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The Miller Trilogy, Jones, and the Future of Juvenile Sentencing and Constitutional Interpretation in the Post-Jones America

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Abstract

The United States is an outlier in juvenile sentencing practices, often subjecting youth offenders to extreme and lengthy punishments. While the Supreme Court over the past two decades has been slowly narrowing the nation's use of such sentences against children through a series of cases known as the Miller Trilogy, this progress came to a sudden halt in the 2021 case of *Jones v. Mississippi*. However, in surprising turn of events, the Supreme Court's recent national display of restraint has not stopped sentencing reform efforts in the states. Contrary to the current Supreme Court, states in the U.S. have preserved the values and precedents set by the Court in the Miller Trilogy. Today, over half of the states in the United Sates have abolished the harshest sentence a child can receive through a combination of legislative and judicial efforts that prevails despite political differences. The trends in recent years of state reform display a renewed hope for the status of juvenile sentencing in the face of present Supreme Court inaction.

Chapter One: Introduction and Purpose of Thesis

Adolescence is a period of life which many remember as a vulnerable time of their lives. People may make questionable and reckless decisions that they would never repeat as they mature and become adults. Young people often experience mental health issues,[1] but there are not adequate societal structures in place to manage one of the most at-risk groups of youth. The lack of support has severe consequences for juveniles in the criminal justice system who can be harmed by current sentencing practices.

Consider a hypothetical teenage boy, James. James has not grown up with an affluent upbringing. Where he lives, extra-curricular school programs are underfunded and he is likely to spend time in the company of his peers smoking[2] and drinking,[3] as millions of teens do every year. In his city, 1 in every 119 people will be a victim of violent crime, and 1 in 25 people will be victims of a property crime.[4] In addition, James and his friends consume media on television and in video games that cause him to believe that carrying a gun with him wherever he goes is the only way to keep himself safe. He is invited by a friend to drive around with a man both older than and unfamiliar to James, to smoke marijuana. Under the influence of these drugs, a heated argument breaks out in that confined space. When the stranger in the driver's seat that James just met reaches down for something, James' friend shouts that he has a gun and demands that James use his own weapon to shoot. Faced with what he thinks is a life-or-death situation, James draws his weapon, and shoots and kills the driver. When he is arrested, the state

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[1] Joseph Tkacz & Brenna L. Brady, *Increasing Rate of Diagnosed Childhood Mental Illness in the United States: Incidence, Prevalence and Costs*, 2 PUBLIC HEALTH PRACT (OXF) 100204 (2021).
[2] Teens | Health Effects | Marijuana | CDC, (2022), https://www.cdc.gov/marijuana/health-effects/teens.html (last visited Jan 31, 2024).
[3] Underage Drinking in the United States (ages 12 to 20) | National Institute on Alcohol Abuse and Alcoholism (NIAAA), https://www.niaaa.nih.gov/alcohols-effects-health/alcohol-topics/alcohol-facts-and-statistics/underage-drinking-united-states-ages-12-20 (last visited Jan 31, 2024).
[4] Knoxville, TN Crime Rates and Statistics - NeighborhoodScout, https://www.neighborhoodscout.com/tn/knoxville/crime (last visited Jan 31, 2024).

determines that for his crime, he must be tried as an adult and thus subject to the same penalties if he is found guilty. The jury, however, does not believe his story. He is found guilty and through chance and chance alone, James was born in one of the 23 states that still permits juveniles to be sentenced to a sentence of life without parole for the crime of homicide, including those murders like James' that weren't premeditated. He is sentenced to life without parole and spends the remainder of his life in prison for a crime he committed as a legal child.

Though James' is not real and never endured a life behind bars for this crime, his story is loosely based on the true story of a Tennessee teenager who almost faced the same fate and whose story and court triumph will be discussed later in this thesis. Yet, the first important thing to note is that James' story *could* happen to any teenager in America still residing in states where lengthy juvenile sentencing remains acceptable practice in the criminal justice system. The United States Constitution promises protection for every citizen against "cruel and unusual punishment."[5] Yet when an adolescent's mind has yet to finish maturing, sentencing them to juvenile life without parole raises profound legal questions. Some argue that juvenile life without parole is indeed cruel and unusual punishment under the Eighth Amendment. Although the United States Supreme Court has not taken this position, it is noteworthy that some state courts and legislatures have recently begun to revisit the question of juvenile life without parole.

The Definition of Juvenile Life Without Parole and Its Role in the U.S. Juvenile Justice System

Juvenile life without parole, often referred to in scholarly works as JLWOP, is a sentencing scheme that 1) requires a sentence of life rather than a term of years, and 2) the

[5] U.S. Constitution. amend. VIII

person sentenced to be under eighteen years of age,[6] the age at which a person is considered a legal adult in the United States. Juveniles are subject to life without parole sentences when they undergo the process of transfer, a mechanism in the American criminal justice system that allows for a child who commits serious and violent offenses to be moved from juvenile court to the adult criminal justice system for their prosecution.[7] Many prosecutors and prosecutorial agencies support the transfer of some juveniles to adult court is because they believe the process serves as a specific and general deterrent that will dissuade the defendant and the general population of youth from reoffending or committing severe crimes.[8] Nevertheless, some research studies have determined that juvenile transfer is actually associated with slightly higher rates of recidivism amongst the population of those juveniles prosecuted through the adult court system.[9] By 2010, juvenile life without parole sentences could only be given to those juveniles found guilty of homicide offenses.[10]

Children sentenced to JLWOP are in fact sentenced to die in prison for crimes they committed in their youth. While the Supreme court banned automatic life without parole sentences for juveniles sentenced as adults, for the same and similar violent crimes, youth in the United States who are transferred to adult court may face a different situation. These juveniles may be sentenced to lengthy automatic life with parole sentences and de facto life sentences of fifty years or longer for crimes that they committed when they were under the age of 18. Many argue that these sentences are functional equivalents of life sentences for juvenile offenders. Studies have shown that incarceration severely shortens life expectancy, with some estimates

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[6] Juvenile Life Without Parole, RESTORE JUSTICE FOUNDATION, https://www.restorejustice.org/issues/sentencing/juvenile-life-without-parole/ (last visited Jan 2, 2024).
[7] Practice Profile: Juvenile Transfer to Adult Court | CrimeSolutions, National Institute of Justice, https://crimesolutions.ojp.gov/ratedpractices/64 (last visited Jan 2, 2024).
[8] *Id.*
[9] *Id.*
[10] Graham v. Florida, 560 U.S 48 (2010).

arguing that for every year of prison, two years are shaved off of an inmates' life expectancy compared to the national average.[11] A negative linear relationship between life expectancy and prison time was also found in a 2013 study with data taken from New York State parole administrative databases spanning the years 1989 to 2003. Researcher, Dr. Evelyn Patterson found that five years in prison increased the odds of death by 78% and took ten years off of their expected life span at the age of thirty.[12] Both of these examples indicate the bleak prognosis for youth incarcerated for decades. Notably, the study also indicates that sentences of forty, fifty, and sixty years are considered by some to be the functional equivalent of life sentences for these juveniles because they spend the majority of their years in prison. Consequently, their chances of dying in prison is a more certain reality.

It is important to mention that of 197 countries, the United States is the only country in the entire world that sentences its children to life without parole.[13] In fact, sentencing children to die in prison is condemned by international law. Article 37(a) of the United Nations' Convention on the Rights of the Child, an international human rights treaty setting out the civil, social, economic, political, health and cultural rights of children states that, "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age"[14] functionally outlawing the practice as a matter of international law. The United States, a member state of the United Nations signed onto

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[11] Christopher Wildeman, *Incarceration and Population Health in Wealthy Democracies**, 54 CRIMINOLOGY 360 (2016).
[12] Evelyn J. Patterson, *The Dose–Response of Time Served in Prison on Mortality: New York State, 1989–2003*, 103 AM J PUBLIC HEALTH 523 (2013).
[13] Juvenile Life Without Parole (JLWOP) | Juvenile Law Center, (2023), https://jlc.org/issues/juvenile-life-without-parole (last visited Jan 4, 2024).
[14] Convention on the Rights of the Child, OHCHR, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child (last visited Jan 4, 2024).

the UN Convention on the Rights of the Child,[15] yet every year in the United States, juveniles as young as the age of thirteen are subject to JLWOP sentences for their crimes.[16]

Today, only twenty-eight states have banned the sentencing practice of life without parole for juvenile offenders.[17] Of the remaining twenty two states, the majority are concentrated in the southeastern United States, yet the state that houses the highest number of youths serving JLWOP sentences is Michigan.[18] An additional five states, New York, Rhode Island, Maine, Missouri, and Montana, have yet to ban the practice, but have no incarcerated individuals residing in the state and serving this sentence (See Fig. 1). Nevertheless, according to the Sentencing Project, a prominent activism organization that advocates for decarceration and fair sentencing, according to 2020 data, 1,465 incarcerated individuals across America are serving JLWOP sentences.[19] So long as life without parole exists as a sentencing option for children, this number only has the potential to increase.

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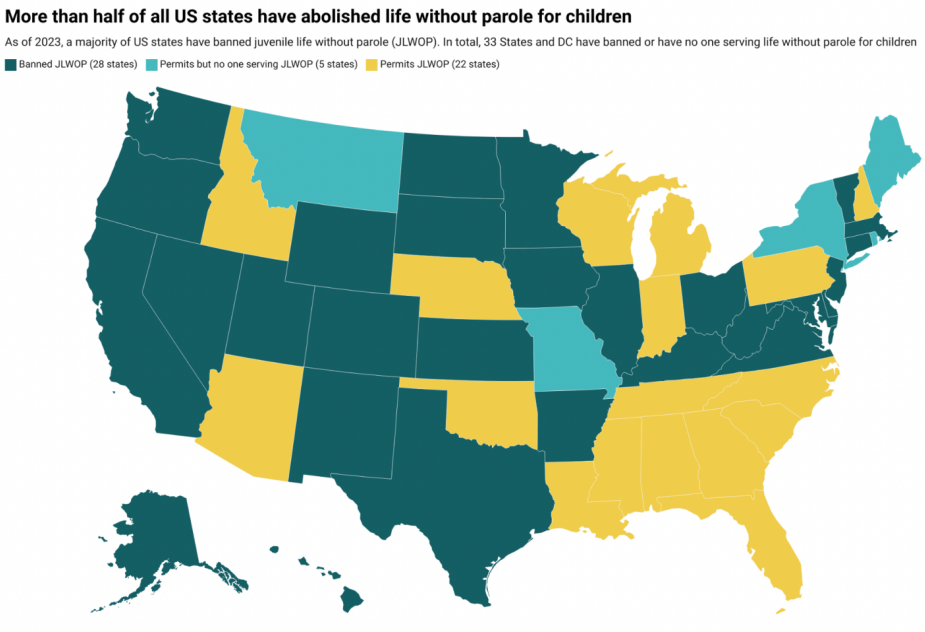
[15] - OHCHR Dashboard, https://indicators.ohchr.org/ (last visited Jan 4, 2024).
[16] The United States is at a Tipping Point on Juvenile Life Without Parole, R STREET INSTITUTE, https://www.rstreet.org/commentary/the-united-states-is-at-a-tipping-point-on-juvenile-life-without-parole/ (last visited Jan 4, 2024).
[17] States that Ban Life without Parole for Children, CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH | CFSY, https://cfsy.org/media-resources/states-that-ban-juvenile-life-without-parole/ (last visited Jan 4, 2024).
[18] *Id.*
[19] Joshua Rovner, *Juvenile Life Without Parole: An Overview*, THE SENTENCING PROJECT (2023), https://www.sentencingproject.org/policy-brief/juvenile-life-without-parole-an-overview/ (last visited Dec 18, 2023).

