

Term-of-Years Sentences Since *Miller v. Alabama*

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Since the landmark case of *Roper v. Simmons* in 2005, the U.S. Supreme Court has ruled in a series of cases on sentencing for juvenile criminal offenders. Emphasizing that children are different for the purposes of criminal punishment, the Court has incrementally held that it violates the Eighth Amendment's prohibition against cruel and unusual punishment to impose death or life without parole for most juvenile offenders. Although the Supreme Court rulings establish minimum standards, they do not prescribe a clear framework for implementation. States have, accordingly, responded differently in interpreting and implementing the Supreme Court precedent. One area where a split exists between states is in juvenile term-of-years sentences that amount to *de facto* life sentences without parole. The case of *People v. Contreras* from California is one of the most recent state cases to address this problem. Reviewed here are *Contreras*, the historical precedent supporting juvenile justice reform, and jurisdictional responses to the notion of sentencing juveniles to *de facto* life sentences. Also discussed is a call for meaningful periodic opportunities for juveniles to be considered for release.

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The United States is the only country that permits sentencing of juvenile offenders (i.e., those who commit crimes before the age of 18) to life without parole.¹ Starting in 2005 with the landmark case of *Roper v. Simmons*,² the U.S. Supreme Court has issued a number of decisions that have transformed sentencing of juvenile offenders. These decisions have been based on the prohibition of cruel and unusual punishment in the Eighth Amendment.³ With an increasing recognition that children are different from adults, the Court has ruled that imposing harsh criminal sentences on most juvenile offenders violates the Eighth Amendment. In 2010, the Supreme Court categorically barred a sentence of life without parole for nonhomicide offenses.⁴ In 2012, the Court ruled unconstitutional mandatory sentences of life without parole for juvenile homicide offenders and held that mitigating factors must be considered in individual sentencing.⁵

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Although the number of juveniles eligible for and serving life sentences without parole has decreased in the last decade in response to the Supreme Court decisions, states are left to interpret and implement their juvenile sentencing schemes and have done so in divergent ways. Some states have embraced the underlying principles announced in the Supreme Court decisions, and others have narrowly carved out exceptions to their juvenile sentences as required by the laws. Many jurisdictions retain laws that permit discretionary sentencing of juvenile homicide offenders to sentences of life without parole. In addition, a number of state sentencing schemes authorize lengthy term-of-years sentences for juveniles that amount to *de facto* life terms without parole, even for nonhomicide offenses.

Summarized here is *People v. Contreras*,⁶ one of the most recent cases to address lengthy term-of-years sentences for juveniles amounting to a *de facto* life sentence without parole. This case illustrates how one state has interpreted juvenile sentencing. The relevant Supreme Court decisions are then summarized to detail the policies and scientific principles upon which courts and legislatures are guiding their Eighth Amendment analysis for juvenile sentencing. Finally, implications from the Supreme Court cases and divergent state responses are discussed. There is a

risk that lengthy term-of-years sentences are the functional equivalent of sentences to life without parole. One response to this includes establishing meaningful periodic opportunities for juvenile offenders to be considered for parole or early release.

People v. Contreras (Cal. 2018)

The Supreme Court of California in *People v. Contreras* (2018)⁶ considered whether sentences of 50 years to life and 58 years to life constitute *de facto* life sentences for defendants sentenced for crimes committed at age 16.⁶ The case stems from actions occurring in 2011. In this case, Leonel Contreras and William Rodriguez kidnapped two teenage girls (ages 15 and 16) at knifepoint from a park. They took the girls to a secluded area of the park, assaulted them, and raped them repeatedly. The defendants confessed to attacking the girls. Tried as adults, both defendants were convicted of multiple offenses, including forcible rape and kidnapping. Mr. Rodriguez was sentenced to two consecutive terms of 25 years to life. Mr. Contreras was sentenced to two consecutive terms of 25 years to life plus two four-year terms for a knife enhancement. The court declined to follow the state’s statutory scheme for Mr. Rodriguez, which would have resulted in a lengthier sentence, stating that it would violate the U.S. Supreme Court’s ruling in *Graham v. Florida*⁴ barring juvenile life sentences without parole for nonhomicide offenses. The sentencing court in *Contreras* said that, were it to follow the sentencing enhancement guideline for Mr. Rodriguez, it would impose on him a sentence outside the defendant’s natural life expectancy. The defendants were sentenced under the state’s One Strike law, which rendered them ineligible for youth offender parole hearings.

