutes.³⁵ First, the Court noted that typical theories of punishment, such as retribution and deterrence, do not apply to juveniles because minors do not respond to punishments in the same way as adults.³⁶ The Court compared the *Roper* case to *Atkins*, a case in which it had decided that the death penalty was unconstitutional for those with mental retardation because those offenders had a diminished personal culpability.³⁷ Furthermore, the Court noted that a majority of states prohibited the death penalty for juvenile offenders under the age of eighteen.³⁸ Additionally, at the end of the opinion the Court also pointed out that the United States was the only country that still allowed juvenile offenders to be put to death.³⁹

Finally, the Court closely analyzed the differences between juvenile and adult offenders.⁴⁰ "Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force."⁴¹ For this reason, courts will carefully examine a wide variety of factors before sentencing a defendant to death.⁴² The Supreme Court noted three general differences between juveniles and adults.⁴³ First, juveniles do not have the

30. *Id.* at 571.

31. *Id.* at 556.

32. *Id.*

33. *Id.* at 557.

34. *Roper v. Simmons*, 543 U.S. 551, 558 (2005).

35. *See id.* at 560-75.

36. *Id.* at 571-72.

37. *Id.* at 563-64.

38. *Id.* at 568.

39. *Roper v. Simmons*, 543 U.S. 551, 575 (2005).

40. *Id.* at 569-73.

41. *Id.* at 568 (citing *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Connor, J., concurring)).

42. *Roper*, 543 U.S. at 568.

43. *Id.* at 569.

same level of maturity and responsibility as adults generally do.⁴⁴ Second, “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”⁴⁵ Third, a minor’s personality is more fluid, and not as well formed, as an adult’s personality.⁴⁶ For these reasons, the Supreme Court found that juveniles do not have the proper personal culpability necessary to be given the death penalty.⁴⁷

B. *GRAHAM V. FLORIDA*

In 2010, the Supreme Court heard another case involving juvenile sentencing, in which it considered whether it was constitutional for a juvenile to be sentenced to life imprisonment without the possibility of parole for a non-homicide crime.⁴⁸ Graham was seventeen years old when he was involved in a home invasion while on probation for a previous attempted robbery charge.⁴⁹ Graham, along with two other young men, forcibly entered a home by threatening the owner with a pistol.⁵⁰ The group ransacked the home and locked the homeowner in a closet.⁵¹ Later that same evening, the group attempted a second robbery that resulted in one of the accomplices being shot.⁵² Graham was apprehended after fleeing from police in a vehicle and then, after crashing into a light pole, on foot.⁵³ He was found guilty of all charges and given the maximum sentence: life imprisonment without the possibility of parole.⁵⁴

The Supreme Court, while examining the Eighth Amendment, once again stated that in order for a punishment to be constitutional, it must be proportional to the crime and the offender.⁵⁵ In this case, the majority of states did allow this level of sentence for a juvenile offender.⁵⁶ However, when examined closer, the Court found that these sentences were rarely given.⁵⁷ The Supreme Court cited the *Roper* factors and held “that because juveniles have lessened culpability they are less deserving of the most se-

44. *Id.*

45. *Id.*

46. *Id.* at 570.

47. *Roper v. Simmons*, 543 U.S. 551, 575 (2005).

48. *Graham v. Florida*, 560 U.S. 48, 52-53 (2010).

49. *Id.* at 54.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Graham v. Florida*, 560 U.S. 48, 55 (2010).

54. *Id.* at 57.

55. *Id.* at 59.

56. *Id.* at 62.

57. *Id.* 62-63.

vere punishments.”⁵⁸ Furthermore, a juvenile offender who has not committed or attempted to commit a homicide was found by the Court to have “twice diminished moral culpability:” diminished by both the age of the offender and the nature of the crime.⁵⁹

Because juveniles will end up serving longer sentences, life without parole is especially harsh.⁶⁰ The Supreme Court examined and rejected a number of theories of punishment as justification for juveniles being given such harsh sentences.⁶¹ These theories included retribution, deterrence, incapacitation, and concerns of recidivism, which the Court determined did not give any basis for life without parole sentences.⁶² Finally, the Court noted that the sentence prevented any sort of rehabilitation from taking place.⁶³ Through this analysis, the Court held that natural life sentences without the possibility of parole for juvenile offenders were unconstitutional.⁶⁴ A state must “give defendants . . . some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”⁶⁵

C. *MILLER V. ALABAMA*

In the most recent decision, the United States Supreme Court examined the constitutionality of mandatory life imprisonment without the possibility of parole for juvenile offenders convicted of homicide.⁶⁶ The Court ultimately held that, for minors, the sentence violated the Eighth Amendment.⁶⁷ When Evan Miller was fourteen, he beat a neighbor with a baseball bat after the neighbor woke up to Miller trying to take his wallet.⁶⁸ Miller then lit a fire to cover up the evidence and the victim died from the injuries and smoke inhalation.⁶⁹ Miller was charged and found guilty of murder in the course of arson, which carried a mandatory punishment of life without the possibility of parole.⁷⁰

58. *Graham v. Florida*, 560 U.S. 48, 68 (2010) (citing *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

59. *Graham*, 560 U.S. at 69.

60. *Id.* at 70.

61. *Id.* at 71-72.

62. *Id.* at 71-72.

63. *Id.* at 73.

64. *Graham v. Florida*, 560 U.S. 48, 74 (2010).

65. *Id.* at 75.

66. *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012).

67. *Id.*

68. *Id.* at 2462.

69. *Id.*

70. *Id.* at 2463.

The Supreme Court acknowledged the shift it had implemented in sentencing standards for juveniles starting with *Roper* and *Graham*.⁷¹ The Court reiterated the factors that make juveniles different from adults as the basis for why, constitutionally, minors must be sentenced differently than adults.⁷² Furthermore, the Court emphasized that it was these differences that diminished the “penological justifications” for doling out extremely harsh sentences to juvenile offenders, even when they are found guilty of horrible crimes.⁷³ The Court underlined the theme that had pervaded its last two decisions, “youth matters in determining the appropriateness” of a harsh sentence.⁷⁴

Finally, the Court turned to the basis for its decision regarding the unconstitutionality of the mandatory sentence.⁷⁵ It found that mandatory imposition of the harshest sentence available to juvenile offenders did not allow the judge to take into account any of the differences the Supreme Court determined to be important.⁷⁶ The Court held that, in sentencing, a judge must be allowed to consider the mitigating factors that accompany youth or there would be too great a risk that the punishment will be disproportionate to the crime.⁷⁷

D. THE NEXT STEP

It is widely recognized by many legal scholars that the United States Supreme Court is moving rather quickly towards abolishing life without parole sentences for juvenile offenders entirely.⁷⁸ There are several parts of the analyses of each case that point to this inevitable shift. First, each case acknowledges that the decisions are directly contrary to our historical understanding of juvenile sentencing.⁷⁹ The Court rejects the notion of looking at sentencing “through a historical prism” in favor of the evolving moral and ethical standards of society.⁸⁰ This opens up the Court to abolish life without parole sentences for juveniles, even though traditionally it is a widely practiced and accepted sentence. Second, each opinion makes it clear that simply because a majority of state sentencing statutes do not cur-

71. *Miller v. Alabama*, 132 S. Ct. 2455, 2463 (2012).