Figure 1: Distribution of States With JLWOP



Source: Campaign for the Fair Sentencing of Youth, 2024

The Important Differences Between Adult and Juvenile Brains

That "young and dumb" reputation, popularized in media and anecdotes exists for a very scientific reason that undermines the rationale for the practice of juvenile life without parole. While juveniles are certainly not dumb, they lack fully developed reasoning and processing skills, and practitioners and scientists largely agree that the juvenile mind processes things differently than an adult's mind would in several key aspects. These professionals that these important differences should make a juveniles less legally culpable for their actions than adult offenders. The consensus among neuropsychiatrists today is that the adolescent brain lacks a fully developed sense of impulse inhibition until the age of twenty-five.[20] This is well above the

[20] Sushil Sharma et al., *Maturation of the Adolescent Brain*, NDT 449 (2013).

age of thirteen,[21] the earliest that a juvenile can be deemed old enough to serve a life sentence without parole for their actions, actions which were likely influenced by an underdeveloped perception of impulse control and consequences.[22] This is because teenagers' prefrontal cortex, the part of the brain that prompts logic and reason in decision making, is less developed than it is in adults. Instead, in situations of high pressure, they rely on the limbic system, a group of systems in the cerebrum of the brain that command the intensity of emotions including fear, anger, and the fight or fight response. As a result, teens are more susceptible to quickly become angry, experience intense mood swings, and make decisions based on "gut" feelings that can all influence the elements of a crime when it is committed.[23]

To prove guilt in criminal justice proceedings, two foundational elements must be established to demonstrate culpability, the actus reus, the guilty act, and mens rea the guilty mind. Mens rea requires that the defendant knowingly and intentionally, to a rational mind, committed a criminal act. Yet, given that juveniles' brains are not yet fully developed, fundamentally lack a proper impulse inhibition, and subconsciously rely on the limbic system that triggers actions on "gut" feelings, under these legal definitions their ability to have the same mens rea as adult offenders is substantially reduced. Therefore, a widely accepted defense against the attempt to prove mens rea, is that juveniles possess what is known as diminished capacity. Diminished capacity is defined by the Legal Information Institute at Cornell University as the "theory that a person due to unique factors could not meet the mental state required for a

[21] Juvenile Life Without Parole, AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/issues/juvenile-justice/youth-incarceration/juvenile-life-without-parole (last visited Dec 27, 2023).
[22] Sharma et al., *supra* note 20.
[23] *Id.*

specific intent crime"[24] under which would fall the crime of homicide, the only crime for which a child can receive the sentence of life without parole for.

In fact, the findings of many psychological studies have implied that changes in the brain's function that allow for future rational decision making rely markedly on maturation alone.[25] This implies that it is simply a matter of a few years' time for many juvenile offenders to develop the decision-making abilities that could alter entirely their behaviors in the kinds of situations that led to their imprisonments of life without parole. It is for this reason why many psychologists, activists, and legal professionals believe in a child's increased capacity for change and rehabilitation compared to that of a similarly situated adult offender. Additionally, that would make sentences like JLWOP both inhumane and unnecessary for them. Life without parole sentences exist to incapacitate those that the criminal justice system believes to be a permanent threat to society, and opportunity for parole is revoked due to belief by a judge or jury that the defendant is permanently incorrigible. However, the concept of permanent incorrigibility for youth directly contradicts the previously mentioned scientific evidence and is widely disputed due to the intersection of neuropsychological study of brain development and population studies on incarcerated juveniles.

What is most commonly referred to as the age-crime curve (See Fig. 2) can be found consistently across incarcerated populations across the nation and in Western populations as a whole.[26] These curves demonstrate that offending amongst juvenile populations tends to increase from early childhood, peaks between the ages of fifteen and nineteen, and decrease in their early

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[24] diminished capacity, LII / LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/diminished_capacity (last visited Dec 28, 2023).
[25] B.J. Casey et al., *Making the Sentencing Case: Psychological and Neuroscientific Evidence for Expanding the Age of Youthful Offenders*, 5 ANNU. REV. CRIMINOL. 321 (2022).
[26] From Youth Justice Involvement to Young Adult Offending | National Institute of Justice, https://nij.ojp.gov/topics/articles/youth-justice-involvement-young-adult-offending (last visited Dec 28, 2023).

twenties.[27] By the age of twenty five, rates are often at about half of what they were at the peak of the curve.[28] According to research conducted by criminologists Jeffrey T. Ulmer and Darrel Steffensmeir of Pennsylvania State University, this age-crime curve trend occurs for two primary reasons. Firstly, twenty-five is widely agreed upon to be the age at which the brain stops developing, and changes in the prefrontal cortex that affect risk-taking, impulse control, emotional maturity, and rational decision-making fully form these elements in the adult mind.[29] Secondly, natural life-course events such as employment, increases in income, marriage, and children become increasingly pertinent to the mind with age. Events such as these make the potential consequences of committing a crime far more riskier and unappealing, and can act as a age-related deterrent to criminal activity in the mid-twenties.[30] These factors contribute to a natural drop in likelihood to reoffend, and given that the brain of a teenager who has been incarcerated in their youth has yet to finish developing, they retain malleability for reform during their time in prison. Thus, the idea that a child is "permanently incorrigible," when they retain a capacity for change and decreased likelihood for re-offense if they commit a crime during their child due to natural biological changes is largely unfounded. Critics argue that to have this idea reinforced by the pervasiveness of juvenile life without parole sentences in the United States is to directly defy what science has found to be true of youth and their capabilities for reform.

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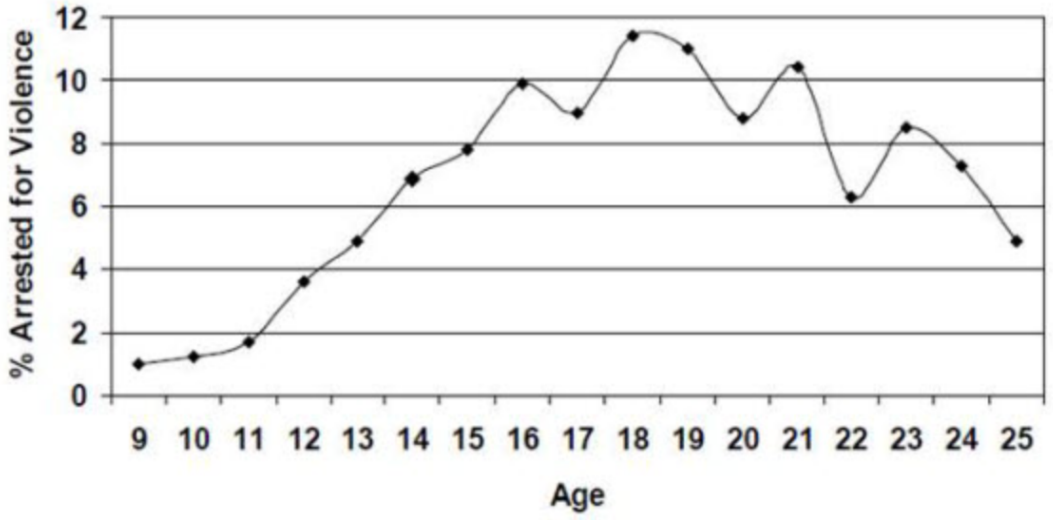
[27] *Id.*
[28] *Id.*
[29] Jeffery T. Ulmer & Darrell Steffensmeier, *The Age and Crime Relationship: Social Variation, Social Explanations*, *in* THE NURTURE VERSUS BIOSOCIAL DEBATE IN CRIMINOLOGY: ON THE ORIGINS OF CRIMINAL BEHAVIOR AND CRIMINALITY 377 (2014), https://sk.sagepub.com/books/the-nurture-versus-biosocial-debate-in-criminology/n24.xml (last visited Dec 28, 2023).
[30] *Id.*

Figure 2: Age Crime Curve



Source: National Institute of Justice Office of Justice Programs

The History of Juvenile Justice Policy and Life Without Parole in the U.S.

The state of criminology's views on the brains of juvenile delinquents, however, was not always so forward thinking and forgiving, and it informed many of the sentencing schemes juveniles are presently subject to, including juvenile life without parole. Prior to much of the recent research that informed present day knowledge on the deficiencies of the juvenile brains, many people characterized these children as a new, dangerous threat named by criminologists as "superpredators." In 1995, criminologist and Princeton professor, John DiIulio gained national attention when he published an article coining the term "superpreadator" to describe a type of remorseless child criminal who would overrun the country and increase crime rates. Though this theory was purported when crime was at an all-time decade low,[31] DiIuilo argued that by 2010, if criminal justice policy did not impose harsh penalties, the number of juveniles in custody would

[31] MATTHEW FRIEDMAN, AMES GRAWERT & JAMES CULLEN, *Crime Trends: 1990-2016 | Brennan Center for Justice*, https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016 (last visited Dec 31, 2023).

increase threefold. This theory was reinforced by criminologist, James Fox, who stated that "Unless we act today, we're going to have a bloodbath when these kids grow up."[32]

The practice of sentencing juveniles to life without parole began in the "tough-on-crime" era of the 1970s, a time during which it was a priority of lawmakers to reduce rising crime rates.[33] However, between the 1970s and 1990s, the youth was often considered and accounted for in court by a defense of infancy, requiring the state to prove that a child is capable of forming mens rea and to overcome the presumption that a child lacks the mind to consider the wrongfulness or consequences of their criminal act.[34] Though this defense was not accepted in juvenile courts, it held great weight and value in the defense of children who were accused of committing violent crimes.[35] However, the statistically significant increase in media coverage and sensationalism of juvenile violent crime in the 1990s, which resulted in a rising level of fear among the public, caused the adoption of more punitive juvenile crime.[36] With the perception of this alleged looming threat, legislators advocated for a "tough on crime" approach in their campaigns and their lawmaking. Across the country, legislators passed new statutes that broadened the crimes for which a juvenile could be transferred to adult court, and thus, subjected more children to adult sentencing schemes such as juvenile life without parole.[37] Criminologists Fox and DiIuilo, founders of the theory, later admitted that the prediction of a juvenile superpredator epidemic turned out to be wrong. They now acknowledged that their suprepredator myth "contributed to

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[32] Admin, Equal Justice Initiative, *The Superpredator Myth, 25 Years Later*, EQUAL JUSTICE INITIATIVE (2014), https://eji.org/news/superpredator-myth-20-years-later/ (last visited Dec 31, 2023).
[33] Juvenile Life Without Parole, *supra* note 6.
[34] Lara A. Bazelon, *Exploding the Superpredator Myth: Why Infancy Is the Preadolescent's Best Defense in Juvenile Court Note*, 75 N.Y.U. L. REV. 159 (2000).
[35] *Id.*
[36] *Id.*
[37] *Id.*

the dismantling of transfer restrictions, the lowering of the minimum age for adult prosecution of children, placing thousands of children into an ill-suited and excessive punishment regime"[38]

Though the United States remains the only nation in the world to have retained the practice of sentencing juveniles to life without parole, limitations have been placed upon after reforms that occurred in the last two decades. Prior to 2005, children as young as twelve were subject to these adult sentencing protocols imposed on them out of fear driven by the super predator myth. As a result, children as young as sixteen years old could be sentenced to the death penalty. Yet between 2005 and 2012, the severity of punishment for juveniles would diminish from the possibility of the death penalty to juvenile life without parole exclusively for crimes of homicide. While this is still behind the standards and ethics of justice held by the rest of the world, the three Supreme Court cases that contributed to this progress are significant for the way they changed the American perspective on juvenile sentencing and for the way it has influenced state judicial action towards reform.

A Brief Overview of the Miller Trilogy Caselaw and Juvenile Life Without Parole

Perhaps the most significant series of juvenile justice cases affecting life without parole are *Roper v. Simmons* (2005), *Graham v. Florida* (2010), and *Miller v. Alabama* (2012). Together these cases are commonly known as The Miller Trilogy of cases, and they transformed the landscape of juvenile sentencing in the United States. All of these cases rely heavily on portions of the Eighth and Fourteenth Amendments to the U.S. Constitution. The Eighth Amendment of the Constitution bars the government from imposing "cruel and unusual punishment" on a defendant.[39] The term "cruel and unusual" has evolved over the course of centuries of court cases

[38] Admin, Equal Justice Initiative, *supra* note 32.
[39] U.S. Constitution. amend. VIII

and legal proceedings. Today it refers to punishment that is significantly harsher than punishments inflicted on similar crimes. In *Solem v. Helm* (1983) a 1983 Supreme Court case, this definition was expanded to encompass the disproportionality of a sentence for its crime.[40] The latter is especially pertinent in the Miller Trilogy of cases, as proportionality of sentence is a key factor in determining what is an acceptable punishment for youth who commit similar crimes to adults with fully-developed brains.

The Fourteenth Amendment of the Constitution guarantees a right to "due process" of law, the right to every citizen to be afforded equal procedures of law before their "life, liberty and property" can be deprived.[41] The Due Process Clause is also the guarantee protecting individuals from cruel and unusual punishment imposed by state governments through what is known as the incorporation doctrine, a mechanism that allows parts of the first ten amendments to the Constitution are made applicable to the state governments' actions. Both of these constitutional amendments will be paramount to understanding the oral arguments and the Supreme Court's decisions in the *Roper*, *Graham*, and *Miller* cases to be discussed further detail later in this thesis.