On appeal, the defendants argued that the sentences amounted to cruel and unusual punishment in violation of the Eighth Amendment because they were juveniles when they committed their nonhomicide offenses and their sentences do not provide an opportunity for parole within their lifetime. Essentially, their sentences are the functional equivalent of life without parole. The court said:

[T]he sentences preclude any possibility of parole until they are near the end of their lifetimes as the parties agree Rodriguez will be 66 and Contreras will be 74 when they are first eligible for parole. This falls short of giving them the realistic chance for release contemplated by *Graham*.

Instead, the sentences tend to reflect a judgment [that] Rodriguez and Contreras are irretrievably incorrigible. While this judgment may ultimately prove correct, it is not one *Graham* permits to be made at the outset (Ref. 7, p 54).

On appeal to the California Supreme Court, the State’s Attorney General argued that a prison sentence that affords a juvenile offender an opportunity for parole within his or her natural life expectancy is not the functional equivalent of a life sentence without the possibility of parole. The state provided life expectancy data from the Centers for Disease Control. Citing *Graham*, a state “is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide offense” (Ref. 4, p 75). With this reasoning, the state asserted that Mr. Rodriguez’s and Contreras’ sentences were not unconstitutional. In contrast, the defendants argued that, among other things, if the court followed the state’s logic, it would allow trial courts to thwart *Graham* and set parole eligibility dates at the end of offenders’ expected life. This would reduce any incentive on the part of the juvenile offender to rehabilitate. They mentioned research on the reduced life expectancy of persons in prison in California.

The California Supreme Court considered whether the defendants’ sentences were functionally life sentences without parole. To answer this, “the proper starting point is not a life-expectancy table but the reasoning of the court in *Graham*” (Ref. 6, p 451). The court rejected the use of actuarial life expectancy tables because they reflect group-based differences, such as gender and race, which would likely face constitutional challenges. While the Supreme Court’s decision in *Graham* made it impermissible to sentence a nonhomicide offender to life without parole, the U.S. Supreme Court did not set a maximum length of confinement before parole eligibility. Rather, the *Graham* decision provided guidance: a lawful sentence shall take into account the juvenile’s capacity for change and limited moral culpability compared with adults; the sentence must offer the juvenile an opportunity for maturation and rehabilitation.

The California Supreme Court stated that the long sentences would preclude juvenile defendants from reaching rehabilitative ideals and that juveniles would be dissuaded from maturing into responsible adults. The court held that such lengthy sentences violated the defendants’ Eighth Amendment rights and remanded for resentencing.

Table 1 Supreme Court Decisions on Juvenile Sentences

Case	Court Decision
<i>Roper v. Simmons</i> (2005) ²	Set aside death penalty for juveniles
<i>Graham v. Florida</i> (2010) ⁴	Prohibited LWOP for nonhomicide juvenile cases
<i>Miller v. Alabama</i> (2012) ⁵	Prohibited mandatory LWOP in juvenile homicide cases
<i>Montgomery v. Louisiana</i> (2016) ¹⁰	<i>Miller</i> applies retroactively and requires individualized sentencing
<i>Adams v. Alabama</i> (2016) ¹¹	Review required for juvenile death sentences commuted to LWOP

LWOP, life without parole.