72. *Id.* at 2464.

73. *Id.* at 2465.

74. *Id.*

75. *Id.* at 2467.

76. *Miller v. Alabama*, 132 S. Ct. 2455, 2467 (2012).

77. *Id.* at 2469.

78. James Donald Moorehead, *What Rough Beast Awaits? Graham, Miller, and the Supreme Court's Seemingly Inevitable Slouch Towards Complete Abolition of Juvenile Life Without Parole*, 46 IND. L. REV. 671 (2013).

79. *E.g.*, *Miller*, 132 S. Ct. at 2463.

80. *See id.*

rently agree with the decisions, this will not affect the outcome.⁸¹ This argument goes hand-in-hand with the Court's rejection of historical sentencing standards.⁸² Again, the Court has left open the possibility of abolishing the harshest sentence available to juveniles.⁸³ Finally, the Court repeatedly emphasizes the differences between juveniles and adults as an explanation for why each should be sentenced differently.⁸⁴ The continued focus on these differences further bolsters the argument for abolishing life sentences without the possibility of parole for juveniles.

However, the Supreme Court has failed to establish a categorical rule in response to how states should deal with sentencing juveniles.⁸⁵ The Court may have been concerned that a categorical rule would further prevent judges from being able to consider any outside factors during sentencing. Or the Court may have thought that the states could better decide the proper sentencing scheme for themselves. Without a categorical rule, states have unevenly applied *Miller* and *Graham*.⁸⁶

IV. HOW STATES HAVE APPLIED *MILLER/GRAHAM*

A. DE-FACTO LIFE SENTENCES

One of the ways states have dealt with sentencing post-*Miller* is through lengthy, consecutive term-of-years sentences, also known as "de-facto" life sentences.⁸⁷ There has been considerable controversy surrounding this sentencing scheme and about whether it remains constitutional.⁸⁸ The *Miller* opinion does not discuss the issue, though it has been considered by many state courts.⁸⁹ Illinois is one state where consecutive term sentences are allowed and given to juveniles.⁹⁰

As recently as 2012, the California Supreme Court found that a one hundred ten year sentence for a sixteen-year-old offender was unconstitu-

81. *E.g.*, *Graham v. Florida*, 560 U.S. 48, 67 (2010).

82. *See, e.g.*, *Miller*, 132 S. Ct. at 2463.

83. *See id.* at 2462.

84. *See, e.g.*, *id.* at 2465.

85. Brian J. Fuller, Note, *Criminal Law-A Small Step Forward in Juvenile Sentencing. But is it Enough? The United States Supreme Court Ends Mandatory Life Without Parole Sentences; Miller v. Alabama*, 132 S. Ct. 2455 (2012), 13 WYO. L. REV. 377, 395 (2013).

86. *Id.* at 394.

87. *See* Therese A. Savona, *The Growing Pains of Graham v. Florida: Deciphering Whether Lengthy Term-Of-Years Sentences for Juvenile Defendants Can Equate to the Unconstitutional Sentence of Life Without the Possibility of Parole*, 25 ST. THOMAS L. REV. 182, 197 (2013).

88. *See* Fuller, *supra* note 85.

89. *Id.*

90. 730 ILL. COMP. STAT. ANN. 5/5-4.5-25(g) (West 2012).

tional under *Graham*.⁹¹ The court found that the length of the sentence was contrary to the mandate in *Graham* and did not allow the juvenile any meaningful opportunity for release.⁹² However, the court did not find consecutive term sentences categorically unconstitutional.⁹³

These de-facto life sentences are not consistent with the language or analysis found in both *Miller* and *Graham*.⁹⁴ A prison sentence that will last sixty or more years does not allow courts to show juvenile offenders any clemency.⁹⁵ Furthermore, despite the lengthy discussion about the differences between adults and juveniles, de-facto life sentences do not give courts any opportunity to take the differences into account when determining a sentence.⁹⁶

B. RETROACTIVE APPLICATION

Following *Miller*, states were faced with the decision of how to deal with juveniles who had already been sentenced to life imprisonment terms. Iowa Governor Terry Branstad chose to immediately commute the sentences of thirty-eight juveniles currently serving life terms, instead of dealing with sentencing appeals.⁹⁷ The defendants are now serving sixty-year terms and will be eligible for parole.⁹⁸ Governor Branstad chose to retroactively apply *Miller* because he stated that he wanted to protect the victims and their families from having to go through another trial and the possibility of a more lenient sentence.⁹⁹

State courts are continuing to struggle with the proper application of *Miller*.¹⁰⁰ Several states have found that *Miller* should not apply retroactively, including Louisiana, Alabama, and Michigan.¹⁰¹ Others, including Illinois, have chosen retroactive application.¹⁰² The Illinois Supreme Court in *Davis* found that the decision of retroactivity depends on whether the rule

91. Savona, *supra* note 87.

92. *Id.* at 200.

93. *Id.* at 201.

94. See *Miller v. Alabama*, 132 S. Ct. 2455, 2468 (2012) (addressing the justifications for why mandatory life without parole is unconstitutional for juvenile offenders).

95. See *Graham v. Florida*, 560 U.S. 48, 75 (2010).

96. See *id.*

97. Savona, *supra* note 87, at 198.

98. *Id.*

99. *Id.*

100. See Savona, *supra* note 87, at 197. “[T]he Court’s decision in *Miller* only exacerbates this issue, which several courts throughout the country continue to struggle with.” *Id.*

101. *Louisiana v. Tate*, 130 So. 3d 829 (La. 2013); *Williams v. Alabama*, No. CR-12-1862, 2014 WL 1392828 (Ala. Crim. App. Apr. 4, 2014); *Michigan v. Carp*, 852 N.W.2d 810 (Mich. 2014).