The first of these cases, decided in 2005, after seventeen-year-old Christopher Simmons was sentenced to death for the murder of Shirley Crook and battled his case in appeals for nearly ten years, *Roper v. Simmons* (2005) determined that the death penalty for minors was unconstitutional.[42] The decision overturned a 1989 case *Stanford v. Kentucky* (1989) that relied on a finding that a majority of Americans did not consider the death penalty for minors to be "cruel and unusual."[43] In *Roper*, however, The Supreme Court found the execution of minors to

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[40] Solem v. Helm, 463 U.S. 277 (1983).
[41] U.S. Constitution. amend. XIV. § 1
[42] Roper v. Simmons, 543 U.S 551 (2005).
[43] Stanford v. Kentucky, 492 U.S. 361 (1989).

be unconstitutional,[44] a historic Supreme Court decision changing the standard of juvenile justice and justice in America and a whole. The Court's decision in *Roper v. Simmons* would mark one of the first cases to consider, and most importantly question, the role of evolving standards of decency, society's changing views informed by social and scientific factors, in it criminal jurisprudence. The lives of 72 death row inmates sentenced to their demise as minors, including defendant Christopher Simmons, were saved with the ruling of that Supreme Court decision.[45] The press and the legal community noted that the ruling advanced the civil rights of minors sentenced to death, spurring additional advocacy and research that would lay the foundation for the remainder of the Miller Trilogy cases to follow in that decade.[46]

Roper's impact on other juvenile sentencing schemes raised additional questions in the years following its ruling. In 2009, the case of Terrence Graham, convicted of armed home burglary and sentenced to life without parole by a Florida state court, came before the Supreme Court. It was the first case after the landmark ruling of *Roper v. Simmons* that reached the Supreme Court, and to apply the same Eighth Amendment arguments presented in *Roper v. Simmons*. Upon his appeal, Graham and his attorneys argued that the imposition of life without parole on a juvenile violated the Eighth Amendment.[47] The Supreme Court's ruling for Graham in this case would be the first to significantly restrict the application of JLWOP sentences, and the first to apply Eighth Amendment principles to a sentence other than execution for juveniles that was left constitutional for adults. Once more, the Supreme Court's decision in this case would rely on evolving standards of decency, with a renewed emphasis on and inclusion of

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[44] *Roper*, supra note 42.
[45] Roper v. Simmons Ten Years Later: Recollections and Reflections on the Abolition of the Juvenile Death Penalty | Juvenile Law Center, (2015), https://jlc.org/news/roper-v-simmons-ten-years-later-recollections-and-reflections-abolition-juvenile-death-penalty (last visited Jan 8, 2024).
[46] *Id.*
[47] *Graham*, *supra* note 10.

scientific findings of the differences between adult and juvenile brains in the majority opinion of Justice Anthony Kennedy.[48]

Miller v. Alabama (2012) would further build upon the progressive curtailing of harsh juvenile sentencing brought about by cases *Roper* and *Graham*. Argued and decided in 2012, *Miller v. Alabama* handled the case of Evan Miller and Colby Smith. Miller, at the age of fourteen, and Cole brutally murdered victim Cole Cannon by beating him with a baseball bat and lighting his trailer on fire. Miller was then transferred from his county's juvenile court and processed through the criminal court to be tried and sentenced with the crimes of capital murder and arson, for which he was subject to a mandatory life without parole sentence triggered by the state of Alabama's sentencing scheme which required those convicted of the crime of capital murder in the criminal court to a mandatory life sentence, regardless of their age.[49] Miller challenged the Alabama Court of Criminal Appeals, which affirmed the lower court's decision. The Supreme Court agreed to hear Miller's case which posed the question of whether the mandatory imposition of a life without parole sentence on a juvenile violated the Eighth Amendment's protections against cruel and unusual punishment. Notable for the way it built upon the foundations of legal reasoning in *Roper v. Simmons* and *Graham v. Florid*a, the decision of the Supreme Court in *Miller* would expand protections for juveniles, barring mandatory life without parole sentences from being given to children.[50] *Miller v. Alabama* marked a new and noteworthy area or progress in challenging severe youth punishment in that it was the first case to scrutinize mandatory sentencing schemes for youth and the second landmark case to narrow the application of juvenile life without parole.

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[48] *Id.*
[49] Miller v. Alabama, 567 U.S. 460 (2012).
[50] Id.

Over time, however, the composition of the Supreme Court changed from a court with a majority of justices who distinguished between juveniles and adults with respect to Fourth and Eighth Amendment claims to a more conservative court that did not. This conservative court will be shown to have vastly different ideas on the role of the Court in defining juvenile justice policy, the value of science and evolving standards of decency in deciding a case, and on adhering to the precedents set by *Roper*, *Graham*, and *Miller*. The justice who pioneered progress and authored all three Miller Trilogy opinions, Anthony Kennedy, retired from the Court in 2018,[51] and three other justices had either retired or passed away by the year 2020, when the Supreme Court heard it's fourth landmark JLWOP case, *Jones v. Mississippi* (2021).

In stark contrast with the Miller trilogy cases, the majority on the Supreme Court in Jones refrained from narrowing the application of JLWOP sentences. The case derived from the crime of appellant, Brett Jones who stabbed his grandfather to death at the age of fifteen.[52] A clarification on *Miller* in a 2016 Supreme Court case stated that Miller only allows the imposition of JLWOP in the cases of "those whose crimes reflect permanent incorrigibility."[53] After a dispute regarding whether the consideration of this factor in court proceedings would entitle Jones to parole, the Supreme Court heard Brett Jones' case. Though it was completely within the power of the Supreme Court to take another step forward towards the abolition of a sentencing structure that has been condemned by the rest of the world in the fashion of their predecessors, the Supreme Court ruled against Brett Jones.[54] Furthermore, it ruled against even

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[51] Lyle Denniston, *Justice Anthony Kennedy in Retirement: A Different Life | Constitution Center*, NATIONAL CONSTITUTION CENTER – CONSTITUTIONCENTER.ORG (Jul. 30, 2018), https://constitutioncenter.org/blog/justice-anthony-kennedy-in-retirement-a-different-life (last visited Apr 13, 2024).
[52] Jones v. Mississippi, 593, 3 U.S. ____ (2021).
[53] Montgomery v. Louisiana, 577 U.S. 190 (2016).
[54] *Jones*, *supra* note 52.

increasing the standard of protections offered to juvenile offenders to ensure that the sentence can be rarely used.

Thesis Purpose and Plan

This thesis intends to establish that while the Miller Trilogy was not without its flaws, it set forth a clear direction for the future of JLWOP in the United States. These cases also recognized the importance of scientific findings of adolescent brain development and the way they should factor into youth sentencing. The thesis will also argue that *Jones v. Mississippi* is a definite outlier for the Supreme Court, which has previously prioritized the safeguards for youth in sentencing, and that *Jones* represents a distinct deviation from the precedents the Supreme Court has historically held in high regard. Additionally, this thesis will argue that *Jones v. Mississippi* is the death of evolving standards of decency in Supreme Court Eighth Amendment cases, and is therefore a step back for a potential future of abolition for juvenile life without parole sentences. In order to provide a thorough understanding of why this is and where hope for abolition lies in the wake of a changing stance on JLWOP from the Supreme Court, this thesis will examine three things. Firstly, it will examine the oral arguments and conclusions of the Supreme Court in the Miller Trilogy of cases, the progress it spurred, and the way it would influence future federal and state juvenile life without parole policy through a mixture of original case analysis and academic literature review. To highlight the contrast in the Court's legal reasoning, adherence to precedent, and value for evolving standards of decency such as scientific findings and social leanings between The Miller Trilogy and *Jones v. Mississippi*, this thesis will do the same for *Jones*. In pointing out the ways in which the federal Supreme Court has changed its jurisprudence, and examining the dangerous implications that accompany the conclusions

made by the Supreme Court in this case, the first primary argument of this thesis is that the United States is unlikely to see the abolition of JLWOP in the near future through federal judiciary action due to the ideological priorities of the Supreme court's current members

This is not to say there is no hope for reform. In fact, the second primary argument that this thesis will make is that in the wake of the Supreme Court's recent inaction on the issue, initiatives by the states over the last decade indicate an increasing potential for abolition by the states well before JLWOP can be abolished or further restricted federally. This thesis will demonstrate that patterns in the more progressive spirit of the Miller Trilogy have continued to live on in the actions of state legislatures and courts, continue to rely on the precedents set by the Miller Trilogy to narrow and even abolish disproportionately lengthy sentencing for juveniles.

The analysis will rely upon case studies of two states that have changed their youth sentencing policies. Connecticut and Tennessee are chosen due to their position on opposite ends of the political spectrum. Connecticut is a liberal state whose approach to these policies is similar to that of the Supreme Court when deciding The Miller Trilogy. On the other hand, Tennessee's policies are more like those favored by the conservative Court in *Jones*. Two cases and two bills across these two states will be analyzed and examined as a part of this case study research. Before the two senate bills were introduced in Connecticut, *State v. Riley* was a 2015 case in which the Connecticut Supreme Court was tasked with determining whether a life sentence without parole may be imposed on a juvenile homicide offender in the exercise of the sentencing authority's discretion after *Miller v. Alabama* was decided. The eventual ruling of the case by the Connecticut Supreme Court's majority provides valuable commentary on the ethical reasoning and legal direction many courts across the country were taking post-Miller, deciding that the

state's present interpretation of Miller was "unduly restrictive."[55] A probe into the legislation that followed, Public Act No. 15-84, S.B. 952 will find further similarities with the approaches taken in the *Miller Trilogy* by the Supreme Court.

Though a number of states have yet to ban JLWOP sentences through legislative action such as Connecticut, other states have sought to reduce harsh juvenile life sentences and revive Miller Trilogy values post-*Jones* through court action. This approach is exemplified by the 2022 case of the *State of Tennessee v. Tyshon Booker* (2022). Despite the narrow interpretation of the 8th Amendment and discarding of Miller Trilogy values in the most recent *Jones v. Mississippi* (2021) case, the Tennessee Supreme Court relied on the broad construction and increasingly liberal arguments of the Miller Trilogy to decide on this case. The court acknowledged in their ruling that crucial Miller Trilogy principle that "youth matters in sentencing" and argued that extreme sentencing must be "imposed only in cases where that sentence is appropriate in light of the defendant's age."[56] Supported by polling research conducted by the Pew Research Trust and Data For Progress on opinions surrounding extreme sentencing for youth, the findings from these case studies will reveal that Americans across the with different political preference support less restrictive policies so that children will not spend their lives in prison for crimes they committed in their youth. This is a factor that both supports the driving forces behind the states' sentencing reform and that indicates a potential for further sentencing reform in upcoming years.

Finally, this thesis will review policy suggestions and potential constitutional challenges that can be pursued to eliminate the practice of juvenile life without parole throughout America. Drawing on a range of academic sources, suggestions for possible mitigation efforts and

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[55] State of Connecticut v. Akeem Riley, 110 A.3d 1205, 11 (2015).
[56] State of Tennessee v. Tyshon Booker 656 S.W.3d 49, 12 (2022)

constitutional challenges against life sentences for juveniles are explored. Additional research from various national organizations and social scientists on interactions between evidence-based policymaking and public opinion will be used to build upon these suggestions to create potentially viable policy solutions.

The nation's history and the federal government's adherence to continuing JLWOP demonstrates an overall lack of belief in its youth, and of the rehabilitative capabilities of a justice system that is not entirely retributive. However, this thesis will also shed light on the changing tides of thought in America away from the lengthy detention of juveniles, towards reform. In addition, the thesis will argue that the likelihood for total abolition JLWOP lies in the actions of the states, and it will provide recommendations and constitutional challenges to this sentence and others like it for those lawmakers and legal professionals whom juveniles facing disproportionate sentencing rely upon.

Chapter Two: From *Atkins* to the Miller Trilogy

In the United States, the function of the Supreme Court through its power of judicial review is not only to interpret and uphold the Constitution but to do so in a way that ensures the promise of equal justice for all under the law. In an early and consequential case, the Supreme Court recognized its power of judicial review in 1803 in *Marbury v. Madison*.[57] The ruling upheld the Court's power to declare laws in violation of the Constitution. Over time, the Court would declare laws unconstitutional in the area of criminal. Notably, the Bill of Rights provides guarantees for defendants against any state action that may violate their rights to fair trials and sentencing. Amendments Five through Eight of the U.S. Constitution all provide protections for criminals, including those sentenced and incarcerated under the age of eighteen. Only recently has the Court applied some of these constitutional protections to questions pertaining to juvenile justice.