U.S. Supreme Court Decisions

The U.S. Supreme Court has ruled in five relatively recent cases on the question of sentencing of juvenile criminal offenders. Each case is based on the U.S. Constitution's Eighth Amendment bar on cruel and unusual punishment. The Court has banned the death penalty for juveniles and incrementally moved to limit, and essentially abandon, juvenile sentences of life without parole, except in the most serious of criminal cases. It is important to note that state constitutions may afford criminal defendants more protections against cruel and unusual punishment than the U.S. Constitution.⁸

Each of the following U.S. Supreme Court cases stand for the position that youth offenders have characteristics that make them less culpable than adults and that those characteristics must be considered in the juvenile justice system. The five cases are summarized here and in Table 1.

Roper v. Simmons (2005)

The question in *Roper v. Simmons* (2005)² was whether execution of a juvenile, who was 16 or 17 years old at the time of the criminal offense, is cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution. Following his conviction and sentencing, Christopher Simmons, who was 17 years old when he committed murder, sought postconviction relief challenging his death sentence. He argued that the reasoning in *Atkins v. Virginia*⁹ prohibiting the execution of persons with intellectual disability should apply to juveniles.

The U.S. Supreme Court ruled that it is unconstitutional under the Eighth Amendment to impose the death penalty on a juvenile offender who was less than 18 years old at the time of the capital offense. The ruling applies to the states through the Fourteenth Amendment. The Court's ruling emphasized the na-

tional trend across the states to prohibit the death penalty for juvenile offenders. The *Roper* decision relied on briefs distinguishing juveniles under age 18 from adults and reasoning that the death penalty is a disproportionate penalty for a juvenile offender. The Court focused on the following mitigating considerations in juvenile sentences: juveniles' immaturity diminishes their culpability; youthful offenders are more vulnerable to outside pressures and influences; and their increased capacity for reform supports separate punishment from adult offenders. The Court created a categorical bar on executing those under age 18. Developmental differences between juveniles and adults are reiterated in the Court's subsequent decisions.

Graham v. Florida (2010)

As mentioned above, the U.S. Supreme Court in *Graham v. Florida* (2010)⁴ extended its categorical limitations to noncapital punishment for juveniles. At question in *Graham* was the constitutionality of a mandatory life sentence for a 17-year-old who committed a pair of nonhomicide offenses. Terrance Graham had been on probation for burglary when he committed a subsequent offense of robbery. His probation was revoked, and he was sentenced to life without parole.

On appeal to the U.S. Supreme Court, the Court reiterated the reasoning in *Roper* that juveniles are less culpable than adults and are therefore less deserving of the most severe punishments. The Court said that further scientific developments since *Roper* only add to the body of knowledge that there exists "fundamental differences between juvenile and adult minds" (Ref. 4, p 68).

The Court stated that life sentences are especially hard on juveniles, who are more likely to spend a greater percentage of their lives behind bars than their adult counterparts. The Court further commented on the lack of penological justification for such severe punishment. Thus the Court held that juvenile life sentences without parole for nonhomicide offenses violates the Eighth Amendment.

Miller v. Alabama (2012)

In *Miller v. Alabama* (2012),⁵ the U.S. Supreme Court considered two cases of 14-year-old juveniles who had been convicted of murder. They were both sentenced to mandatory life sentences without parole. Under *Miller*, the Court held that the Eighth

Amendment prohibits sentencing schemes that mandate life without parole in cases where a juvenile is convicted of homicide. Relying on *Roper* and *Graham*, the Court reiterated the distinct developmental qualities of youth that require juveniles to be treated differently from adults in the criminal justice system. The Court said that the mandatory penalty schemes prevent the sentencing court from considering the mitigating factors associated with adolescent immaturity (Ref. 5, p 2466).

Life without parole may be imposed, but the Court made clear that the sentence should take into account mitigating characteristics of youth, or how children differ from adults and how such differences mitigate against irrevocable life sentences. The Court emphasized the “distinctive (and transitory) mental traits and environmental vulnerabilities” (Ref. 5, p 2465) of youth and the fact these characteristics do not manifest only for specific crimes. The *Miller* ruling identified five factors to be considered in determining whether (with discretion) to impose a sentence of life without parole on a juvenile: the juvenile’s age and immaturity; family home environment; circumstances of the offense, including the role the juvenile had in the offense and any influence of peer pressure; the incapacities of youth that may have disadvantaged the juvenile in dealing with the justice system (e.g., challenges dealing with police or participation in court); and the juvenile’s potential for rehabilitation (Ref. 5, p 2468). These have become known as the *Miller* factors.