102. *Illinois v. Davis*, 2014 IL 115595, 6 N.E.3d 709.

that comes out of *Miller* is substantive or procedural.¹⁰³ Substantive rules are generally applied retroactively because there is a significant risk that the defendant is “fac[ing] a punishment that the law cannot impose upon him.”¹⁰⁴ Procedural rules, on the other hand, are not applied retroactively.¹⁰⁵ The Illinois Supreme Court found that while the *Miller* decision did mandate a new sentencing procedure, it was the result of a substantive change of the sentencing laws.¹⁰⁶ Therefore, according to *Davis*, the rule in *Miller* should apply retroactively to juvenile defendants already serving life sentences.¹⁰⁷

Beyond the discussion of whether *Miller* creates a substantive or procedural rule, the Juvenile Law Center (JLC) has made several compelling arguments in support of retroactive application.¹⁰⁸ The JLC has filed an amicus brief in *Jones v. Commonwealth of Virginia*, arguing that Donte Jones’s sentence of life without parole was unconstitutional under *Miller*.¹⁰⁹ The JLC argued that even if *Miller* is considered a procedural rule, it is a “watershed rule of criminal procedure,” which should be applied retroactively.¹¹⁰ Additionally, once a punishment has been determined to be cruel and unusual, to continue to impose that sentence on a person is also cruel and unusual.¹¹¹ Despite these arguments, the Virginia Supreme Court denied the appeal, and Donte Jones will continue to serve his sentence of life in prison.¹¹²

C. CONTINUED LIFE IMPRISONMENT

The option of life imprisonment still exists as a potential sentence for juveniles. *Miller* does not require a complete prohibition from life sentences, only from the sentence being imposed automatically.¹¹³ However, the United States Supreme Court did mandate that the differences between adults and juveniles be taken into consideration during sentencing and that, by considering those differences, a sentence of life imprisonment would be relatively rare.¹¹⁴ Nevertheless, many states have continued to apply life

103. *Id.* at 721.

104. *Id.* (quoting *Schiro v. Summerlin*, 542 U.S. 348, 351-52 (2004)).

105. *Davis*, 6 N.E.3d at 721.

106. *Id.* at 722.

107. *Id.* at 722.

108. JUVENILE LAW CTR., *Jones v. Commonwealth of Virginia* (Dec. 28, 2014, 12:30 PM), <http://www.jlc.org/legal-docket/jones-v-commonwealth-virginia>.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012).

114. *Id.*

without parole to juvenile homicide offenders, while still technically being in compliance with *Miller*.¹¹⁵

D. OTHER SENTENCING CHALLENGES

Without a categorical rule, state courts will continue to see challenges to sentences given to juvenile homicide offenders. *Miller* suggests that courts consider certain key differences between adults and juveniles, but does not lay out any directions for how that should be done.¹¹⁶ This lack of direction means defendants will appeal their sentences alleging violation of the *Miller* standard and state courts will have to decide what actually is the standard. For example, a defendant in Pennsylvania appealed a mandatory thirty-five year sentence for homicide and the court held that it was constitutional.¹¹⁷ Furthermore, an Illinois Appellate court has held that a twenty-year mandatory firearm enhancement is constitutional.¹¹⁸ This Note will attempt to clear up some of the confusion left by the *Miller* decision by laying out a clear path for Illinois judges to follow in deciding how to sentence juvenile homicide offenders.

V. HISTORY OF THE JUVENILE JUSTICE SYSTEM IN ILLINOIS

Illinois has a long history of treating juvenile offenders differently than adult offenders.¹¹⁹ In 1899, Illinois passed the Illinois Juvenile Court Act, which created a juvenile court and a separate court system that would emphasize rehabilitation.¹²⁰ Illinois recognized early on that juveniles were fundamentally different from adults and thus, should be treated differently by the justice system.¹²¹ It was not until 1974 that a federal law was passed to provide funding for separate juvenile justice systems.¹²² In 1998, Illinois passed the Juvenile Justice Reform Provisions of the Illinois Juvenile Court Act.¹²³ The purpose of the provision was to address three main goals within the juvenile justice system: accountability, community safety, and compe-

115. *Atwell v. Florida*, 128 So. 3d 167 (Fla. Dist. Ct. App. 2013) (holding that a sentence of life without parole for a juvenile homicide offender was constitutional).

116. *Miller*, 132 S. Ct. at 2469.

117. *Pennsylvania v. Lawrence*, 99 A.3d 116 (Pa. Super. Ct. 2014).

118. *Illinois v. Cohn*, 2014 IL App (1st) 122562-U.

119. Lindsay Bostwick, *Policies and Procedures of the Illinois Juvenile Justice System*, ILL. CRIM. JUST. INFO. AUTHORITY 1 (Aug. 2010), http://www.icjia.state.il.us/public/pdf/ResearchReports/IL_Juvenile_Justice_System_Walkthrough_0810.pdf.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

tency development.¹²⁴ By reducing the stigma attached to juvenile offenders and emphasizing rehabilitation and community relations, Illinois has been a leader in the juvenile justice system.¹²⁵

For a majority of young offenders in Illinois, juvenile court is where they will be charged.¹²⁶ Most young people who are charged with a crime have committed a relatively minor offense.¹²⁷ For the most serious offenders, there are a few specific circumstances under which they can be transferred to adult court.¹²⁸ First, the prosecutor can request a transfer to adult court, which is subject to approval by a juvenile court judge.¹²⁹ Second, there are a number of instances in which a juvenile delinquent is automatically transferred to adult court including, if the juvenile is at least fifteen years old and has been charged with any of the following: “first degree murder, aggravated criminal sexual assault, aggravated battery with a firearm where the juvenile personally discharged the firearm, armed robbery committed with a firearm, or aggravated vehicular hijacking committed with a firearm.”¹³⁰ Finally, a defendant who was at least thirteen at the time of the crime will be automatically transferred to adult court if they are charged with “first degree murder committed during the course of aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnap[p]ing.”¹³¹

Once a juvenile defendant has been transferred to adult court, they are tried as an adult.¹³² If they are convicted, the offender will serve time in a juvenile facility until they reach the age of seventeen.¹³³ At that point, the offender is transferred to an adult facility to serve the remainder of their sentence.¹³⁴

VI. CURRENT JUVENILE SENTENCING IN ILLINOIS

Clearly, Illinois has consistently recognized the benefits of treating juvenile delinquents differently than adult offenders. However, due to the numerous circumstances in which a juvenile defendant can be transferred to adult court, it is obvious that Illinois still has a ways to go in addressing serious sentencing issues. The Cruel and Unusual Punishment Clause of the

124. See Bostwick, *supra* note 119.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. See Bostwick, *supra* note 119.

130. *Id.*

131. *Id.*; 705 ILL. COMP. STAT. ANN. 405/5-130(4)(a) (West 2012).