In the tradition of the Supreme Court's practice of abiding by stare decisis, the cases of the Miller Trilogy set a clear and predictable progression in juvenile sentencing, with each case building upon the legal reasoning laid of prior cases, and narrowing the extent to which minors could be subject to extreme punishment. Contemporary legal scholars John R. Mills and his co-authors agree that the Miller Trilogy marked transformational changes in the criminal justice system but also in Eighth Amendment legal theory and application.[58] As this chapter will explain, both the oral arguments and rulings of the Miller Trilogy signified the important way in which social science inherently can inform our understanding of the meaning of cruel and unusual punishment as applied to juveniles. This line of case law was interrupted when the Court

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[57] Marbury v. Madison, 5 U.S. 137 (1803).
[58] John R Mills, Anna M Dorn & Amelia Courtney Hritz, *Juvenile Life Without Parole in Law and Practice: Chronicling the Rapid Change Underway*, 65 AMERICAN UNIVERSITY LAW REVIEW (2016).

decided *Jones v. Mississippi*, a case that adopted more punitive standards for juvenile punishment.[59]

Aktins, Diminished Capacity and Evolving Standards of Decency

It is important to understand the reasoning provided by the affirming and dissenting judges in the Miller Trilogy and the consequences for the subsequent Eighth Amendment cases. As previously stated, relying upon and abiding by the precedent set by similar and applicable cases that had previously come before the court is common practice by courts and fundamental to maintaining the tradition of stare decisis that guides judges in their decision making. An earlier case of the most significance for the Miller Trilogy and excessive juvenile punishment was *Atkins v. Virginia* (2002).[60]

In 1996 petitioner Daryl Renard Atkins was convicted of armed robbery, abduction and capital murder. For his crimes, he was arrested and brought to trial, and he underwent a psychological evaluation that revealed Atkins suffered from mental disability. Despite these findings being brought to light during the trial by the expert defense witness who conducted the evaluation, the jury found Atkins guilty and sentenced him to death. Even after this information of Atkins' diminished mental capacities was presented to the jury in a second sentencing hearing, they again sentenced him to death.[61]

In 2002, the United States Supreme Court granted a writ of certiorari to Daryl Atkins, agreeing to hear his legal challenge that sentencing the mentally disabled to death was unconstitutional under the Eighth Amendment's cruel and unusual punishment clause. The court,

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[59] Cara H Drinan, *Jones v. Mississippi and the Court's Quiet Burial of the Miller Trilogy*, 19 OHIO STATE JOURNAL OF CRIMINAL LAW 181 (2021).
[60] Atkins v. Virginia, 563 U.S 304 (2002).
[61] *Id.*

in a 6-3 ruling authored by Justice Stevens, agreed with the case brought by Atkins,[62] basing its reasoning on various grounds relevant to the discussions of *Roper*, *Graham*, and *Miller*. One of the primary reasons why the court made the determination to firstly, grant a writ of certiorari in this case is in part due to what Justice Stevens describes as a "dramatic shift in the state legislative landscape that has occurred in the past 13 years,"[63] namely that some states had outlawed the death penalty. This is particularly significant because it demonstrates the Supreme Court's acknowledgement of evolving moral and legal standards in the states as a determining factor in the acceptance and decisions made in this case, something that can be seen throughout the Miller Trilogy of cases. This reference to state evolving standards is noticeably absent from *Jones*. The court did not limit this this application of the change in the states to their decision to grant cert, but in their decision to bar the application of the death penalty on mentally disabled individuals.

Stevens cited precedent from the previous Warren Court that set the tone for the Miller Trilogy's approach to juvenile life without parole in a quote that states, "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man . . . The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[64] Other rationales presented in the Court's opinion regarding the unconstitutional imposition of the death penalty for the mentally disabled include the concept of the proportionality of a sentence in relation to the then existing mental state of the defendant. Additionally, the majority in *Atkins* identified several principal aspects of the mentally disabled described by both modern child psychologists and the Court in the Miller Trilogy's decisions.

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[62] *Atkins* 563 U.S 304, 310 (2002)
[63] *Id.* at 318.
[64] Trop v. Dulles, 356 U.S. 86, 101 (1958).

These include "significant limitations in adaptive skills such as communication, self-care, and self-direction;"[65] the tendency of these individuals to "often act on impulse rather than pursuant to a premeditated plan; and the likelihood that in group settings they are followers rather than leaders."[66] The Supreme Court in Atkins would associate all of this with the concept of "diminished capacity," the theory that due to the unique qualities of a mentally disabled person's mental state, they cannot meet the mental state required for a specific intent crime. The origins of these concepts in *Atkins* are crucial to understanding their reappearance in the Miller Trilogy, specifically the standard they set for the court's rulings on juvenile sentencing.

Miller Trilogy Oral Arguments

The oral arguments provided by the attorneys of the victorious parties in the Miller Trillogy, beginning with the case of *Roper v. Simmons*, play a vital role in the formation of a definition for "cruel and unusual punishment" for juveniles, and of a definition the "evolving standards of decency" so crucial to understanding the departure taken later by the Supreme *Court in Jones v. Mississippi*. Contained in the three oral arguments and rulings of *Roper*, *Graham*, *Miller*, and *Jones*, are three factors lending themselves proving evidence of cruel and unusual punishment and evolving standards of decency. The first is the comparison of foreign and domestic criminal justice, indicating that the United States is an outlier due to its extremely punitive youth sentencing. The second factor is the prevalence of the reasoning that the direction of domestic of policy changes, growing sentiment from the states embodied in judicial and legislative initiatives, indicate evolving standards of decency. Additionally, scientific findings drawn by many of these notable institutions and organizations are often made front and center in

[65] *Atkins* 563 U.S 304, 305 (2002)
[66] *Id.* at 318.

the determination of the cruelty of life without parole and the death penalty. The use of these scientific findings is the third factor across all three cases used to advocate against death and JLWOP sentences because the science supports the reduced culpability of youth and a theory of the disproportionality of lethal or life sentences. The combined trend of these three factors being prevalent across all three cases scientific, is particularly notable, however, for the way they would and continue to align with the circumstances surrounding juvenile life without parole in a post *Jones* world.

The successful arguments in the Miller Trilogy line of cases are rooted in the applicable parallels between the legal concepts put forward in *Atkins* in defense of mentally disabled criminals, and also the unique conditions of juveniles and the how the nation and world has responded to them in criminal justice policy. The case in which comparative criminal justice policy was relied upon most heavily was *Roper v. Simmons*, the case in which the respondent, convicted juvenile murderer Christopher challenged his death penalty sentence. One of the primary reasons provided to the Supreme Court in the oral arguments delivered by Christopher Simmons' attorney was that nowhere else in the world was the death penalty legal for a minor.[67] Rebutting Justice Scalia's questions of whether the United States should yield to the rest of the world, simply because it has abolished the death penalty for juveniles, the respondent's attorney responded that there exists "a constitutional test that looks to evolving standards of moral decency that go to human dignity."[68] The attorney emphasized the fact that the United States was the only remaining nation in the world to execute those who committed crimes as children, a significant fact that is relevant to the determination of the constitutionality of a criminal punishment. Though no other case after *Roper* relied heavily on comparative juvenile justice

[67] Transcript of Oral Argument at 14, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633)
[68] *Id.* at 38.

policy, at this moment in time, the circumstances of JLWOP sentences are consistent with arguments supporting the abolition of the death penalty for juveniles in *Roper* was argued.

A frequent strategy utilized by the attorneys in the Miller Trilogy and *Jones* oral arguments focused on the situating the evolving standards of decency in juvenile sentencing in trends of domestic law and policy change. In 2004, when the case of *Roper v. Simmons* was brought forth to the court, thirteen states had abolished the death penalty for all convicted criminals.[69] A 2004 Juveniles News and Developments article on the Death Penalty Information Center reported that 31 states had banned the practice of executing juveniles prior to the oral argument date in October,[70] and a further 14 states had laws requiring the minimum possible age of execution ne 18 years of age.[71] The secondary argument provided in *Roper* that would reappear in future debate on disproportionate juvenile punishment highlighted state legislation as an indicium of evolving standards of decency. As the attorney for respondent Christopher Simmons made clear in his argument, no state which enacted age-specific amendments to their death penalty laws lowered the age, and no state that barred the death penalty for children, reinstated it.[72] "The movement, addressed by the Court in *Atkins*, has all been in one direction," the attorney stated. Pairing this trend with the precedence set in *Atkins* with scientific support, the respondent's conclusion was that the combination of these factors created "scientific, empirical validation for requiring that the line (for the death penalty) be set at 18."[73] In other

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[69] State by State, DEATH PENALTY INFORMATION CENTER, https://deathpenaltyinfo.org/states-landing (last visited Feb 10, 2024).
[70] Juveniles News and Developments 2004, DEATH PENALTY INFORMATION CENTER, https://deathpenaltyinfo.org/stories/juveniles-news-and-developments-2004 (last visited Feb 10, 2024).
[71] Capital Punishment, 2004 | Bureau of Justice Statistics, (2005), https://bjs.ojp.gov/press-release/capital-punishment-2004 (last visited Feb 10, 2024).
[72] Transcript of Oral Argument at 28, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633)
[73] *Id*. at 29

words, there was both legislative action and institutional support that was informed by the concept of evolving standards of decency.

Four years later, in *Graham v. Florida*, following the precedent established in *Roper*, a very similar argument can be observed in the case presented by the petitioner. In 2009 at the time of oral argument, all but five states in America permitted juveniles to serve life without parole sentences,[74] which can be perceived as overwhelming support for the JLWOP sentence in all circumstances. The Roberts court affirmed this notion with their own on this trend, indicating an appreciation of the sentence from the states, "the fact that it has been allowed for so long and imposed so rarely, as the States themselves have admitted, is strong evidence of societal consensus."[75] Nevertheless, Graham's attorney acknowledged that states that primarily utilized the JWLOP sentencing only for the crime of homicide. The attorney for Graham took the point a step further and contended that it is instead evidence that this behavior from the states indicated the unusuality of the punishment, a necessary prong to prove that a sentence violated the protection from cruel and unusual punishment in the Eighth Amendment.[76]

When attorney Bryan Stevenson brought fourteen-year-old Evan Miller's case to the Supreme Court in 2012,[77] advocating for a ban on life without parole sentences for juveniles under the age of fourteen and mandatory life without parole sentences for juveniles, he too focused on evolving standards of decency based on the states' policies. Before Miller was decided, 39 jurisdictions allowed the imposition of life without parole sentences on children,[78]

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[74] ASHLEY NELLIS & RYAN S. KING, *No Exit: The Expanding Use of Life Sentences in America*, (2009), https://www.sentencingproject.org/app/uploads/2023/01/inc_NoExitSept2009.pdf (last visited Apr 8, 2024).
[75] State Distribution of Youth Offenders Serving Juvenile Life Without Parole (JLWOP) | Human Rights Watch, (Oct. 2, 2009), https://www.hrw.org/news/2009/10/02/state-distribution-youth-offenders-serving-juvenile-life-without-parole-jlwop (last visited Apr 18, 2024).
[76] Transcript of Oral Argument at 4, Graham v. Florida, 560 U.S. 48 (2010) (No. 08-7412)
[77] *Miller*, *supra* note 49.
[78] Transcript of Oral Argument at 4, Graham v. Florida, 560 U.S. 48 (2010) (No. 08-7412)

During the oral argument, the Supreme Court's conservative justices Antonin Scalia and Samuel Alito used this statistic in their questioning of the petitioner. Justice Scalia in particular noted that because the enactment of such a punishment on juveniles was still possible in so many jurisdictions in America it indicated the states' standards of decency. He said, "the American people, you know, have decided that that's the rule. They allow it. And the Federal Government allows it."[79] Though rebuffing this idea was no easy feat for Bryan Stevenson, he was still able to offer a point lending itself towards the standards of many states. Stevenson stated, "The States that have actually considered, discussed, and passed laws setting a minimum age for life without parole have all set that minimum age above 15. That's my primary argument. Thirteen States have done it; all of them except for one have set it at 18."[80]

Present across all oral arguments of the Miller trilogy and *Jones* was the integration of scientific evidence to compel the court to reduce the severity of punishments that youth were receiving such as the death penalty and JLWOP sentences. *Roper v. Simmons* was argued on the heels of much of the scientific evidence mentioned earlier in this thesis that identified the inherent qualities of reduced culpability and potential for rehabilitation that juveniles possess. Attorney Waxman, arguing for criminal defendant Christopher Simmons described these pieces of evidence as changing "the constitutional calculus for much the same reasons the Court found compelling in Atkins,"[81] which were essential to the proper interpretation of the Constitution in regard to the sentencing of juveniles. In *Roper*, the scientific evidence was not as perhaps developed as it is today, but the attorney for Simmons was able to persuade the court of several things. Firstly, he was able to confirm that juveniles have diminished moral capability, based on