Montgomery v. Louisiana (2016)

In *Montgomery v. Louisiana* (2016),¹⁰ the U.S. Supreme Court considered whether *Miller* should apply retrospectively to juvenile defendants sentenced to life without parole before the *Miller* decision. Henry Montgomery, who was convicted of murdering a law enforcement officer when he was 17 years old, filed for postconviction relief following *Miller*, but the Louisiana Supreme Court ruled that *Miller* did not apply retroactively to Mr. Montgomery. The U.S. Supreme Court held that *Miller* is retroactive in cases on state review, even where the state decision was final before the *Miller* decision.

Adams v. Alabama (2016)

The question in *Adams v. Alabama* (2016)¹¹ was the adequacy of review for a defendant whose sentence to death had been commuted to life without

parole. Although initially sentenced to death, Renaldo Adams’ sentence was commuted to life without parole on the basis of the *Roper* decision. Following *Miller*, Mr. Adams appealed to the U.S. Supreme Court, arguing that compulsory life without parole under the state scheme (despite the commutation of his prior life sentence) was inconsistent with *Miller*.

The Supreme Court in *Adams* agreed with the petitioner. Although the justices took different approaches in analyzing whether Mr. Adams had received an individualized sentence, the Court vacated the lower court’s ruling and remanded for further consideration in light of *Miller* and *Montgomery*, which had just been decided. Mr. Adams was entitled to review of the *Miller* factors.

Subsequent Legal Developments

Divergent Laws

In *People v. Contreras* (2018), the California Supreme Court recently interpreted the U.S. Supreme Court cases to prohibit as unconstitutional under the Eighth Amendment lengthy term-of-years sentences for juvenile nonhomicide offenders when they amount to the functional equivalent of (or *de facto*) life sentences without parole. This is just one of many responses states have made in the aftermath of the Supreme Court line of cases summarized above.

Since the *Graham* and *Miller* decisions, several states have passed legislation to abandon juvenile life sentences.¹² Currently, 19 states and the District of Columbia have legislatively abolished juvenile life sentences.¹³ In addition, a number of states do not have any juveniles serving life sentences: Indiana, Maine, New Jersey, New Mexico, and New York.¹⁴ At least one state has ruled that juvenile nonhomicide and homicide offenders should be treated similarly in sentencing procedures to preclude life sentences without possibility of parole or early release, regardless of the offense committed.¹⁵ In *People v. Caballero* (2012),¹⁵ the California Supreme Court considered a case where the defendant, who was convicted of three counts of murder committed as a juvenile, was sentenced to consecutive sentences resulting in 110 years to life. Looking beyond the Supreme Court’s ban on sentences of life without parole for nonhomicide juvenile offenses, the court equated this sentence to a *de facto* life without parole and found that the characteristics of juveniles that form

the basis of the Supreme Court precedent are based on age, not offense.

In another recent case, the Washington Supreme Court in *State v. Bassett* (2018)⁸ considered whether the state's constitutional ban on cruel punishment¹⁶ prohibits sentencing juveniles to life without parole where the post-*Miller* sentencing statute¹⁷ made juvenile homicide offenders ineligible for early release in cases where a minimum term of life had been imposed. The court ruled that the state's constitutional protections are broader than the Eighth Amendment in this particular context. The court ruled that, even for homicide offenses, sentencing juveniles to life without parole or without the possibility of early release is cruel punishment, that the state's post-*Miller* statutory amendment is unconstitutional, and that the petitioner was to be resentenced.