132. See Bostwick, *supra* note 119.

133. *Id.*

134. *Id.*

Eighth Amendment has continuously been used to limit juvenile sentencing throughout the United States.¹³⁵ Historically, sentencing has been viewed as needing to be proportional to the crime committed.¹³⁶ Due to a juvenile's very nature, the age of a juvenile plays a role in examining that proportionality.¹³⁷

In Illinois, juveniles transferred to adult court are generally subject to the same sentencing guidelines as adult offenders.¹³⁸ These sentences can take various forms. For example, a juvenile convicted of a Class X felony will be sentenced to a term of imprisonment of no less than six years and no more than thirty years.¹³⁹ If the juvenile defendant is sentenced to several terms, that sentence can be served either concurrently or consecutively. Consecutive terms are permitted at the discretion of the judge.¹⁴⁰ The court is free to consider the nature of the crime and the character of the defendant to determine whether consecutive terms are necessary to protect the public.¹⁴¹ In various other circumstances, serving several term-of-years sentences consecutively is mandatory. These circumstances include aggravated sexual assault, a Class X felony in which the defendant inflicted a severe bodily injury, aggravated possession of child pornography, and more.¹⁴²

Illinois also continues to sentence juveniles to natural life in prison under various situations.¹⁴³ A juvenile convicted of first degree murder can be sentenced to life imprisonment if the court finds that the murder was particularly heinous or brutal, if the victim is a peace officer, or if the victim is under the age of twelve and the murder occurs during the course of aggravated sexual assault, criminal sexual assault, or aggravated kidnapping.¹⁴⁴ There are also several circumstances involving the use of firearms that will automatically lengthen a sentence.¹⁴⁵

A judge may consider various different factors when deciding whether to extend the proscribed sentence for a juvenile.¹⁴⁶ These include, but are not limited to, the defendant's conduct, criminal history, the age and handicap status of the victim, whether the crime was related to gang activity, and whether the punishment will serve to deter others.¹⁴⁷ These factors fit in

135. See *Roper v. Simmons*, 543 U.S. 551, 561 (2005).

136. *Miller v. Alabama*, 132 S. Ct. 2455, 2463 (2012).

137. *Id.*

138. See Bostwick, *supra* note 119.

139. 730 ILL. COMP. STAT. ANN. 5/5-4.5-25 (West 2012).

140. 730 ILL. COMP. STAT. ANN. 5/5-8-4 (West 2012).

141. *Id.*

142. *Id.*

143. 730 ILL. COMP. STAT. ANN. 5/5-8-1 (West 2012).

144. *Id.*

145. *Id.*

146. 730 ILL. COMP. STAT. ANN. 5/5-5-3.2 (West 2012).

147. *Id.*

with the considerations suggested by the United States Supreme Court in *Roper*, but they do not go far enough.¹⁴⁸ As one can see from the exhaustive circumstances described by the Illinois Compiled Statutes, there are many circumstances remaining that allow for Illinois courts to sentence juveniles to consecutive sentences, lengthy sentences, and, in a few cases, natural life sentences. This is problematic because, not only are the sentences being imposed contrary to the direction laid out by the Supreme Court in *Roper*, *Graham*, and *Miller*, but also it presents a moral and ethical question about how juveniles in this country, and especially in Illinois, are treated by the justice system.

VII. WHERE SHOULD ILLINOIS GO FROM HERE

A. WHAT HAS ALREADY BEEN DONE

Earlier this year, the Illinois Supreme Court appropriately decided to retroactively apply *Miller* to juveniles previously given automatic natural life sentences.¹⁴⁹ The court reviewed the case of Addolfo Davis, the young man discussed at the beginning of this Note, who has now been in jail for more than twenty years.¹⁵⁰ The court examined whether the *Miller* decision imposed a substantive or procedural rule in determining whether it should be applied retroactively.¹⁵¹ Ultimately, the court held that *Miller* created a substantive rule and, as such, would be applied retroactively.¹⁵² However, the court further noted that only mandatory life sentences were invalidated and maintained that such sentences could be imposed at the discretion of the trial judge.¹⁵³

B. WHAT ILLINOIS NEEDS TO CHANGE

1. *Statutory Sentencing Changes*

The first step in changing how Illinois deals with juvenile sentencing is statutorily. The necessary changes are essentially two-fold: first, eliminate life without parole sentences for juveniles entirely, and second, end mandatory sentencing schemes for juveniles. These changes reflect the

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

149. *Illinois v. Davis*, 2014 IL 115595, 6 N.E.3d 709.

150. See *id.*

151. *Id.* at 721.

152. *Id.* at 722.

153. *Id.* at 722-23.

shifting attitudes of the Supreme Court and will put Illinois at the forefront of ethical and moral sentencing of juveniles.

The direction of the United States Supreme Court away from life without parole sentences for juveniles is obvious. First in *Roper*, the Supreme Court abolished the death penalty as a sentencing option for juveniles.¹⁵⁴ Then in *Graham*, the Court held that life sentences for juveniles convicted of non-homicide crimes were unconstitutional.¹⁵⁵ Finally, the *Miller* decision prohibited mandatory natural life sentences.¹⁵⁶ The Supreme Court has followed a clear path away from life without parole sentences. Following the reasoning laid out by the Court in these three cases, it can easily be seen how the Court would deal with abolishing the sentence entirely.

First, the severity of the punishment should be taken into consideration. Justice Elena Kagan, in *Miller*, wrote in her opinion that as life without parole is the harshest punishment available, it is difficult to justify its use on juveniles.¹⁵⁷ Currently, a sentence of natural life without parole is the harshest sentence that may be imposed on a juvenile defendant. The Court in addressing all three of the precedential cases has shied away from allowing juveniles to receive what are viewed as the cruelest sentences: death and life in prison.¹⁵⁸ It follows logically that there will come a point in which the Court will move away from the latter punishment entirely for young offenders.

The next step of legal analysis will be to examine the differences between juveniles and adults.¹⁵⁹ These differences include the lack of maturity in juveniles, the increased influence of peer pressure, and the transitory state of the juveniles' personality traits.¹⁶⁰ It is these differences that have led the Court to hold that juveniles have a lessened culpability and are therefore, "less deserving of the most severe punishments."¹⁶¹ In fact, the Supreme Court has "held on multiple occasions that a sentencing rule permissible for adults may not be so for children."¹⁶² As established above, life without parole is the last remaining severe punishment for juveniles.¹⁶³ Furthermore, the Eighth Amendment prohibits cruel and unusual punishment.¹⁶⁴ If it is to be believed that juveniles are so different from adults that

154. *Roper v. Simmons*, 543 U.S. 551, 575 (2005).

155. *Graham v. Florida*, 560 U.S. 48, 75 (2010).

156. *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012).

157. *Id.*

158. *E.g.*, *Roper*, 543 U.S. at 569.