[79] Transcript of Oral Argument at 12, Miller v. Alabama, 567 U.S. 460 (2012) (No. 10-9646)
[80] *Id.* at 16
[81] Transcript of Oral Argument at 24, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633)

the research of the time that, and he argued that "here adolescents -- are less morally capable. They are much, much less likely to be sufficiently mature to be among the worst of the worst."[82] This second sentence additionally implies that the possibility of becoming "the worst of the worst" happens after this maturity is obtained at adulthood, presently supported by science, a concept supported by adolescent psychology[83] In order to explain to the Court the factors that should inform a possible age-related spectrum of developmentally-driven culpability, Simmons' attorney said, "every scientific and medical journal and study acknowledges that 16- and 17-year-olds are the heartland. No one excludes them. And what we know from the science essentially explains and validates the consensus that society has already developed."[84] Notably, this argument underscores the evolving standards of decency, and it pushes the idea of immaturity to the legal definition of adulthood, which is in many states is still currently placed at 18 years of age. Additionally, this declaration that the ages of 16-17 are the "heartland" of adolescence also aligns with the trend of crimes peaking at that age range in the age-crime curve.[85] The age-crime curve, measuring the susceptibility towards criminal activity, reaches a peak around the age of 16 (See Fig. 2), consistent with both Christopher Simmons' specific case and also the general youth population.[86]

The attorney for Terrence Graham also made important references to scientific evidence in the oral arguments *Graham v. Florida*.[87] Though they did not feature as prominently, the science cited in the oral argument and opinions of *Roper v. Simmons* was used to support the petitioner's argument in *Graham*, in the context of advocating for the ban of JLWOP sentences

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[82] *Id.* at 30
[83]Casey et al., *supra* note 25.
[84] Transcript of Oral Argument at 31, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633)
[85] From Youth Justice Involvement to Young Adult Offending | National Institute of Justice, *supra* note 26.
[86] *Id.*
[87] *Graham*, *supra* note 10.

for those children who commit non-homicide crimes. The unconstitutionality of the penalty of life without parole for a child who has not committed a homicide was substantiated by attorney for the petitioner Bryan Gowdy, when he argued that the sentence is "cruel because of the inherent qualities of youth."[88] The "inherent qualities of youth" included those defined by scientists in scholarly articles published at the time, such as one published in the *Annual Review of Clinical Psychology,* that identified the existence of deficits in rational decision-making abilities and impulse inhibition in juveniles aged 11-18.[89] Additionally, the attorney stated, "this sentence clearly falls on the line of being cruel because it tells an adolescent, for an adolescent mistake, you can never live in civil society."[90] The identification of an "adolescent mistake" rather than a general mistake implies that it is a separate kind of mistake from the kind that can be made as an adult due to these scientific factors, and highlighting the uniqueness of the mistakes that juvenile defendants make. To conclude his argument, Attorney Gowdy provided an answer rooted in in response to judges' questions about whether in cases of juvenile sentencing the Court should adopt a categorical approach or one that would process juveniles and determine their culpability on a case-by-case basis. He stated, "Based… on what scientists have told us, the categorical approach is the most logical approach because we can't tell which adolescents are going to change and which aren't,"[91] given the nuances of the adolescent mind development across that specific population of individuals.

Much in the same way as Attorney Bryan Gowdy relied on science to display the cruelty and disproportionality of JLWOP sentences, Bryan Stevenson, attorney for petitioner Evan Miller also offered scientific evidence up to the Court to prove that mandatorily sentencing a

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[88] Transcript of Oral Argument at 5, Graham v. Florida, 560 U.S. 48 (2010) (No. 08-7412)
[89] Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANNU. REV. CLIN. PSYCHOL. 459 (2009).
[90] Transcript of Oral Argument at 8, Graham v. Florida, 560 U.S. 48 (2010) (No. 08-7412)
[91] *Id*. at 26

fourteen-year-old to juvenile life without parole was "cruel and unusual punishment" under the Eight Amendment. Given the court's reliance on these psychological findings in the previous two cases of the Miller Trilogy, *Roper* and *Graham*, he opened his argument by identifying the "internal attributes and external circumstances that preclude a finding of a degree of culpability."[92] Additionally, Attorney Stevenson laid these facts and the court's recognition of them as a foundation for an argument which the court later accepted, namely, that the sentence of life without parole for juveniles may be cruel and unusual in certain circumstances, regardless of the manner of the crime. Of the Court's decision he said,

> these deficits in maturity and judgment and decision-making are not crime-specific. All children are encumbered with the same barriers that this Court has found to be constitutionally relevant before imposition of a sentence of life imprisonment without parole or the death penalty[93]

Once again central to a Supreme Court JWLOP oral argument was the stance that to impose such a sentence would be stripping children of their chance to rehabilitate when the science suggests that this is not only a possibility for them to do so, but a likelihood. Evan Miller's attorney argued, "even psychologists say that we can't make good long-term judgments about the rehabilitation and transitory character of these young people"[94] suggesting that the Court err on the side of caution and provide children with the benefit of the doubt in sentencing.

Across the Miller Trilogy, the combined trends of leveraging advancing scientific finding and forward legislative movement in these oral arguments are important. Those that the court were persuaded by would remain constitutionally significant for the definition of acceptable sentencing for youth. Aside from the strength they would garner from acceptance in the Supreme

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[92] Transcript of Oral Argument at 3, Miller v. Alabama, 567 U.S. 460 (2012) (No. 10-9646)
[93] *Id.*
[94] *Id.* at 21

Court's rulings, they would and continue to align with the circumstances surrounding JLWOP when *Jones v. Mississippi* was decided in 2021, and even in the present day.

Chapter Three: The Court's Changing Jurisprudence from *Miller* to *Jones*

The Miller Trilogy Rulings

In agreeing with these specific points made by the attorneys during the oral arguments for the Miller Trilogy, the Supreme Court set forth legal precedent in each of their rulings in these cases, binding in future federal, state, and trial court cases, that became more accepting of scientific conclusions regarding the adolescent brain and appropriate juvenile sentencing standards. The conclusions in each of these cases shapes the acceptable punishments of youth convicts today, and the Miller Trilogy opinions laid out a blueprint for the interpretation of scientific evidence used by judges as they further defined cruel and unusual punishment for juvenile offenders. The discussion below will explore the noteworthy trends in the Supreme Court's conclusions in the Miller Trilogy and their subsequent consequences for the law and youth sentencing practices.

Before the holdings and dicta of the rulings can be explored, it is necessary to examine the trends in the Court that decided them, namely, the makeup of those seated on it and their backgrounds. Five justices on the Supreme Court were present for the entirety of the Miller trilogy. Liberal-leaning Justices Ruth Bader Ginsburg, and Stephen Breyer, consistently joined the majority by agreeing or concurring with the majority. Conservative-leaning justices Clarence Thomas and Antonin Scalia always dissented, and the fifth justice, often considered centrist, was Anthony Kennedy. The rest of the justices would join in with their input on juvenile sentencing after the decision in *Roper*. It is notable that in the decade during which all three Miller Trilogy cases were decided, the Supreme Court was not more conservative than the general America public that it served. A ten-year longitudinal study conducted by the Proceedings of the National Academy of Sciences (PNAS) studied the makeup of the court and the shifts in the court's

political alignment based on its most centrist judge over time. Their study reported that in 2010, during the time between the *Graham* and *Miller* decisions, "with Kennedy as the median [justice], the court's rulings put it in an ideological middle ground roughly halfway between Republicans and Democrats." In addition, "the estimated ideological position of the court with Kennedy as the median falls almost exactly at the position of the average American."[95] Given the integral role played by societal norms and sentiments towards the interpretation of cruel and unusual punishment, the fact that the court's political alignment was so similar to that of the public may have been a factor in their acceptance of these standards of decency offered to them by the scientific and legal communities advocating for diminished extreme sentencing for youth.

Of the Supreme Court's majorities in these ruling there was one judge whose opinions and attitudes championed juvenile sentencing reform and cannot be overlooked in this analysis. Authoring the landmark cases of *Roper* and *Graham*, the first two out of the three Miller Trilogy opinions, the presence of Anthony Kennedy on the Supreme Court was central to the understanding of permissible juvenile sentencing and the establishment of the importance of "evolving standards of decency" to the understanding of the Eighth Amendment. During a time that many legal scholars would argue the political spectrum of the Supreme Court justices was far more prone to ebb and flow across their decisions in cases with different political impacts,[96] Justice Kennedy was appointed to the Supreme Court by Republican conservative President Ronald Reagan in an effort to "to appoint only those opposed to... the 'judicial activism' of the Warren and Burger Courts,"[97] whose decisions were regarded by conservatives as too

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[95] Stephen Jessee, Neil Malhotra & Maya Sen, *A Decade-Long Longitudinal Survey Shows That the Supreme Court Is Now Much More Conservative than the Public*, 119 PROC. NATL. ACAD. SCI. U.S.A. e2120284119 (2022).
[96] BISKUPIC, NINE BLACK ROBES: INSIDE THE SUPREME COURT'S DRIVE TO THE RIGHT AND ITS HISTORIC CONSEQUENCES (1st ed. 2023).
[97] DAVID M. O'BRIEN, STORM CENTER: THE SUPREME COURT IN AMERICAN POLITICS (6th ed. 2002).

progressive. Given this public promise, there is reason to believe Justice Kennedy was appointed out of belief that he would abide by these intentions when replacing the original nominee Robert Bork. In spite of this, Justice Kennedy's opinions on the landmark Miller Trilogy demonstrated a considerable act of judicial activism, and a willingness to move outside of the boundaries of one's political affiliation following his neutral interpretation of the Eighth Amendment, and its implication for juvenile sentencing schemes. Legal scholars who have analyzed his work, identify trends in his decisions, namely that "when Justice Kennedy was assigned to write a majority opinion, he wrote more often on the side of criminal defendants than for the government."[98] The presence of a figure with such a record on the Supreme Court during the processing of juvenile criminal cases notably left a more progressive impact on sentencing, as he was a consistently a staunch advocate for the rights of youth defendants.

The first of Justice Anthony Kennedy's opinions was authored in the case of *Roper v. Simmons* and affirmed many arguments by Christopher Simmons' lawyer (discussed previously in this chapter) during oral argument. These include the weight of international and state policies as indicia of evolving standards of decency as well as the importance of scientific evidence when structuring acceptable and constitutional juvenile sentencing standards. In response to the first point offered by Christopher Simmons' attorney, the Supreme Court's majority in *Roper* placed considerable value on the arguments calling for America's international isolation in juvenile sentencing protocols to be a driving factor in determining the unconstitutionality of the death penalty for children. In his majority opinion, Justice Kennedy wrote, "Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official

[98] Rory K Little, *Balanced Liberty: Justice Kennedy's Work in Criminal Cases*, 70 HASTINGS L.J. 1243.

sanction to the juvenile death penalty,"[99] not only acknowledging America's outlier status, but also affirming that this type of evidence offered in support of juvenile sentencing reform is both acceptable and constitutionally significant. In fact, evidence of a tradition of affirming this type of evidence is provided in the Roper decision following this statement: "Yet at least from the time of the Court's decision in *Trop*, the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment's prohibition of 'cruel and unusual punishments.'"[100] The statement both emphasizes the presence of a Supreme Court precedent that prioritizes the incorporation of international standards in the interpretation of the Eighth Amendment more generally and also extends that precedent to the Supreme Court decisions regarding juvenile life sentences.

The Supreme Court opinions in the Miller Trilogy also highlighted the importance of domestic policy changes in shaping the concept of evolving standards of decency in Eighth Amendment doctrine. Consistent throughout the opinions was an emphasis on the arguments offered to them comparing a particular state and its codes with the criminal codes of the rest of the United States. Beginning in *Roper*, the Court drew parallels between the state of the nation's death penalty policies at the time of the *Atkins* decision, which famously ruled to narrow the usage of the death penalty by deeming the execution of the mentally disabled, unconstitutional. At the time of *Roper* only three years later, Justice Kennedy noted that, "30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach."[101] By drawing that parallel, Kennedy emphasized the weight that domestic shifts in

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[99] *Id*. at 554.
[100] *Id. at 575*
[101] *Roper*, *supra* note 42. at 553

criminal justice laws have for Supreme Court rulings as a matter of precedent. This is confirmed as Kennedy's further argued that "the same consistency of direction of change has been demonstrated"[102] and that the Court did "still consider the change.." from the last case to consider the death penalty for juveniles to this case "…to be significant."[103]

In Justice Anthony Kennedy's second majority opinion written for the Miller Trilogy in *Graham v. Florida*, additional emphasis is laid on the importance of considering nationwide domestic policy change, but in *Graham* this is in respect to sentences of life without parole for juveniles. As previously noted, the profile of state policy looked different in *Graham* than it did in *Roper*, with a majority of states permitting life without parole sentences for juveniles. In addition, federal law permitted the sentence for juveniles, as mentioned by Justice Kennedy in the majority opinion for *Graham v. Florida*.[104] In fact, the Supreme Court found evidence of a national consensus against the sentence in this case to be "incomplete and unavailing."[105] However even in the Court's rejection of the notion that such evidence existed in this case as strongly as it did in *Roper v. Simmons*, the Supreme Court's majority still indicates the importance of using this kind of policy-based evidence in forming evolving standards of decency. To begin their opinion, the majority in the court quoted the Atkins opinion, stating, "The analysis begins with objective indicia of national consensus. '[T]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures,'"[106] outlining the role that state policy changes are intended to have in Supreme Court decisions determining the constitutionality of juvenile life sentences.

