

becomes law, it could trigger successful motions for resentencing hearings for career offenders who were previously determined ineligible under *Terry*.

The legislative effort for further reform under the proposed Terry Technical Corrections Act comes at a time of national discussion on how to reduce criminal recidivism in individuals with substance use disorders. Effective interventions do exist, including substance use treatment in jail and prison settings, and judicial diversion programs that emphasize treatment over incarceration (Mitchell O, Wilson DB, MacKenzie DL. Does incarceration-based drug treatment reduce recidivism? A meta-analytic synthesis of the research. *J Exp Criminol.* 2007; 3:353–375). Psychiatric clinicians are well positioned to leverage their expertise, including their understanding of the psychological and pharmacologic treatment options and knowledge of the rehabilitation potential of individuals with substance use disorders, to influence policy change.

## Rehabilitation Potential in Juvenile Sentencing

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### Washington Supreme Court Vacates Sentence Where Lower Court Failed to Properly Weigh Significance of Juvenile’s Rehabilitation behind Bars

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**Key words:** juvenile; sentence; *de facto* life sentence

In *State v. Haag*, 495 P.3d 241 (Wash. 2021), the Washington Supreme Court overturned a 46-year sentence that had been imposed on Timothy Haag by a resentencing court following the U.S. Supreme Court decision in *Miller v. Alabama*, 567 U.S. 460 (2012). The Washington Supreme Court ruled that the resentencing court failed to properly weigh mitigation factors for Mr. Haag, who had been convicted

and sentenced for acts that occurred when he was 17 years old. Six of the nine justices also said that the 46-year sentence is unconstitutional as it amounted to a *de facto* life sentence.

#### Facts of the Case

In July 1994, at the age of 17, Mr. Haag killed his 7-year-old neighbor, Rachel Dillard. In 1995, he was convicted of aggravated first-degree murder and sentenced to mandatory life without parole. In 2018, a resentencing hearing was conducted in accordance with Washington’s *Miller*-fix statutes (Wash. Rev. Code. § 10.95.030(3) (2015) and Wash. Rev. Code. § 10.95.035 (2015)) following *Miller v. Alabama*. At resentencing, Mr. Haag was 27 years old and sentenced to a term of 46 years to life, meaning the earliest he could be released was at the age of 63. At the resentencing hearing, two expert witnesses testified on Mr. Haag’s behalf. They had both administered the Structured Assessment of Violence Risk in Youth test and both opined that he would have been at low risk of reoffending at the time of the offense. Additional testing by one of the experts further supported the opinion that he was considered low risk for reoffending. Mr. Haag also presented evidence from other witnesses that he had matured while in prison. The record reveals that he had only one infraction while in prison and had earned a high school diploma. Mr. Haag also held work positions during his incarceration and became a Jehovah’s Witness. Mr. Haag himself testified to situations that occurred in prison in which he could have responded with violence, but he refrained.

The state produced no expert testimony and did not offer testimony to rebut the experts’ opinions about his low risk of reoffending. The state produced victim impact statements. The resentencing court said that it had a daunting task of weighing multiple factors and, on balance, imposed a minimum sentence of 46 years and a maximum sentence of life in prison. Mr. Haag appealed the decision of the resentencing court, arguing that the court “failed to meaningfully weigh the mitigating factors and that his sentence amounted to an unconstitutional *de facto* life sentence” (*Haag*, p 245). The Court of Appeals upheld the sentence. On further petition, the Washington Supreme Court granted review.

#### Ruling and Reasoning

Mr. Haag argued that the lower court erred in sentencing him to 46 years because it emphasized

retributive factors over mitigating factors and that his sentence amounted to an unconstitutional *de facto* life sentence. The state supreme court agreed.

The Washington Supreme Court summarized a line of cases from the U.S. Supreme Court and Washington State on juvenile sentencing. Referencing *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, the court reiterated the point from these Supreme Court cases that children differ from adult offenders for the purpose of sentencing. The *Miller* decision prohibited mandatory life without parole for persons who commit offenses before the age of 18. The *Miller* decision also said that a life sentence without parole should be limited to rare circumstances where the juvenile offense constitutes irreparable corruption. In response to *Miller*, the Washington legislature enacted a *Miller*-fix statute, such that juveniles convicted of murder no longer face mandatory life sentences without parole and that a resentencing hearing must be conducted. The *Miller*-fix statute requires the court to “take into account mitigating factors that account for the diminished culpability of youth” (Wash. Rev. Code. § 10.95.030(3)(b) (2015)). The court stated that, in Washington, resentencing courts must also consider what rehabilitation has occurred since the juvenile was originally sentenced. Resentencing hearings, then, must focus on rehabilitation rather than the past events. Mr. Haag argued that the resentencing court erred in its over-reliance on retribution.

The Washington Supreme Court agreed with Mr. Haag that the sentencing court erred in its emphasis on retribution over mitigation. The court found that the resentencing court focused on Rachel Dillard’s lost future and should have looked more at Mr. Haag’s rehabilitation, citing the evidence of Mr. Haag’s rehabilitation as voluminous and uncontroverted by the state. The court mentioned that the ruling does not prevent future courts from use of discretion in determining whether and to what extent the juvenile has, in fact, rehabilitated, as well as in weighting whether youthfulness contributed to the crime and whether the juvenile is likely to reoffend.