159. *E.g.*, *id.*

160. *Id.*

161. *Graham v. Florida*, 560 U.S. 48, 68 (2010) (citing *Roper*, 543 U.S. at 569).

162. *Miller*, 132 S. Ct. at 2470.

163. *See id.* at 2466.

164. U.S. CONST. amend. VIII.

they cannot be held to the same responsibility for their crimes, it would follow that a sentence that puts a juvenile in prison for the rest of his or her natural life is cruel and unusual, because the juvenile does not possess the requisite culpability.

The third part of the analysis is to examine how the punishment of life imprisonment fits within the accepted theories of punishment. The basis for these theories goes hand in hand with the already mentioned differences between juveniles and adults.¹⁶⁵ First, deterrence is not an appropriate justification for the sentence because, as juveniles do not possess the proper risk assessment skills, they are not deterred by threat of punishment.¹⁶⁶ Second, the United States Supreme Court noted that the basis for retribution rationale is the amount of blame placed upon the defendant.¹⁶⁷ Again, as we have determined juveniles to have a diminished culpability, retribution is not an adequate justification for such a lengthy sentence.¹⁶⁸ Finally, rehabilitation is not served by these sentences, as the defendant does not have the opportunity of release.¹⁶⁹ Life imprisonment for juveniles goes directly against the analysis in *Graham* that led the Supreme Court to state that non-homicide offenders must be given reasonable and meaningful opportunity for release.¹⁷⁰ Without any reasonable hope that he or she may one day be set free, there is no incentive for the juvenile to reflect and take responsibility for his or her actions, thus destroying any hope for rehabilitation.¹⁷¹ Following this analysis, it is clear that by the guidelines set by the United States Supreme Court both life without parole sentences and lengthy term of years sentences should be considered unconstitutional.¹⁷²

Finally, the attitudes of the community should be considered. In *Roper*, the Court was especially concerned that a majority of states had already rejected the death penalty for juvenile defendants.¹⁷³ *Graham* noted that community consensus is not “determinative of whether a punishment is cruel and unusual.”¹⁷⁴ Most states still impose life without parole on juve-

165. *E.g.*, *Miller*, 132 S. Ct. at 2464.

166. *Id.*

167. *Id.* at 2465.

168. *Id.*

169. *Id.*

170. *See Graham v. Florida*, 560 U.S. 48, 75 (2010).

171. *Id.* at 79. “A young person who knows that he or she has no chance to leave prison before life’s end has little incentive to become a responsible individual.” *Id.*

172. *See id.*; Brief for Juvenile Law Ctr. et al. as Amici Curiae Supporting Petitioner at 6, *Chaz Bunch v. Ohio*, 135 S. Ct. 152 (2014) (No. 12-558). The United States Supreme Court denied the petition for writ certiorari in this case. *Id.*

173. *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

174. *Graham*, 560 U.S. at 67.

nile defendants in certain circumstances. However, the United States is the only country to do so, as noted earlier in this Note.¹⁷⁵

This analysis supports the view that the Supreme Court will continue to trend away from the use of life without parole sentences, until they are abolished entirely. The second step Illinois should take in addressing juvenile sentencing is to do away with mandatory sentencing schemes for juvenile defendants. This will best be accomplished by implementing individualized sentencing hearings in which the judge is required to consider several factors. The Court in *Miller* stated clearly that, like with death penalty sentences, a life imprisonment sentence for juveniles requires an individualized sentencing hearing.¹⁷⁶ Though *Miller* only considered life without parole sentences, the logical next step in the legal analysis will be to require these hearings for juvenile offenders who have been convicted and could face lengthy prison sentences.¹⁷⁷

2. Individualized Sentencing

By requiring the trial court to “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison,” the Supreme Court signaled that how trial courts sentence juvenile offenders should begin to change.¹⁷⁸ As *Miller* already mandates sentencing hearings before convicting a juvenile offender to life without parole, Illinois should change its approach to juvenile sentencing by also requiring individualized sentencing hearings for young criminals facing a lengthy term in prison.¹⁷⁹ Though the United States Supreme Court has not yet explicitly stated that lengthy term of years sentences require such hearings, several arguments can be made in support of mandating them.

For example, if a fifteen year old is convicted of murder in Illinois, he or she may be sentenced to sixty years imprisonment.¹⁸⁰ On release, he or she could be seventy-five years old. However, according to a study done in Michigan, it is unlikely that this juvenile offender will actually live to that age. While the life expectancy for someone born today is about seventy-seven years old, it is significantly lower for those who are incarcerated in their youth.¹⁸¹ The average life expectancy for a prison inmate is about fif-

175. Kozłowska, *supra* note 15.

176. *See Miller v. Alabama*, 132 S. Ct. 2455, 2470 (2012).

177. *See id.*

178. *Id.* at 2469.

179. *Id.*

180. 730 ILL. COMP. STAT. ANN. 5/5-4.5-25(a) (West 2012).

181. Deborah LaBelle, *Michigan Life Expectancy Data for Youth Serving Natural Life Sentences*, ACLU OF MICHIGAN JUVENILE LIFE WITHOUT PAROLE INITIATIVE,

ty-eight years.¹⁸² However, if that inmate was incarcerated as a child, his life expectancy drops to about fifty years old.¹⁸³ This is a shockingly low life expectancy for juvenile offenders. By these numbers, any term longer than thirty-five years, for a non-homicide offender, does not provide the juvenile with a meaningful opportunity for release as required by *Graham*.¹⁸⁴

Similar analysis, as used earlier in this Note to show how the Supreme Court is moving away from life without parole sentences for juveniles, can be used to argue that individualized sentencing hearings should be required before sentencing juvenile offenders to lengthy prison sentences. The differences between juveniles and adults have been discussed throughout this Note but they bear repeating. Juveniles lack maturity and rational decision-making abilities.¹⁸⁵ Juveniles are more susceptible to peer pressure and other negative influences.¹⁸⁶ Finally, a young person's personality is still being formed.¹⁸⁷ The Supreme Court has taken these differences to mean that the conduct of a juvenile offender is not to be considered as "morally reprehensible as that of an adult."¹⁸⁸ By repeatedly highlighting these differences and stating that juveniles and adults should be judged by different standards, it logically follows that juvenile sentencing should be handled differently, even beyond that which has already been required by the United States Supreme Court. In the *Miller* decision, Justice Kagan discussed the limitations caused by mandatory sentencing schemes, in respect to life without parole sentences, as preventing the trial court from taking into consideration the character of the offense and the individual offenders, as well as any other possibly mitigating factors.¹⁸⁹ This consequence of a mandatory sentence is the reason for a required, post-conviction sentencing hearing before a juvenile can be sentenced to life without the possibility of parole.¹⁹⁰

A repeated critique of the extension of *Graham* and *Miller* is that the decisions are inconsistent.¹⁹¹ In *Graham*, the majority extensively describes the differences between juveniles and adults as justification for sentencing

<http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Michigan-Life-Expectancy-Data-Youth-Serving-Life.pdf> (last visited Mar. 6, 2015).