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[102] *Id.* at 553.
[103] *Id* at 565.
[104] *Graham*, *supra* note 10.
[105] *Id.* at 63
[106] *Atkins*, 536 U.S. 304, 304 (2002)

Authored by Supreme Court Justice Elena Kagan, the opinion in *Miller v. Alabama*, determining the unconstitutionality of mandatory life without parole sentences for juveniles, also establishes a doctrinal necessity for the Supreme Court to factor state policy on JLWOP into the formation of evolving standards of decency. Justice Kagan recognizes and still rejects the State of Alabama's argument that "because many States impose mandatory life-without-parole sentences on juveniles, we (The Court) may not hold the practice unconstitutional."[107] On the contrary, though 29 jurisdictions at the time allowed mandatory life without parole for juveniles processed and convicted as adults through court proceedings, she and the justices that comprised the majority in this case assert that the State's case was weaker than the argument of national consensus that was rejected in *Graham* by Justice Kennedy. This weakness was due to the difference in nature that the consistent and unreduced use of JLWOP by the states for homicide crimes at the time of *Miller* compared to *Roper* and *Graham*, and for the way that *Miller* was not imposing categorical bans on a sentence.

A principal factor that Justice Kagan influences the Court's decision for convicted juvenile defendant, Evan Miller is scientific evidence. Rather than focusing on national consensus to form evolving standards of decency, the Court's reasoning was informed by evolving standards of decency and defining the proportionality of punishment for a juvenile. Though only one case set into precedent the application of international consensus, and two set into precedent the application of national consensus, all three Miller Trilogy cases indicate that scientific evidence regarding the status of the juvenile mind and its inherent differences from adults, should shape the ruling of a case.

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[107] *Miller*, 567 U.S. 460, 482 (2012)

Beginning with *Roper*, the Supreme Court weighed and incorporated evidence of youth's poor impulse inhibition and rational decision-making skills with legal notions of reduced culpability. Based on the Supreme Court's determination in *Atkins v. Virginia* that capital punishment must only be reserved for "a narrow category of the most serious crimes"[108] in *Roper*, Justice Anthony Kennedy identified three reasons rooted in the biological differences between juveniles under the age of 18 and adults that "demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders."[109] The three unique qualities of youth that Justice Kennedy names in the *Roper* opinion were, a "lack of maturity and an underdeveloped sense of responsibility;" a vulnerability and susceptibility for "negative influences and outside pressures, including peer pressure;" and finally, the character of juveniles is not fully formed and in fact "transitory."[110] Therefore, these qualities made the punishment of death for them cruel and unusual, when for adults it was and remains presently considered acceptable. However, the majority did not just blindly accept these factors based on the arguments posed by the attorney for Christopher Simmons. Instead, they relied upon various contemporary studies that revealed and corroborated this evidence. In fact, Kennedy quoted from accredited sources such as the peer reviewed, *American Psychologist* and renown psychologists such as Erik Erikson.[111] In incorporating these sources into its decision to support their holding, the Supreme Court drew support from the science of adolescent psychology and its inherent effects on juvenile culpability. This research asserted: "Once the diminished culpability of

[108] *Atkins*, 536 U. S. 304, 319 (2002).
[109] *Roper*, 543 U.S. 551, 569 (2005)
[110] *Id.* at 570
[111] *Id.* at 571

juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults."[112]

However, as was much later noted by Attorney Bryan Stevenson in his oral argument for *Miller v. Alabama*, these deficits exist in minors regardless of the crime. The Supreme Court would affirm this through their application of scientific evidence in *Graham v. Florida* years before to exclude non-homicide crimes from being subject to JLWOP sentences. Echoing the research deemed crucial to deciding the unconstitutionality of the death penalty for children, Justice Kennedy made repeated reference to those three unique qualities of juvenile offenders deemed constitutionally significant to narrow the forms of punishment a child could endure. As referenced above, they include a lack of maturity, vulnerability and susceptibility for detrimental influences and outside pressures, and the still unformed character of juveniles.[113] Building upon the precedent set in *Roper*, and the arguments offered by Terrence Graham's attorneys, the majority opinion concluded: "No recent data provide reason to reconsider the Court's observations in Roper about the nature of juveniles. As petitioner's amici point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," by applying these differences as a definitive matter of importance, fact, and compulsion crucial to answering constitutional questions about JLWOP.[114] Once more, there is a clear pattern of scientific citation to support their ruling for Graham in this case. Secondarily, the science informed the justices when drawing the line of what they considered to be the only acceptable application of life without parole sentences for juveniles. Anthony Kennedy wrote, "to justify life without parole on the assumption that the juvenile

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[112] *Id.*
[113] *Roper* supra note 110.
[114] *Graham* 560 U.S. 48, 50 (2010)

offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable."[115] As will be discussed below, this holding, based upon the evolved standards of decency driven by science would be of great importance in *Jones v. Mississippi*.

Finally, in *Miller v. Alabama* those inherently unique qualities of youth that informed the holdings in *Roper* and *Graham* would prevail in an absence of state policy change acting as indicia towards evolving standards of decency. Though brief in her remarks, Justice Elena Kagan who wrote for the majority in this case concluded that mandatory life without parole sentencing schemes for youth were not only incompatible with the holdings of *Graham* and *Roper*, but they were also unjust given the role those deficits play in juvenile impulse inhibition and rational decision-making processes. Before rendering their decision on mandatory JLWOP sentences, the Court interpreted precedent and affirmed Attorney Bryan Stevenson's arguments. Reflecting on *Miller* in the context of *Graham*, the Court says,

> *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole… And in other contexts as well, the characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate.[116]

After arguing that the *Graham* decision made the death penalty and life without parole analogous sentences for juveniles due to their unique characteristics, Justice Kagan and the majority outlined the logic for their ruling within this framework. Because the death penalty requires individualized sentencing, and the *Graham* court concluded that JLWOP could be akin to the death penalty, the majority wrote, "Such mandatory penalties, by their nature, preclude a

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[115] *Id.* at 74.
[116] *Miller*, 560 U.S. 460, 473 (2010)

sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."[117]

In conjunction with *Graham*, *Miller v. Alabama* set into precedent numerous views on JLWOP and made mandatory several standards for review when sentencing juveniles. Firstly, the psychological differences in children make life sentences for them akin to capital punishment. Due to this, a juvenile life sentence penalty must be subject to the highest standards of review by lower court sentencing bodies. Moreover, as in *Miller*, the review must also be subject to the precedents set in death penalty Supreme Court cases.[118] Secondly, not only does juvenile status matter in sentencing, but the Supreme Court in *Graham* and *Miller* stated that in many cases, youth status *precludes* the application of certain sentences for certain minors.[119] In other words, the unique factors of youth are the most paramount factor for consideration when sentencing, and is enough to render a punishment disproportionate.[120] For the Supreme Court, these factors make interpretation of the Eighth Amendment different for juveniles and adults. Thirdly, and most pertinent to *Jones v. Mississippi* the Supreme Court set the precedent that the punishment of life without parole for juveniles is only acceptable for the children found "permanently incorrigible" by the courts that hear their case.[121] Moreover, the Court has even acknowledged that this concept of "permanent incorrigibility" is difficult to discern as a quality present in youth at all.[122] All three cases, *Roper*, *Graham*, and *Miller* did not only set important legal precedents for hearing these juvenile-related Eighth Amendment cases, but also created procedural and ethical standards regarding the way that they decide them. Namely, these procedural and ethical

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[117] *Id.* at 476
[118] *Miller*, *supra* note 49.
[119] *Graham*, *supra* note 10.
[120] *Id.*
[121] *Id.*
[122] *Roper*, *supra* note 42.

standards taking into account changing societal standards in addition to modern scientific findings about the juvenile brain that culminate in a general standard of behavior imposing as many protections for youth in sentencing as possible.

Jones v. Mississippi **(2021) and the Downfall of the Miller Trilogy**

In *Jones v. Mississippi,* the Court rejected evolving scientific findings about the unique sentencing needs of juveniles that provided support for its rationale in the Miller Trilogy line of cases, which included *Roper v, Simmons*, *Graham v. Florida*, and *Miller v. Alabama*, as discussed above. The attorney for Brett Jones, who at fifteen years old stabbed his grandfather to death and was subject to JLWOP in Mississippi, called on the court to recognize the unique qualities of youth and the implications that they have on sentencing, and honor the holdings of these previous cases. *Jones v. Mississippi,* however, resulted in a very different outcome. The Supreme Court, just nine years after their landmark decision in *Miller*, ruled instead in favor of the state of Mississippi.

Between *Miller v. Alabama* and *Jones v. Mississippi*, the Court decided another case, *Montgomery v. Louisiana* (2016), that is important to understanding the arguments presented in *Jones*. At the time, the Supreme Court was comprised of the same justices seated at the bench in *Miller*, with Justices Sotomayor, Ginsburg, Kagan, Breyer, and Roberts joining Justice Anthony Kennedy, who wrote for their majority. *Montgomery v. Louisiana* established that *Miller* retroactively applied. Crucially, though, *Montgomery* stated that "Miller did bar life without parole . . . for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility."[123] In this case, the majority's rationale ensured that this severe punishment was

[123] *Montgomery v. Louisiana*, 577 U.S. 190, 17 (2016)

given as rarely as possible for convicted youth. They reiterated this point several times throughout *Montgomery*. While emphasizing the matter of permanent incorrigibility, the Court also stated,

> *Louisiana* suggests that *Miller* cannot have made a constitutional distinction between children whose crimes reflect transient immaturity and those whose crimes reflect irreparable corruption because *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility… That this finding is not required, however, speaks only to the degree of procedure *Miller* mandated in order to implement its substantive guarantee.[124]

This determination was considered to have opened the door for and even encouraged the implementation of this official fact finding of "permanent incorrigibility" in the states' courts, or the constitutional challenge compelling one in Jones.[125]

Brett Jones' attorney attempted to emphasize this point 2021, relying on the precedent set by *Miller* and calling on the types of arguments used by the litigators that came before him and the holdings in the Miller Trilogy and *Montgomery*. Although the argument focused on procedure, Attorney Shapiro drew upon both the scientific community's conclusions on adolescent psychology, and the evolved standards founded upon them. He opened his argument by stating, "Settled law recognizes the scientific, legal, and moral truth that most children, even those who commit grievous crimes, are capable of redemption,"[126] as a basis to advocate for that higher standard of review to their cases. Though the justices questioned him on whether this deviated from the original intention of the Eighth Amendment, the attorney for defendant Brett Jones argued that a mandated implicit or explicit finding by a sentencing judge of whether a given defendant fits within the "permanent incorrigibility" rule was the natural and practical

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[124] *Id.* at 19.
[125] David M. Shapiro, *To the States: Reflections on Jones v. Mississippi*, 135 HARVARD LAW REVIEW (2021), https://harvardlawreview.org/forum/vol-135/to-the-states-reflections-on-jones-v-mississippi/ (last visited Apr 4, 2024).
[126] Transcript of Oral Argument at 4, Jones v. Mississippi, 593 U.S. ___, (2021) (No. 18-1259)

edification of a rule already set into precedent in *Miller* and *Montgomery*.[127] Despite the precedents established by the holdings of the Miller Trilogy, and however frequent that emphasis on a necessity for only the "permanently incorrigible" to be sentenced to JLWOP, the Court was not persuaded by these arguments.

The Supreme Court that heard the Miller Trilogy oral arguments was a very different court than the one that had heard the oral arguments in *Jones v. Mississippi.* The Court that decided the Miller Trilogy and *Montgomery* was nearly evenly split, with Kennedy as the median justice. The conservatives were John Roberts, Clarence Thomas, Samuel Alito, and Antonin Scalia while the liberal wing originally included John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer, and David Souter. After the retirements of Souter was replaced by Sotomayor and Stevens was replaced by Elena Kagan. By the time of *Jones v. Mississippi,* the Supreme Court had a strong conservative majority made up of six justices: Clarence Thomas, John Roberts, Samuel Alito, Neil Gorsuch, Clarence Thomas, Brett Kavanaugh, and Amy Coney-Barrett. Kavanaugh wrote the majority opinion denying the petitioner's request in this case.