In contrast, other states have applied the Supreme Court precedent more narrowly. For example, the Missouri Supreme Court held in *Willbanks v. Missouri Dep't of Corrections* that consecutive sentences that result in *de facto* sentences of life without parole for nonhomicide juvenile offenders are not unconstitutional.¹⁸ In *Willbanks*, a juvenile was charged and convicted of kidnapping, three counts of armed criminal action, and other crimes related to a carjacking committed at age 17. He was sentenced on each conviction with an aggregate sentence of more than 100 years. He would first be eligible for parole at 85 years old. On appeal, he argued that the aggregate sentence was the functional equivalent of a life sentence with no meaningful opportunity for parole in violation of *Graham* and the Supreme Court's Eighth Amendment rulings. The Missouri Supreme Court affirmed the sentence. The court reasoned that *Graham* precludes a juvenile sentence of life without parole for a single nonhomicide offense, but *Graham* does not control for cases of multiple nonhomicide offenses that may result in a lengthy term-of-years sentence. A petition for writ of *certiorari* to the U.S. Supreme Court was denied.

The Missouri Supreme Court, on the same date as *Willbanks*, ruled in *State ex re. Carr v. Wallace* that sentencing a juvenile homicide offender to three concurrent terms of life without the possibility of parole for 50 years violated *Miller* and was unconstitutional.¹⁹ In *Carr*, the juvenile would have been approximately 65 years old when eligible for parole under his original sentence. The ruling was based on

the fact that the juvenile was sentenced under a mandatory scheme that did not give consideration to the *Miller* factors. These two rulings by the Missouri Supreme Court on the same date were contrasted in a brief in a related case; the Missouri court did not explain why "life in prison without the possibility of parole until age 65 constituted life without parole under *Miller* and *Graham*, but consecutive sentences of more than 100 years without the possibility of parole until age 85 did not" (Ref. 20, p 12). Accordingly, in Missouri juvenile homicide offenders may be eligible for parole before juvenile nonhomicide offenders with lengthy term-of-years sentences.

Policy Considerations

States that extend the U.S. Supreme Court holdings to *de facto* life sentences without parole base their laws, in large part, on advances in developmental science and research on adolescent immaturity. The U.S. Supreme Court has held that children are fundamentally different from adults and that this needs to be taken into account in sentencing juvenile offenders. The Court's decisions emphasize that juveniles' potential for rehabilitation is to be considered in sentencing under the *Miller* factors.

In addition to state lawmakers and courts, many organizations, including health and legal organizations, have publicly denounced juvenile sentences without parole. Some examples of these are identified in Table 2. The American Bar Association's (ABA) Juvenile Justice Committee has long opposed lengthy sentences for juveniles in the absence of review for release consideration. In 2008, the ABA approved a resolution calling for lawmakers to implement sentencing laws that recognize the mitigating factors associated with age and maturity of juvenile offenders and mandate that juvenile offenders be eligible for parole consideration at a reasonable point during their sentence and at periodic intervals thereafter, if release is denied.²¹

The policies set forth in *Graham* and *Miller* and that underlie the U.S. Supreme Court line of cases on juvenile offenders support the notion that it is inappropriate at the time of sentencing to decide that a juvenile offender should be destined to life without parole. Without clear guidance for state policy makers and the judiciary as to how to interpret and implement *Graham* and *Miller*, however, we are seeing divergent results across jurisdictions.

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Table 2 Sample of Organizational Positions Opposing Life Sentences for Juveniles

Organization	Position
American Bar Association ²¹	Juvenile offenders should generally be eligible for parole or other early release consideration at a reasonable point during their sentence and periodically thereafter if not released
American Academy of Child & Adolescent Psychiatry ²²	Opposes LWOP for crimes committed as juveniles
American Psychiatric Association ²³	Long-term sentences without the possibility of parole are undesirable for offenders younger than 18 at the time of the offense
Mental Health America ²⁴	Opposes LWOP for juvenile offenders
United Nations Convention on the Rights of the Child ²⁵	Life imprisonment without possibility of parole shall not be imposed for offenses committed by persons younger than 18

LWOP, life without parole.

This article has highlighted state responses in case law, but legislatures too have responded to the U.S. Supreme Court rulings and may be in a better position to outline clear policy directives in response to *Miller* and the other legal decisions. When focusing on the rationale of *Miller*, its implementation should afford juveniles opportunities for release during their lifetimes in all but the most egregious of cases, if not all cases.

