

INDIVIDUALIZED SENTENCING OF YOUTH FACING LIFE WITHOUT PAROLE

A JUDICIAL BENCH CARD

This bench card is a resource for trial judges with jurisdiction over criminal cases in which a defendant is eligible for life without parole for a crime committed when the defendant was under the age of 18. The bench card provides a brief synopsis of relevant U.S. Supreme Court decisions and related considerations for sentencing and resentencing.

CASE LAW SYNOPSIS

YOUTH ARE CONSTITUTIONALLY DIFFERENT FROM ADULTS

- In four cases—*Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), *Miller v. Alabama*, 132 S.Ct. 2455 (2012), *Graham v. Florida*, 560 U.S. 48 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005)—the Supreme Court of the United States has established that “children [under 18] are constitutionally different from adults for purposes of sentencing.” *Miller*, 132 S.Ct. at 2464.
- The U.S. Supreme Court “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.” *Id.* at 2465.
- Youthful mitigating attributes identified by the U.S. Supreme Court include lack of maturity and underdeveloped sense of responsibility, vulnerability to negative influences and outside pressures, limited control over their environment, and capacity for change. *See id.* at 2464.

LIFE WITHOUT PAROLE IS UNCONSTITUTIONAL FOR THE VAST MAJORITY OF YOUTH

- **Life without parole is unconstitutional for youth who commit nonhomicide offenses.** The Court in *Graham* held “that for a juvenile offender who did not commit homicide, the Eighth Amendment forbids the sentence of life without parole.” *Graham*, 56 U.S. at 74.
- **Life without parole is unconstitutional for the vast majority of youth who commit homicide offenses.** The Court in *Miller* and *Montgomery* held that life without parole “is disproportionate under the Eighth Amendment” when imposed on “a child whose [homicide] crime reflects transient immaturity.” *Montgomery*, 136 S.Ct. at 736. “*Miller*’s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.” *Id.*

YOUTH FACING LIFE WITHOUT PAROLE MUST HAVE AN INDIVIDUALIZED SENTENCING HEARING

- “A hearing where ‘youth and its attendant characteristics’ are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not.” *Montgomery*, 136 S.Ct. at 735.
- However, the Court in *Miller* and *Montgomery* did more than require the sentencing court to conduct an individualized sentencing hearing. “Even if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose [homicide] crime reflects unfortunate yet transient immaturity.” *Id.* at 734.

THE SUPREME COURT ESTABLISHED A PRESUMPTION AGAINST LIFE WITHOUT PAROLE FOR YOUTH

- “Although *Miller* did not foreclose a sentencer’s ability to impose life without parole on a juvenile, the Court explained that a lifetime in prison is a disproportionate sentence for all but the rarest of children [who commit homicide], those whose crimes reflect ‘irreparable corruption.’” *Id.* at 726.

SENTENCING/RESENTENCING CHECKLIST

QUESTIONS TO CONSIDER AT SENTENCING AND RESENTENCING

- Has the defense had the time and resources to conduct a mitigation investigation commensurate with a capital sentencing mitigation investigation? Resources include funds to retain a qualified investigator, mitigation specialist, and expert witnesses.
- Has the defense had the opportunity to present mitigating evidence for purposes of sentencing, consistent with *Miller*'s mandate that “a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles”?¹
- Has the sentencer at minimum considered the mitigating factors outlined in *Miller*? Mitigating factors at the time of the offense include, but are not limited to:
 - chronological age and its hallmark features, including immaturity, impetuosity, and failure to appreciate risks and consequences;
 - family and home environment;
 - the circumstances of the offense, including susceptibility to familial and peer pressures;
 - incompetencies associated with youth, including inability to deal with police officers, prosecutors, or defense counsel;
 - reduced culpability due to age and capacity for change; and
 - other relevant life history identified during the mitigation investigation.

See Miller, 132 S.Ct. at 2468.

- Have any of the mitigating factors outlined above been presented as aggravating evidence at sentencing or resentencing, contrary to *Miller* and *Montgomery*? For example, was youth at the time of the offense presented as aggravating rather than mitigating evidence?
- Has the defense had the opportunity to present mitigating evidence through lay and expert witness testimony, demonstrative evidence, affidavits, records, and/or reports?
- Has the state proven that the juvenile defendant is “the rare juvenile offender whose crime reflects irreparable corruption,” sufficient to justify a sentence of life without parole under the Eighth Amendment, consistent with *Miller* and *Montgomery*?

ADDITIONAL CONSIDERATIONS FOR RESENTENCING

- In addition to the mitigating evidence outlined in *Miller* relating to the circumstances of the offense, has the sentencer had the opportunity to consider evidence of maturity and rehabilitation for purposes of resentencing? Examples include:
 - the availability and completion of prison programming;
 - academic or vocational achievements;
 - prison record;
 - positive relationships with correctional staff and other inmates;
 - other positive personal relationships; and
 - a reentry plan.

¹ *Miller*, 132 S.Ct. at 2475.

ADOLESCENT DEVELOPMENT RESOURCES

ADOLESCENT DEVELOPMENT RESEARCH CITED IN *ROPER, GRAHAM, MILLER, AND MONTGOMERY*

Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Review 339 (1992).

- “[A]dolescents are overrepresented statistically in virtually every category of reckless behavior.” *Roper*, 543 U.S. at 569.

Brief for the American Medical Association et al. as Amici Curiae in Support of Neither Party, *Graham v. Florida*, 560 U.S. 48 (2010)(Nos. 08-7412, 08-7621); Brief for American Psychological Association et al. as Amici Curiae Supporting Petitioners, *Graham v. Florida*, 560 U.S. 48 (2010)(Nos. 08-7412, 08-7621).

- “[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.” *Graham*, 560 U.S. at 68; *Miller*, 132 S.Ct. at 2464-5.

Erikson, Identity: Youth and Crisis (1968).

- “[T]he character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” *Roper*, 543 U.S. at 570; *see Graham*, 560 U.S. at 89; *see Miller*, 132 S.Ct. at 2464; *see Montgomery*, 136 S.Ct. at 732.

Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009 (2003).

- “The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside. . . . For most teens, risky or antisocial behaviors are fleeting; they cease with maturity as individual identity becomes settled.” *Roper*, 543 U.S. at 570 (internal citations, quotations, and brackets omitted); *see Miller*, 132 S.Ct. at 2464.
- “[J]uveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. . . . This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.” *Roper*, 543 U.S. at 569 (internal citations omitted); *see Graham*, 560 U.S. at 68; *see Miller*, 132 S.Ct. at 2475; *see Montgomery*, 136 S.Ct. at 732.
- “[J]uveniles lack the freedom that adults have to extricate themselves from a criminogenic setting.” *Roper*, 543 U.S. at 569 (internal brackets omitted); *see Miller* 132 S.Ct. at 2464.
- “It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Roper*, 543 U.S., at 573; *see Graham*, 560 U.S. at 68; *see Miller*, 132 S.Ct. at 2469; *see Montgomery*, 136 S.Ct. at 734.

ADDITIONAL ADOLESCENT DEVELOPMENT RESOURCES

The Campaign for the Fair Sentencing of Youth, Psychological Research, *available at* fairsentencingofyouth.org/psychological-research.

Elizabeth Scott, Thomas Grisso, Marsha Levick & Laurence Steinberg, The Supreme Court and the Transformation of Juvenile Sentencing (2015), *available at* modelsforchange.net.