182. *Id.*

183. *Id.*

184. *Id.*

185. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

186. *Id.*

187. *Id.* at 570.

188. *Id.* (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).

189. *Miller v. Alabama*, 132 S. Ct. 2455, 2467 (2012).

190. *See id.*

191. Moorehead, *supra* note 78, at 688.

the two classes of offenders differently.¹⁹² The majority in *Miller* follows the same analysis, but stops short of creating a hardline rule, stating that in some cases life without parole would be an appropriate sentence for a juvenile offender.¹⁹³ The criticism is that if juveniles and adults are so fundamentally different, why do those differences not matter as much when the juvenile is charged with homicide?¹⁹⁴ This Note argues that just because *Miller* does not explicitly preclude life without parole sentences that does not diminish the change in attitudes about juvenile sentencing by the United States Supreme Court.

As previously discussed, the life expectancy for an inmate who was sentenced to prison as a juvenile is only fifty years old.¹⁹⁵ With a low life expectancy, it is conceivable that many juvenile offenders sentenced to lengthy prison terms will die in prison. For this reason, it is just as important for juveniles who receive a lengthy term of years sentence to have an individualized sentencing hearing as it is for a juvenile who faces a life sentence. Looking at the statistics, the only difference between a life sentence and a lengthy term is the first guarantees the offender will die in prison, while the second makes it a statistical probability.¹⁹⁶

Beyond probabilities and the similarities between the two types of sentences, there is precedent for requiring individualized hearings to consider juvenile specific factors for actions other than sentencing a juvenile offender to life in prison.¹⁹⁷ At sixteen years old, Cameron Moon was indicted for murder.¹⁹⁸ He only had one previous conviction, a misdemeanor for keying a car.¹⁹⁹ At a pre-trial hearing, the State of Texas “asked the juvenile court to order that Cameron stand trial as an adult.”²⁰⁰ The motion was granted despite the state presenting no supporting evidence, and the defense presenting extensive testimony that Cameron “lacked sophistication and maturity and that he was highly amenable to rehabilitation in the juvenile system.”²⁰¹ On appeal, the State argued that the transfer was justified based on the nature of the crime alone.²⁰² The Texas Criminal Court of Appeals disa-

192. *Id.*

193. *Id.* at 689.

194. *Id.* at 690.

195. LaBelle, *supra* note 181.

196. *See id.*

197. See JUVENILE LAW CTR., *Texas High Court Upholds Individualized Determinations for Youth Tried as Adults*, (Jan. 1, 2015 3:19 PM), <http://jlc.org/blog/texas-high-court-upholds-individualized-determinations-youth-tried-adults> [hereinafter *Texas High Court Upholds Individualized Determinations*].

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Texas High Court Upholds Individualized Determinations*, *supra* note 197.

greed, holding that the juvenile court must consider the evidence as opposed to transferring based on the nature of the crime alone.²⁰³

Illinois should take a cue from the Texas court and require that a trial court consider multiple factors before sentencing a juvenile homicide offender. Currently, Illinois statutes allow a trial court to consider several factors before imposing a more severe sentence on a convicted defendant.²⁰⁴ The trial court may also consider the nature and circumstances of the offense and the character of the defendant in deciding whether the defendant should serve multiple sentences consecutively.²⁰⁵ There are many opportunities for the trial court to use its discretion to lengthen a juvenile's time in prison.²⁰⁶ However, there are no similar standards in place that require trial courts to consider any of the mitigating factors, discussed at length by the United States Supreme Court, before sentencing a juvenile offender. Standards for post-conviction, individualized sentencing hearings for juvenile offenders should be established in Illinois because juveniles are fundamentally different from adults²⁰⁷ and, as such, should be subject to different, more rigorous, sentencing standards.²⁰⁸

The reoccurring argument against requiring individualized sentencing hearings for juveniles, both for life and lengthy term sentences, comes out of *Harmelin v. Michigan*.²⁰⁹ In *Harmelin*, the Supreme Court considered a life sentence for an adult offender convicted of possession of cocaine.²¹⁰ The Court held that "a sentence which is not otherwise cruel and unusual [does not] become[] so simply because it is 'mandatory.'"²¹¹ However, *Harmelin* dealt with an adult offender²¹² and it is reasonable for a trial court to treat adult and juvenile offenders differently based on inherent differences.²¹³

Additionally, juvenile offenders should be sentenced differently than adult offenders because Illinois law makers may not have had juveniles in

203. *Id.*

204. *See* 730 ILL. COMP. STAT. ANN. 5/5-5-3.2(a) (West 2012).

205. 730 ILL. COMP. STAT. ANN. 5/5-8-4(c)(1) (West 2012).

206. *See* 730 ILL. COMP. STAT. ANN. 5/5-5-3.2 (West 2012).

207. *See* *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

208. *See* *Miller v. Alabama*, 132 S. Ct. 2455, 2470 (2012).

209. *Harmelin v. Michigan*, 501 U.S. 957 (1991). Harmelin was sentenced to a mandatory term of life imprisonment after being convicted of possession of 672 grams of cocaine. *Id.* He appealed his conviction on the grounds that his mandatory sentence was cruel and unusual under the Eighth Amendment. *Id.*

210. *Id.*

211. *Id.* at 995 (quoting *Champan v. United States*, 500 U.S. 453, 467 (1991)).

212. *Harmelin v. Michigan*, 501 U.S. 957 (1991).

213. *See* *Miller*, 132 S. Ct. at 2470.

mind when writing the sentencing statutes.²¹⁴ Juvenile offenders in Illinois are transferred to adult court under a number of circumstances, either presumptively or through the discretion of the juvenile court.²¹⁵ Once transferred, the juvenile offenders are subject to the same sentencing scheme as the adult offenders.²¹⁶ In essence, despite repeated discussion by the Supreme Court about the fundamental characteristics of juveniles, which lessen their culpability, those characteristics have never been considered prior to sentencing juvenile offenders.

