

Juvenile Life Without Parole

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Roper/Graham/Miller+ Trilogy

- *Roper v. Simmons*, 543 U.S. 551 (2005): Cannot impose the death penalty on children.
- *Graham v. Florida*, 560 U.S. 48 (2010): Cannot impose LWOP on juvenile non-homicide offenders because they must have a “meaningful opportunity for release.”
- *Miller v. Alabama*, 132 S.Ct. 2455 (2012): No mandatory LWOP for child homicide offenders.
- *State v. Long*, 138 Ohio St.3d 478 (2014): Trial courts must consider the “mitigating qualities of youth” before sentencing a child to discretionary LWOP for aggravated murder.

Issues in Litigation

- *Toca v. Louisiana*, U.S. Sup. Ct. No. 14-6381: United States Supreme Court agreed to decide whether *Miller* applies retroactively. (Decision expected by June 2015).
- *State v. Moore*, Ohio Sup. Ct. No. 2014-0120: Did *Graham* ban only sentences labeled “life without parole,” or does it apply to other life-long sentences that offer no meaningful opportunity for release? (Oral argument Feb. 4, 2015).
- What does “non-homicide” mean? Attempted murder? Complicity? Felony murder?

Basic theory behind the cases:

Kids are different

- The part of the brain that controls judgment and risk assessment is literally not all there yet (completes in men around age 25).
- So kids more easily succumb to pressure from peers and adults.
- Kids don't think about consequences as much.
- Ability to feel remorse reduced.
- And kids can change.

Practical Results

- Adults are more blameworthy than kids (adults deserve more punishment than kids).
- Trial judges can't know if kids will change (future dangerousness/ protection of society).
- LWOP for a kid is longer than LWOP for an adult, so LWOP punishes kids more for the same offense.

Morbidity Statistics

- Normal CDC tables are not helpful because prisoners do not live as long as the general public.
- Conflict Counsel of Colorado: Study of all deaths in Colorado prisons for a five-year period: **54% of all deaths occurred before age 55.**
- US DOJ, deaths in state prisons from 2001-2011: **57% of all deaths occurred before age 55.**
- Major caveat: Does not determine lifespan of inmates who entered prison as children.

Sources for mortality figures

- There is No Meaningful Opportunity in Meaningless Data: Why it is Unconstitutional to Use Life Expectancy Tables in Post-Graham Sentences, 18 UC Davis J. Juv. L. & Pol'y 267 (Summer 2014)
(<http://fairsentencingofyouth.org/wp-content/uploads/2014/02/Life-Expectancy-Article-with-Watermark1.pdf>)
- Mortality in Local Jails and State Prisons, 2000-2011 - Statistical Tables (Aug. 2013)
(<http://www.bjs.gov/content/pub/pdf/mljsp0011.pdf>)

Rough Ohio Numbers

- As of 2010-2011, DRC inmates admitted before age 18:
 - 86 had min. sentences of 20 years or longer.
 - 42 had min. sentences of 30 years or longer.
 - 18 had min. sentences of 40 years or longer.
 - 6 had min. sentences of 50 years or longer.
- Caveats:
 - Does not include kids admitted after age 18.
 - Does not include effects of House Bill 86.
 - Does not include potential SYO invocations.
- Less than 10 total sentenced to “LWOP.”

Problems with Ohio Statutes and Rules

- Ohio permits JLWOP for certain rape offenses.
- Ohio permits functional LWOP for all offenses.
- Ohio law has no sentencing standards that comply with *Miller* for juvenile homicide offenses.
- Ohio has no regular procedural mechanism for bring challenges to non-death sentences based on new, retroactively applicable decisions of the United States Supreme Court. R.C. 2953.23.
- No standards for counsel and procedure in juvenile aggravated murder cases.
- Lack of programming for kids with LWOP in DRC.

Possible Solutions

- Automatic parole or judicial release eligibility with periodic review. (Last year, West Virginia enacted retroactive parole eligibility after 15 years.)
- Standards for counsel and for sentencing hearings in juvenile homicide cases.
- Move juvenile homicide LWOP back to capital aggravate murder only. *Miller* applies capital case law to juvenile non-capital cases.
- Remember, *Graham* requires a “meaningful opportunity for release,” not just a theoretical possibility of release on a child’s deathbed.

Contact Information

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