One response is to call for sentencing reforms of juvenile offenders that specifically provide for sentence reviews regardless of the nature of the offense committed. This response is supported by the state of scientific research that indicates that the seriousness of a juvenile's offense is not a reliable predictor of future offending behavior, even where homicide is the inciting offense.²⁶ Moreover, such reforms would reduce inconsistent results, such as in Missouri, between juvenile homicide and nonhomicide offenders that have resulted from strict readings of the case law precedent.

Although created before *Graham* and *Miller*, the state of Montana has long had a statute that may serve as a model for other jurisdictions working to best interpret and implement the U.S. Supreme Court rulings. In particular, the Montana Annotated Code removes restrictions on parole eligibility for all offenders "less than 18 years of age at the commission of the offense for which the offender is to be sentenced" (Ref. 27, sec. (1)) and those with diminished mental capacity, as well as some additional categories of offenders.²⁷ The Montana statute removes restrictions on parole eligibility for juvenile offenders with homicide or nonhomicide offenses and the law applies to juvenile offenders with *de facto* life sentences.

In a similar manner, the drafters of the Model Penal Code have put forth a model bill for juvenile sentencing.²⁸ Although the Model Penal Code de-

tails provisions for comprehensive sentencing reform, relevant to the discussion here is that it mandates periodic review for parole eligibility or early release for juvenile offenders:

The following provisions shall apply to the sentencing of offenders under the age of 18 at the time of commission of their offenses . . . (h) Offenders shall be eligible for sentence modification . . . after serving 10 years of imprisonment. The sentencing court may order that eligibility . . . shall occur at an earlier date, if warranted by the circumstances of an individual case.²⁸

The Model Penal Code suggests that the first review of parole eligibility for juveniles should occur at 10 years. Some states have enacted similar provisions but with variation in the time period to review. An example is provided from the Delaware Code,²⁹ which states that any offender sentenced to an aggregate term in excess of 20 years for any offenses other than first-degree murder committed before age 18 shall be eligible to petition the Superior Court for sentence modification after serving 20 years of the original sentence. For offenders convicted of first-degree murder committed prior to age 18, the offender shall be eligible to petition for sentence modification after serving 30 years of the original sentence.

As previously mentioned, the ABA favors meaningful periodic opportunities for juveniles to be considered for release, which is consistent with the Model Penal Code and the Delaware statute. The ABA's Council on Criminal Justice elected to make no specific recommendation as to the time duration before periodic review, noting only that it should be reasonable. The Delaware statute adds that, although juveniles are entitled to sentence review, this does not mean they are entitled to frequent reviews or that there is no limit on the review process. In Delaware, five years must elapse before one can petition for a subsequent sentence modification.²⁹

These model statutes provide one means to take into account the “children are different” principle by recognizing the development of adolescents and the fact that juveniles are more likely to reform than their adult counterparts. Requiring and offering meaningful review of their progress toward maturity and rehabilitation provides juvenile offenders with incentive to work toward reform. In contrast, laws that permit lengthy term-of-years sentences with *de facto* life sentences without parole not only evade the intent of *Graham* and *Miller* but discourage juveniles from efforts to improve their abilities and to seek interventions to promote meaningful rehabilitation.

Conclusion

In the wake of recent U.S. Supreme Court rulings on juvenile sentencing, states have interpreted and implemented divergent policies. The varied approach has resulted, in some jurisdictions, in sentences that may be disproportionate to the crimes committed and inconsistent with the rationale in *Miller*. In most cases, sentences that confine juveniles for the duration of their meaningful life expectancy, without opportunities for sentence modification or release, fail to take into account the guiding principle of the Supreme Court’s recent cases, i.e., that children are different. As our understanding of brain science continues to advance, psychiatrists can play an important role in educating lawmakers and courts in this area. Forensic psychiatrists, in particular, may play an important role in evaluating a juvenile’s progress toward rehabilitation and maturation.

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