Based on these assertions, it is clear that in order to properly follow the legal analysis of *Miller*,²¹⁷ Illinois should adopt a new rule requiring trial courts to consider the characteristics of the juvenile before sentencing him or her, for both possible life without parole and lengthy term sentences. This new rule should go beyond allowing trial courts to have discretion when deciding the length of a juvenile's sentence. For guidance, lawmakers should look to a recent case out of Ohio.²¹⁸ Eric Long was seventeen years old when he was involved in several crimes stemming from two shootings in March of 2009.²¹⁹ Following his conviction, at a sentencing hearing, he was sentenced to two consecutive life terms.²²⁰ Long appealed, arguing that the hearing needed to be more than discretionary, the judge should have considered the *Miller* factors.²²¹ The Supreme Court of Ohio agreed and ruled that the trial court must consider mitigating factors during a sentencing hearing.²²²

Like Ohio, Illinois should require sentencing hearings that allow the judge discretion and necessitate the consideration of factors related to the offender's special circumstances as a juvenile.²²³ Unfortunately, *Miller* fails to lay out a clear process for what exactly state courts should consider when sentencing juvenile offenders.²²⁴ For direction, Illinois lawmakers should look to how other states have handled sentencing hearings. In a recent case, the Supreme Court of Wyoming clearly laid out a number of factors that

214. See *id.* at 2472. Justice Kagan acknowledges that any juvenile sentenced to life in prison is done so "through the combination of two independent statutory provisions." *Id.* The first allows the transfer of juvenile offenders to adult court and the second lays out the penalty used for all offenders. *Id.*

215. Bostwick, *supra* note 119.

216. See *id.*

217. See *Miller*, 132 S. Ct. at 2468.

218. *State v. Long*, 8 N.E.3d 890 (Ohio 2014).

219. *Id.* at 892.

220. *Id.*

221. *Id.*

222. *Id.* at 899.

223. See *State v. Long*, 8 N.E.3d 890, 899 (Ohio 2014).

224. See *Miller v. Alabama*, 132 S. Ct. 2455, 2468 (2012). The decision lists what should be scrutinized but does not mandate any particular process. *Id.*

would be ideal for Illinois to adopt.²²⁵ The factors the Wyoming Court used were pulled from *Miller* and organized into a clear list.²²⁶ During a post-conviction sentencing hearing, a trial court should scrutinize the following factors before sentencing a juvenile offender: (a) the character and history of the juvenile offender and the specific circumstances of the crime; (b) the background and emotional and mental development of the juvenile offender; (c) the offender's age and characteristics that go along with it including immaturity and ability to appreciate risks; (d) the juvenile's family and home environment; (e) the circumstances of the crime, the extent to which the juvenile was involved, and the extent to which peer or familial pressure may have factored into the juvenile's participation; (f) "the juvenile's relative inability to deal with police and prosecutors or to assist his own attorney"; and (g) the offender's potential for rehabilitation.²²⁷ The trial court should be required to enumerate these factors on the record in order to ensure that each one has been properly scrutinized and applied to the specific circumstances.

The trial court should examine these factors at the time of sentencing, not at a parole hearing after the juvenile has served a portion of their sentence.²²⁸ If Illinois were to wait until a parole hearing to consider the proposed factors it would be too late.²²⁹ For example, if all juvenile offenders convicted of felony murder in Illinois were given extended prison sentences without the appropriate scrutiny at sentencing, but would receive a parole hearing after serving a portion of their sentence which would take into account all of diminishing factors, it would not be enough.²³⁰ This would be "[i]mposing a one-size-fits-all approach to juvenile sentencing" that is directly contrary to the concerns the Supreme Court has with giving juvenile

225. *Bear Cloud v. State*, 294 P.3d 36 (Wyo. 2013). The Supreme Court of Wyoming considered the appeal of Wyatt Bear Cloud after he was convicted on charges stemming from a murder and home invasion. *Id.* at 39-40. On appeal, Bear Cloud argued that the mandatory life sentence he received was unconstitutional under *Miller*. *Id.* The Court agreed and remanded the case for resentencing. *Id.* at 48.

226. *Id.* at 47.

227. *Bear Cloud v. State*, 294 P.3d 36, 27 (Wyo. 2013) (quoting *Miller*, 132 S. Ct. at 2467).

228. *Bear Cloud*, 294 P.3d at 27.

229. See Brief for Juvenile Law Ctr. et al. as Amici Curiae Supporting Petitioner at 6, *State v. Mares*, 335 P.3d 487 (Wyo. 2014) (No. S-13-0223). Following *Bear Cloud*, Wyoming changed its sentencing legislation to allow parole hearings for certain juvenile offenders after serving twenty-five years. *Id.* In an amici curiae brief, the Juvenile Law Center argued that parole hearings were too late for the mitigating factors of youth to be considered. *Id.* The Supreme Court of Wyoming ultimately held that *Miller* applied retroactively and remanded the case for resentencing. *Mares*, 335 P.3d at 508.

230. See Brief for Juvenile Law Ctr. et al. as Amici Curiae Supporting Petitioner at 7-8, *State v. Mares*, 335 P.3d 487 (Wyo. 2014) (No. S-13-0223).

offenders the harshest possible sentences.²³¹ In order to be in compliance with *Miller*, Illinois must require that the trial court consider all of the mitigating factors prior to sentencing.²³²

Of course there will be instances in which it is necessary to sentence the juvenile offender to an extended prison sentence or, until it is abolished, a sentence of life without the possibility of parole.²³³ The Supreme Court in *Miller* signals that it is not yet prepared to completely “foreclose a sentencer’s ability” to sentence a juvenile offender to life in prison.²³⁴ Likewise, trial courts in Illinois should still be allowed to issue lengthy term sentences in the appropriate circumstances.²³⁵ However, such a harsh punishment should not be common given the many mitigating factors associated with youth.²³⁶

In order for an Illinois trial court to sentence a juvenile offender to life without parole or to a lengthy term, the judge should be required to conclude on the record that several factors apply to the situation.²³⁷ These factors are:

[(a)] The nature and circumstances of the offense are unrelated to the hallmarks of adolescent development and reflect the child’s irreparable corruption; [(b)] The nature and circumstances of the offense are unrelated to the child’s family and home environment and reflect the child’s irreparable corruption; [(c)] The child’s participation in the offense, including the extent of his participation, were unrelated to family and/or peer pressures; [(d)] The child’s level of participation in the offense, including the child’s participation in both the planning and commission of the offense, reflect the child’s irreparable corruption; [(e)] The child possessed the sophistication to competently negotiate the criminal justice system, including his interactions with law enforcement; and [(f)] The child’s culpability, age, mental capacity, maturity, crimi-

231. *Id.* at 8.

232. *See id.* at 6.

233. *See Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012).