The court also agreed with Mr. Haag that the 46-year minimum sentence amounted to *de facto* life in prison, which is an unconstitutional violation of the Eighth Amendment. As other states have noted, such long sentences leave incarcerated individuals without opportunity for a meaningful life outside of prison. The court stated that sister states have come to the

same result for similar reasons and the court finds the other decisions to be instructive. For these reasons, the Washington Supreme court reversed and remanded for a new sentencing hearing in accordance with the rulings in this case.

#### Concurring Opinion

Justice Johnson wrote a concurring opinion, in which he agreed with the majority’s conclusion regarding the resentencing court’s abuse of discretion. He proffered that vacating and remanding for resentencing was appropriate, and that further consideration of whether the now vacated sentence amounted to *de facto* life sentence was no longer necessary.

#### Dissenting Opinion

Concurring in part and dissenting in part, Justice Stephens said that he agreed with the majority’s conclusion that the resentencing court failed to emphasize mitigating over retributive qualities in the sentencing of Mr. Haag. Judge Stephens wrote a separate opinion to explain that Mr. Haag’s 46-year minimum term does not amount to an unconstitutional *de facto* life without parole sentence as concluded by the majority. She stated that the U.S. Supreme Court did not categorically bar sentences of life without parole for any class of juvenile offender.

Justice Stephens relied on *Jones v. Mississippi*, 141 S. Ct. 1307 (2021), which was decided while Mr. Haag’s case was pending before the Washington State Supreme Court. Under *Jones*, the Court ruled that a sentencer is to consider youth as a mitigating factor when determining whether to impose sentence of life without parole, but is not required to make a finding of “permanent incorrigibility.” Accordingly, according to Justice Stephens, a court is not prohibited from delivering sentences of life without parole to juvenile offenders who demonstrate a capacity for rehabilitation.

#### Discussion

At the base of the Washington State Supreme Court’s majority opinion in the *Haag* case lies the idea that “children are different,” and different factors should be considered for juveniles who commit a crime before age 18 compared to adult offenders. Courts have increasingly taken into consideration the advancing neuroscientific research on brain

development, including what we now know about the prefrontal cortex (which influences attention, impulse inhibition, and cognitive flexibility) and maturation of the adolescent brain. Further subcortical brain areas, including the limbic system responsible for reward feedback, develop earlier, and this maturation differential may account for increased risk-taking behaviors seen in adolescents. Given the high plasticity of the brain in childhood and adolescence, environmental influences are thought to have a great impact on brain development during these periods. An example of difficult life circumstances and influences can be seen in the *Haag* case. The court records reflect that, at a young age, Mr. Haag experienced abandonment by his father, bullying, poverty, mistreatment by his stepfather, the death of his best friend, and anxiety related to the discovery of his sexual orientation in a small community. Juveniles are also more likely to be affected by positive influences and have a greater capacity for reform. The court in *Haag* made it clear that evidence of rehabilitation behind bars must be considered by the sentencing court.

Courts are recognizing that juvenile criminal offenders should be given a chance to capitalize on this difference from their adult counterparts by limiting the length and severity of sentences delivered. Additionally, introducing earlier or more frequent sentence reviews may further motivate these individuals to engage in rehabilitation services offered in prison, including schooling, employment, volunteer positions, and psychiatric care (Piel J. Term-of-years sentences since *Miller v. Alabama*. *J Am Acad Psychiatry Law*. 2020; 48(1): 98-104), and afford them some opportunity for a meaningful life after expiration of their prison term.

## Strict Liability in Drug Possession

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## Court Rules Washington's Strict Liability Drug Possession Law Violates Due Process

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**Key words:** drug possession; strict liability; *mens rea*; due process

In *State v. Blake*, 481 P.3d 521 (Wash. 2021), the Washington Supreme Court considered the constitutionality of the strict liability standard imposed by the state's drug possession statute, *Wash. Rev. Code*. § 69.50.4013 (2015). The court ruled that it is a violation of due process because the statute, which has substantial penalties for "innocent, passive conduct," exceeds the legislature's police power.

### Facts of the Case

Shannon Blake was arrested in 2016 while police were serving a warrant regarding stolen vehicles. At the jail, a small bag of methamphetamine was discovered in the coin pocket of the jeans she was wearing. The state then charged Ms. Blake with violation of the drug possession statute, which made it a felony "for any person to possess a controlled substance" (*Wash. Rev. Code*. § 60.50.4013 (2015)).

At trial, Ms. Blake asserted a defense of unwitting possession, an affirmative defense established in a previous ruling, but nowhere present in the statute. She testified, and her boyfriend corroborated, that the jeans had been given to her two days prior to her arrest by a third party who had purchased them second-hand. She and her boyfriend testified that she did not use drugs. The trial court found that Ms. Blake had possessed the methamphetamine and that she had not fulfilled the burden of proof that the unwitting possession defense required, thus ruling that she was guilty. The trial court did not make any findings as to whether she had possessed the drug knowingly or intentionally.

Ms. Blake appealed on the grounds that it violates due process to impose the burden on her to prove unwitting possession. The Washington Court of Appeals ruled against her, stating that the crime of possession of a controlled substance does not mandate a *mens rea* element and the defendant's burden to show unwitting possession does not violate due process. The Washington Supreme Court granted review of Ms. Blake's subsequent appeal.