However, the fact of a conservative majority was not a new phenomenon. In fact, a conservative majority was present throughout all of the Miller Trilogy. The *Jones'* conservative majority is quite different because all of the current Republican appointed justices share the conservative legal movement's ideology.[128] One consequence is that there has been a shift in the ideology of the median justice as compared to the views of the general public. A decade-long longitudinal study conducted for the Proceedings of the National Academy of Sciences (PNAS) recorded the trends in the Supreme Court's ideology compared to that of the public up until the

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[127] *Montgomery*, *supra* note 53.
[128] Jack M. Balkin, *Abortion and the Republican Party*, *in* ROE V. DOBBS: THE PAST, PRESENT, AND FUTURE OF A CONSTITUTIONAL RIGHT TO ABORTION 81 (1st ed. 2024).

year when Jones was decided in 2021. The study found that not one, but two shifts in the median justice's political leaning had occurred between the year when *Miller* was decided in 2012, and *Jones* in 2021.[129] The researchers found that the ideology of the median justice shifted from Kennedy to Roberts upon his retirement in 2018, and from Roberts to Kavanaugh in 2020 after the death of Ruth Bader Ginsburg.[130] In addition, when she was replaced with Justice Barrett, the Supreme Court went from having a 5-4 conservative majority to a 6-3 conservative supermajority,[131] diminishing the pressure of the median justice to be the "tie-breaker" in cases involving controversial constitutional issues such as juvenile sentencing.

Even more noteworthy, this study additionally reported that this shift in the views of the justices on the Supreme Court moved it "to the ideological right of roughly three quarters of all Americans" based on surveys taken from Americans on their stances on issues that the Court decided in those terms.[132] As of May 2021, twenty-five states and Washington, DC, had banned JLWOP.[133] As the data indicate, there was now a growing trend amongst states in America to view this punishment as unacceptable or unnecessary, a metric similar to the evolving standards of decency criterion used by the Court. Consequently, the conservative supermajority's ideology was now well to the of right of the American public's views on matters of juvenile sentencing.

The language and holding in *Jones v. Mississippi* depart from the Supreme Court's values, precedents, and intent throughout the Miller Trilogy the justices do not accept the science and psychology that supports more lenient treatment of juvenile offenders. Professor Cara H. Drinan of the Catholic University of American Law school, a well-known author of JWLOP

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[129] Jessee, Malhotra, and Sen, *supra* note 95.
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] EMILY J. HANSON & JOANNA R. LAMPE, *Juvenile Life Without Parole: In Brief*, (2022).

scholarly literature, refers to *Jones v. Mississippi* (2021) as the "quiet burial" of the Miller Trilogy and its precedent for a variety of similar reasons.[134] Drinan asserts that in the Miller Trilogy cases Justice Kennedy used language that made the well-being of juvenile offenders a centerpiece of his opinions. He recognized a youthful prisoner's special need for "hope" and "reconciliation with society,"[135] and he insisted that states provide them "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[136] The Supreme Court in *Miller* is less attuned to these concerns. Later, Justices Kennedy and Kagan swapped language such as "murderer" for "juvenile offender" in *Graham*[137] or "juvenile arrested for murder" in *Miller*,[138] thereby not dehumanizing these juveniles by routinely calling them "murderers" and always recognizing their youth in their opinions. Drinan found however that in *Jones v. Mississippi* Justice Bret Kavanaugh uses the term "murderer" to describe these children at least sixteen times.[139]

Additionally, in *Jones*, references to or reliance upon scientific studies regarding the qualities of youth that necessitate a distinction between those who are permanently incorrigible and those who are not are not included.[140] This is an especially jarring gap in the *Jones* opinion given precedent set by the Court based on this knowledge stating, that it is "difficult…to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."[141] Instead of acknowledging the true holdings of the *Miller* and *Graham* courts which determined

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[134] Drinan, *supra* note 59.
[135] *Graham*, 560 U.S. 48, 79 (2010)
[136] *Id.* at 50.
[137] *Graham*, *supra* note 10.
[138] *Miller*, *supra* note 49.
[139] Drinan, *supra* note 59.
[140] *Jones*, *supra* note 52.
[141] *Graham*, 560 U.S. 48, 68 (2010)

that juvenile offenders' internal attributes and external circumstances "preclude a finding of a degree of culpability,"[142] the *Jones* court simply diminishes these decisions to only say that "youth matters in sentencing."[143] Thirdly, the Court does not employ an Eighth Amendment analysis that values scientific and psychological evidence in addition to evidence of evolving standards of decency from the states. Instead, they turned to solely rely on examples set by the states, stating "Miller did not identify a single State that, as of that time, made permanent incorrigibility an eligibility criterion for [juvenile] life-without-parole sentences."[144] The Court completely ignoring the important efforts states have taken at the time of oral argument in *Jones* to reduce the use of JLWOP sentences, which include 25 states having abolished them and another 10 states having no one serving that sentence.[145]

In his concurrence with the majority in *Jones v. Mississippi* Justice Clarence Thomas wrote a very revealing interpretation of the holding in *Jones*. He says,

> First, we could follow Montgomery's logic and hold that the 'legality' of Jones' sentence turns on whether his crime in fact 'reflect[s] permanent incorrigibility.' 577 U. S., at 205, 209. Or we could just acknowledge that Montgomery had no basis in law or the Constitution. The majority, however, selects a third way: Overrule Montgomery in substance but not in name.[146]

In this, he revealed that the intention of the *Jones*' court was never to continue to expand upon the protections provided to a very vulnerable class of individuals whose qualities may preclude life without parole sentences for them, but instead to place a decided halt to that progress and quietly dismantle sixteen-years' worth of precedent, shaking things up for the state of juvenile sentencing in the country.

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[142] *Miller*, *supra* note 49.
[143] *Id.*
[144] *Jones*, 593 U.S. ___, 6 (2021)
[145] *Id.*
[146] *Id.* at 7.

Chapter Four: State Responses to the Miller Trilogy and Jones: Case Study One

It is important to note that the Miller Trilogy's holdings greatly affected the ways in which state justice systems could function. By the year 2012, the states' ability to sentence juveniles to life without parole had narrowed significantly. Specifically, after the *Graham v. Florida* decision in 2010, states could no longer impose JLWOP sentences for non-homicidal offenses. As discussed in Chapter Three, the *Miller* ruling in 2012 further prohibited from states the JLWOP sentence even on juveniles who committee homicides. The legal reasoning behind this line of cases acknowledging the diminished culpability and capacity for change in youth, and the social implications of the Miller Trilogy left the states with a blueprint as to how to approach juvenile criminal cases.

In 2011, before *Miller v. Alabama* had been decided, only five states had banned juvenile life without parole.[147] Currently, twenty-eight states have banned juvenile life without parole and a further five currently have no one serving juvenile life without parole sentences (See Fig. 1)[148] This rapid transformation of state law constitutes a significant aspect of juvenile justice reform in the states. In addition to these twenty-eight states that abolished the practice entirely, six states have also reformed juvenile life without parole by re-writing penalties that were struck down by *Graham v. Florida* and by eliminating life without parole for felony murder.[149] Desire for justice for those who were wronged prior to the *Miller* Trilogy also prompted many states to seek retroactive remedies for youth sentenced to life in prison without parole. By 2019, nearly 400 individuals who faced this sentence before *Miller v. Alabama* had returned to their homes and

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[147] Nicole Roussell, *Which States Ban Life without Parole for Children?*, CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH | CFSY (2015), https://cfsy.org/states-that-ban-life-without-parole-lwop-sentences-for-children/ (last visited Dec 18, 2023).
[148] *Id.*
[149] Rovner, *supra* note 19.

communities following parole and resentencing hearings in their state and local courts.[150] This evidence in the states suggests they are more likely to continue take the lead in abolishing JLWOP than is the Supreme Court, especially after its ruling in *Jones v. Mississippi*.

In America, federalism and a system of separation of powers provide the states with various options to limit and abolish juvenile life without parole. The last twelve years have generated examples of states utilizing the executive, legislative, and judicial branches to reform juvenile sentencing reform. Additionally, these reforms made by states can have the distinct and notable effect of influencing the decisions of states around them, such as the waves of juvenile life without parole reforms and abolishment seen after the first few states took action against the sentencing practice after the Miller Trilogy.

The two most common avenues states have taken to narrow and eradicate the use of JLWOP have been through the legislative and judicial branches, sometimes a mix of both. The legislative channel most often involves state lawmakers acting in response to the national judicial precedent set by the *Miller* Trilogy. In addition, some states rely upon voter sentiment and scientific research to support reform efforts. In a research report released in 2020, the Justice Collaborative Institute and The Fair and Just Prosecution organization reported the in a poll of a nationally representative sample of voters that "a majority of Americans recognize that children are uniquely equipped to grow and change, and believe criminal judicial means of changing juvenile life without parole laws."[151]

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[150] Cara H Drinan, *The Miller Trilogy and the Persistence of Extreme Juvenile Sentences*, 58 AM. CRIM. L. REV. 1659.

[151] DATA FOR PROGRESS, THE JUSTICE COLLABORATIVE INITIATIVE & FAIR AND JUST PROSECUTION, *A Majority of Voters Support An End To Extreme Sentences For Children*, (2020), https://www.fairandjustprosecution.org/staging/wp-content/uploads/2020/07/Juvenile-Life-Without-Parole-Polling-Report.pdf (last visited Dec 18, 2023).

Despite the conservative Republican majority's opinion in *Jones*, the poll reported that "Two-thirds of respondents, including two-thirds of Republicans, believe the juvenile justice system should focus more on prevention and rehabilitation rather than on punishment and incarceration."[152] The way this national attitude towards juvenile life without parole is channeled through the state legislative body is one of the defining components of the legislative route to juvenile life without parole reform that differentiates this mode and its outcomes from the federal court's system. This polling suggests on the question of juvenile sentencing reform the majority in *Jones* is out of step even with the views of Republican voters who responded to the survey. Furthermore, it should be noted that reform efforts often center on state constitutional protections, which often afford protections extending far beyond those mandated by the federal Constitution and the Supreme Court's interpretation of it.[153]

Judicial initiative in the state has taken on a very similar shape to the processes and considerations of the *Miller* Trilogy cases but on a far more localized level, bearing in mind scientific evidence and judicial precedent in their decisions. Secondly, they involve challenging the already often liberal state constitutions, as state constitutions have the tendency to offer protections extending far beyond those mandated by the federal constitution and the Supreme Court's interpretation of it.[154]

In February 2023, the state of Illinois became the 26th state in the union to ban juvenile life without parole,[155] bringing juvenile justice reform to a tipping point, as now over half of the

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[152] *Id.*
[153] *Id.*
[154] Marcia Coyle, *State Courts, Voters Increasingly Turning to State Constitutions to Protect Rights | Constitution Center*, NATIONAL CONSTITUTION CENTER – CONSTITUTIONCENTER.ORG (Aug. 18, 2023), https://constitutioncenter.org/blog/state-courts-voters-increasingly-turning-to-state-constitutions-to-protect-rights (last visited Dec 18, 2023).
[155] Aaryn Urell, *Illinois Abolishes Life-Without-Parole Sentences for Children*, EQUAL JUSTICE INITIATIVE (2023), https://eji.org/news/illinois-abolishes-life-without-parole-sentences-for-children/ (last visited Dec 18, 2023).

states in the nation have taken action against the controversial sentence. In order to understand the way in which state initiatives bear on the future of JLWOP reform, the efforts of two states will be analyzed. The states chosen for the purpose of this examination are Tennessee and Connecticut for two primary reasons. The first is that each of these states demonstrate the successes of the legislative and judicial paths as a means for juvenile justice reform: Connecticut chose the legislative approach while Tennessee adopted a judicial reform process. Apart from different methods, these states also have notably different political ideologies and historical relationships with reform. The analysis below will highlight the promising juvenile reform options provided by both approaches.

Connecticut

From the year 2013 to 2016, the Center for the Campaign for the Fair Sentencing for Youth reported that three states per year eliminated life without parole as a sentencing option for children.[156] Connecticut was one of the three states that made this change in 2015, joining eight other east coast states that have banned juvenile life without parole during the past decade. Connecticut made this policy shift when Senate Bill 796, known now as Public Act No. 15-84,[157] was signed. This legislative action taken by the Connecticut legislature during a time of favorability towards such a reform.

By June 2015 when Public Act No. 15-84 was signed into law, Connecticut's political landscape was ripe for the implementation of this kind of juvenile justice reform. Voting

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[156] THE CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, *Righting Wrongs: Celebrating 5 Years of States Banning Life Without Parole for Children*, (2016), https://www.nmlegis.gov/handouts/CJRS%20092618%20Item%202%20Dold%20-%20CFSY%205%20Year%20Report%20-%20Final.pdf (last visited Dec 18, 2023).