234. *Id.*

235. *See id.*

236. *See id.*

237. *See* Brief for Juvenile Law Ctr. et al. as Amici Curiae Supporting Petitioner at 8, *State v. Long*, 8 N.E.3d 890 (Ohio 2014) (No. 2012-1410). The following list of factors is adopted from a brief in amici curiae written by the Juvenile Law Center. *Id.* The factors are consistent with those set out in *Miller. Id.*

nal sophistication, and other factors dictate a finding that the child cannot be rehabilitated.²³⁸

The harshest punishments should appropriate only when all of the previous factors have been met.²³⁹ In doing so, it ensures that the sentence is consistent with the Supreme Court's holding in *Miller* that such punishments are uncommon.²⁴⁰

3. *Meaningful Opportunity for Release*

Unless the trial court determines that it is necessary to sentence the juvenile offender to a lengthy prison term or life without parole, the juvenile must be given a meaningful opportunity for release, consistent with *Graham*.²⁴¹ The *Graham* decision stated that the opportunity for release must be "based on demonstrated maturity and rehabilitation."²⁴² The Supreme Court, however, leaves it up to the states to determine what compliance with this mandate should require.²⁴³

For Illinois, compliance with a meaningful opportunity for release should include early parole hearings that review the benefits and disadvantages of continued incarceration.²⁴⁴ It is important for the parole hearings to commence before the juvenile offender reaches old age²⁴⁵ because, for many criminals who begin a pattern of crime at a young age, these offenders are likely to outgrow their antisocial behavior as they age and mature.²⁴⁶ Based on this sharp drop off in criminal activity, the parole board should look closely at the juvenile offender's current age, maturity, and behavior.²⁴⁷ Though it is difficult to accurately determine which juvenile

238. *Id.*

239. *See id.*

240. Brief for Juvenile Law Ctr. et al. as Amici Curiae Supporting Petitioner at 8, *State v. Long*, 8 N.E.3d 890 (Ohio 2014) (No. 2012-1410).

241. *Graham v. Florida*, 560 U.S. 48, 75 (2010).

242. *Id.*

243. *Id.*

244. *See* Brief for Juvenile Law Ctr. et al. as Amici Curiae Supporting Petitioner at 8, *State v. Long*, 8 N.E.3d 890 (Ohio 2014) (No. 2012-1410).

245. 'Old age' for the purposes of parole hearings should be determined per life expectancies for juveniles sentenced to lengthy prison terms. *See supra* note 181. For example, if the life expectancy of a juvenile in prison is fifty years of age, a parole hearing would need to be set well before that age to be in accordance with the *Graham* mandate. *See id.*

246. *See id.*; MODELS FOR CHANGE, *Research on Pathways to Desistance: December 2012 Update*, (Dec. 2012), available at <http://www.modelsforchange.net/publications/357> [hereinafter MODELS FOR CHANGE] (download PDF file of the report by clicking the "Download" button on the upper left-hand side of page). In a study of 1,300 serious offenders over seven years, between the ages of sixteen and twenty-three, only ten percent continued to report high levels of antisocial behaviors. *Id.*

247. *See id.*

offenders will continue to act in an antisocial manner, one of the greatest indicators of future criminal activity is a substance abuse disorder.²⁴⁸ Furthermore, family involvement in the treatment of the substance abuse disorder has been shown to have the longest lasting effects.²⁴⁹ Therefore, the parole board should also carefully consider the level of family support available to the juvenile and whether any substance abuse issues are apparent.²⁵⁰

Additionally, it is important for the parole board to note the access the juvenile offender had to rehabilitative services and vocational training.²⁵¹ The *Graham* Court stressed the importance of rehabilitation, especially in relation to juvenile inmates.²⁵² The parole board must be used to ensure that juvenile offenders are being given the proper opportunities to assist them in rehabilitation and possible training to make potential future release more successful.²⁵³

Finally, it is very important for the parole board to focus on the juvenile offender's age and relative lack of maturity at the time of the offense, as opposed to the seriousness of the crime.²⁵⁴ The Supreme Court in *Roper* advised that it was likely "that the brutality or cold-blooded nature of any particular crime would overpower the mitigating arguments based on youth as a matter of course."²⁵⁵ Therefore, while it is important for the parole board to consider the punitive and incapacitation natures of the punishment, that should not be the main focus of their review.

VIII. CONCLUSION

On December 1, 2014, the United States Supreme Court denied a petition for writ of certiorari on Addolfo Davis's case.²⁵⁶ In doing so, it al-

248. *See id.*

249. *See id.*

250. *See* MODELS FOR CHANGE, *supra* note 246.

251. *See* Brief for Juvenile Law Ctr. et al. as Amici Curiae Supporting Petitioner at 8, *State v. Long*, 8 N.E.3d 890 (Ohio 2014) (No. 2012-1410), .

252. *See* *Graham v. Florida*, 560 U.S. 48, 74 (2010).

253. *See id.* (noting that juvenile offenders are "most in need of and receptive to rehabilitation").

254. *See* Brief for Juvenile Law Ctr. et al. as Amici Curiae Supporting Petitioner at 11, *State v. Long*, 8 N.E.3d 890 (Ohio 2014) (No. 2012-1410).

255. *Roper v. Simmons*, 543 U.S. 551, 573 (2005); *see also* Brief for Juvenile Law Ctr. et al. as Amici Curiae Supporting Petitioner at 11-12, *State v. Long*, 8 N.E.3d 890 (Ohio 2014) (No. 2012-1410).

256. Jason Mast, *Supreme Court Declines Review of JLWOP Case; Retroactivity Stands in Illinois but Inconsistency in U.S.*, THE YOUTH PROJECT (Feb. 12, 2014), <http://www.chicago-bureau.org/supreme-court-declines-review-jlwop-case-retroactivity-stands-illinois-inconsistency-u-s/>.

lowed retroactive application of *Miller* to stand in Illinois.²⁵⁷ On May 4, 2015, a hearing was held to determine if Davis should receive a new sentence.²⁵⁸ Cook County Judge Angela Munari Petrone declined to change Davis's sentence, despite testimony that Davis had since reformed.²⁵⁹

If Illinois were to implement the two statutory changes suggested by this Note, abolishing life without parole sentences for juvenile offenders and requiring individualized sentencing hearings, it would lead this nation in ethical juvenile sentencing. These changes can be accomplished by educating lawmakers and judges in Illinois about the differences between adult and juvenile offenders. Increased understanding about the mitigating factors and diminished culpability associated with youth is vital to the entire nation. Addressing juvenile sentencing may be the answer to one of the many problems the United States faces with its criminal justice system.

257. *Id.*

258. ABC 7 EYE WITNESS NEWS, *Convicted Murderer Addolfo Davis Re-Sentenced to Life in Prison* (May 6, 2015, 8:13 PM), <http://abc7chicago.com/news/convicted-murderer-addolfo-davis-re-sentenced-to-life-in-prison/695272/>.

259. *Id.*