[157] Madeo Admin, *Connecticut Abolishes Juvenile Life-Without-Parole Sentences*, EQUAL JUSTICE INITIATIVE (2015), https://eji.org/news/connecticut-abolishes-juvenile-life-without-parole/ (last visited Dec 18, 2023).

registration records from October 2014 indicate that there were 712,925 registered Democrats in the state at the time and 407,519 Republicans,[158] indicating a potential advantage for politicians supporting progressive juvenile justice reform. A Pew Research Trust Report published in November 2014 indicated that at the time, that 75% of Democrats in America believed that in the justice system, juveniles should be treated differently than adults compared to just over half of Republicans.[159]

Additionally other legislative reforms that occurred in the years leading up to Public Act No. 15-84 were good indicators of changing attitudes around juvenile justice in that state. In 2014, Connecticut General Assembly established the Juvenile Justice Policy and Oversight Committee (JJPOC) through Public Act 14-217. The committed focused on reviewing and managing continued juvenile justice reform through actions such as assessing the impact of Raise the Age legislation in other states and investigating the existence of disproportionate minority contact with police.[160] However, support for juvenile justice reform in Connecticut before juvenile life without parole was banned did not only come from Connecticut's politicians. However, support for juvenile justice reform in Connecticut before juvenile life without parole was banned did not only come from Connecticut's politicians. In 2014 and 2015, news outlets such as the *Hartford Courant* and *Connecticut Mirror* published op-eds calling the legislature to raise the age at which an individual could be tried in adult court from 18 to 21.[161] Op-eds also

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[158] Office of the Secretary of the State, *October 30, 2014 Registration and Enrollment Statistics*, (2014), https://portal.ct.gov/-/media/SOTS/ElectionServices/Registration_and_Enrollment_Stats/Nov14RE2pdf.pdf (last visited Dec 18, 2023).
[159] The Pew Charitable Trusts, *Public Opinion on Juvenile Justice in America*, (2014), https://www.pewtrusts.org/-/media/assets/2015/08/pspp_juvenile_poll_web.pdf (last visited Dec 18, 2023).
[160] Connecticut Youth Services Association, *JJPOC*, https://www.ctyouthservices.org/Diversion/Important-Documents/JJPOC/ (last visited Dec 18, 2023).
[161] The Harford Courant, *Good Reasons To Raise Age For Juvenile Justice*, HARTFORD COURANT (Nov. 17, 2015), https://www.courant.com/2015/11/17/good-reasons-to-raise-age-for-juvenile-justice/ (last visited Dec 18, 2023).

highlighted the work of advocates who worked to improve the treatment of juveniles then incarcerated in the criminal justice system.[162]

The multitude of these demographic and historical factors played a significant role in Connecticut's readiness to eliminate juvenile life without parole through legislation that occurred soon after the Supreme Court's ruling in *Miller v. Alabama* and following a landmark Connecticut Supreme Court case, *State v. Riley* argued in September of 2014.

State v. Riley

In November 2006, seventeen-year-old Akeem Riley of Hartford, Connecticut who had been enmeshed in gang activity for some time, drove past a group of teenagers, including sixteen-year-old Trey Davis of Bloomfield, Connecticut, and his friends. He removed a semi-automatic firearm from the car, and pointing it out of the window, fired several shots at the crowd, believing someone responsible for a gang-related shooting the previous week to be there. Instead, the bullets fired from the barrel of Akeem Riley's gun struck three innocent bystanders, injuring two, aged thirteen and twenty-one, and killing Trey Davis. Akeem Riley was subsequently arrested for his crimes after another incident two months after this crime during which the same gun was used and his profile was matched to that of the perpetrator of the drive-by shooting that killed Trey Davis. Officially becoming a justice-involved youth, Akeem Riley was tried and sentenced as an adult under the Connecticut criminal justice system. The jury convicted him of one count of homicide murder, two counts of attempt to commit murder, and two counts of assault in the first degree. For Akeem Riley, these charges and the decision made

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[162] Jacqueline Rabe Thomas, *Advocates Seek Investigation into DCF Treatment of Court-Involved Youth*, CT MIRROR (Apr. 14, 2014), http://ctmirror.org/2014/04/14/advocates-call-for-investigation-into-dcfs-treatment-of-court-involved-youth/ (last visited Dec 18, 2023).

by the sitting judge in the case sentenced him to a total of one hundred years behind bars without parole, the functional equivalent of a life sentence without parole.[163]

The trial court rendered its decision in 2009, three years before the Supreme Court's ruling in *Miller v. Alabama*, which stated that the Eighth Amendment barred the mandatory sentencing of life without parole to juveniles. Following this decision, Riley and his lawyers appealed his case to the Connecticut Appellate court, arguing that his sentence violated his Eighth Amendment right prohibiting cruel and unusual punishment as well as his Fourteenth Amendment right to due process of law.[164] Riley and his lawyers further contended that *Miller* required a court to consider the ways in which juveniles are psychologically different than adults as determined in *Miller*. However, the appellate court upheld the sentence and original ruling of the trial court, arguing that *Miller's* requirement to consider this type of evidence only applied to cases in which the sentencing scheme resembled that of mandatory life without parole. Mr. Riley's sentence was not mandatory. Furthermore, the appellate court ruled that Connecticut's sentencing scheme already aligned with these requirements.[165] After this ruling, Akeem Riley and his legal team appealed this decision to the Connecticut Supreme Court in 2014.

The Connecticut Supreme Court ruled to overturn the decision of the Court of Appeals and provide Akeem Riley with a new sentencing hearing. One can argue that this ruling was both influenced by recent legislative action in the state and was also a catalyst to the statute that would eventually ban juvenile life without parole in Connecticut. An aspect of the ruling in *State v. Riley* that likely influenced the legislature's passage of S.B. 796 (also known as Public Act 15-84) determination that Connecticut criminal justice system's handling of juvenile offenders was

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[163] *State of Connecticut v. Akeem Riley*, 110 A.3d 1205 (Conn. 2015).
[164] *Id.*
[165] *Id.*

not consistent with the requirements under *Miller v. Alabama*.[166] Ultimately, Connecticut's juvenile criminal reform of JLWOP sentencing was accomplished by the legislature only after the state Supreme Court decided *State v. Riley.* Nevertheless, the ongoing legislative reform efforts appear to have played a role in the Court's ruling. Before finalizing their ruling on this case, the Connecticut Supreme Court declined to hear Riley's claim regarding *Graham v. Florida* because the legislative branch was considering juvenile sentencing reforms stemming from recommendations made by a sentencing commission.[167]

State v. Riley (2015) relied heavily on the broad interpretation of the U.S. Constitution and the perception of the Constitution as a living document that was used in the majority opinions of the *Miller* Trilogy. This court also went further and expanded upon it. Justice McDonald, writing for the majority, stated, "We begin by acknowledging that Miller is replete with references to mandatory life without parole and like terms," thereby acknowledging that the United States Supreme Court's ruling in *Miller v. Alabama* was limited in its breadth.[168] However, due to numerous factors that the Connecticut Supreme Court found relevant, such as the fact that *Miller* and *Graham* equated life sentences for juvenile life without parole to the death penalty, the majority in this case drew an important conclusion. They argued, "*Miller* logically indicates that, if a sentencing scheme permits the imposition of that punishment on a juvenile homicide offender, the trial court must consider the offender's 'chronological age and its hallmark features' as mitigating against such a severe sentence."[169]

The Connecticut Supreme Court's decision in *State v. Riley* (2015), while it did not go as far as to JLWOP sentences are in fact unconstitutional, paved the way for the legislative ban,

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[166] *Miller*, *supra* note 49.
[167] *State v. Riley*, *supra* note 55.
[168] *Id.* at 10
[169] *State v. Riley*, *supra* note 55. at 14.

providing a potential blueprint for juvenile justice reform. In other words, by further narrowing the use of JLWOP sentences and extending the protocol mandated by *Miller* to review aspects of a youth's reduced culpability in *Riley*. Consequently, *State v. Riley* (2015) set the tone for state legislators who sought to pass JLWOP reform measures, especially because the state Supreme Court had drawn the analogy between life without parole and the death penalty in the *Miller* Trilogy cases discussed above.

P.A. 15-84 and the Abolition of Juvenile Life Without Parole

Following the *State v. Riley* decision on March 10th, 2015, prompted swift action from the Connecticut legislature to pass a pending bill, at the time known as S.B. 796, but which became Public Act No. 15-84 when in it was signed into law. The first draft of the bill was introduced in the Connecticut Senate in January of 2015, by seven Democratic senators whose party slightly favored increased juvenile justice reform according to data available at the time.[170] The first iteration of the bill proposed to update the Connecticut general statutes. The bill was intended "to comply with the Supreme Court of the United States by providing for review of sentences by persons who were under eighteen years of age when they committed their crimes, and providing guidelines for sentencing of juveniles convicted of certain serious felonies."[171] While the bill did not specifically say that the purpose was to ban juvenile life without parole sentences, providing review for these sentences in the language of the bill (with reference to *Miller* and *Graham*), indicates the importance of federal judicial decisions for state action on this matter.

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[170] The Pew Charitable Trusts, *supra* note 159.
[171] Sen. Looney et al., *AN ACT CONCERNING LENGTHY SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH AND THE SENTENCING OF A CHILD OR YOUTH CONVICTED OF CERTAIN FELONY OFFENSES.*, 02216, https://www.cga.ct.gov/2015/TOB/S/2015SB-00796-R00-SB.htm (last visited Dec 18, 2023).

In addition, various other factors played a role in how the bill was shaped and changed over time, including advocacy from various groups in Connecticut and nationally. Importantly, a key strength of this legislative means of criminal reform is lobbying, as it permits citizens to become part of the input of juvenile reform conversation. Several prominent national and state organizations such as the Connecticut chapter of the national ACLU[172] and Connecticut Voices for Children[173] advocated in favor of this bill when it was still in the Connecticut Senate and House of Representatives. Most of these organizations also published press releases. For example, in a press release, the ACLU of Connecticut wrote, "Connecticut lawmakers must end the disgraceful practice of sentencing children to mandatory life sentences without possibility of parole."[174] Furthermore the organization provided relevant statistical evidence regarding the disproportionate effect these sentences have on children of color to bolster their claim. Likewise, Connecticut Voices for Children, a research-based organization aimed at improving the lives of youth in the state, published and sent testimony to the Judiciary Committee considering the bill and expressed their support for SB 796. They argued that the " law simply gives young people the opportunity to present how they have grown and come to take responsibility for their actions."[175] This group also echoed claims consistent with *Miller v. Alabama* reasoning and stated that "S.B. 796 helps ensure that juvenile sentencing rules incorporate the scientific and legal consensus that has emerged concerning treatment of juveniles by the courts."[176] Both of

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[172] ACLU of Connecticut, *No Mandatory Life Without Parole for Children | ACLU of Connecticut*, (2015), https://www.acluct.org/en/press-releases/aclu-of-connecticut-no-mandatory-life-without-parole-for-children (last visited Dec 18, 2023).
[173] Eddie Joseph, *Testimony in Support of Senate Bill 796 An Act Concerning Lengthy Sentences for Crimes Committed by a Child or Youth and the Sentencing of a Child or Youth Convicted of Certain Felony Offenses*, (2015), https://ctvoices.org/wp-content/uploads/2015/03/030415_judic_sb796_childyouthcrimesentences.pdf (last visited Dec 18, 2023).
[174] *Id.*
[175] Joseph, *supra* note 172.
[176] *Id.*

these examples of community lobbying, from the ACLU and from Connecticut Voices for Children were intended both to raise awareness for the bill for their wider memberships and to show the lawmaking bodies their support for the bill through strong language emphasizing the magnitude of the issue at hand.

After referral to the Judiciary Committee, the bill went through several iterations before reaching its final form. The language of the secondary draft of the bill in section (f) included an essential regulation barring the imposition of a juvenile life without parole sentence that stated:

> a person convicted of one or more crimes committed while such person was under eighteen years of age, who is incarcerated on or after October 1, 2015, and who received a definite sentence or aggregate sentence of more than ten years for such crimes prior to, on or after October 1, 2015, may be allowed to go at large on parole,[177]

This provision remained in the final version of the bill signed into law in June of 2015. Furthermore, the final version of the bill, in the words of the Campaign for the Fair Sentencing of Youth, "goes further than *Miller*" because it requires judges to consider the hallmark features of adolescence and scientific differences between adults and children in all cases in which a child is sentenced as an adult for serious crimes. It additionally outlines "youth related factors" for the parole boards reviewing these sentences to consider.[178] The bill, which was signed into law as Public Act No. 15-48 by Connecticut Governor, Dannel Malloy on June 23, 2015, embodied the evolving standards of decency standard that was supported by the science regarding adolescent brain development. The bill reflected the more favorable views of America towards juvenile criminal reform and abolished JLWOP sentences in Connecticut.

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[177] Connecticut Judiciary Committee, *AN ACT CONCERNING LENGTHY SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH AND THE SENTENCING OF A CHILD OR YOUTH CONVICTED OF CERTAIN FELONY OFFENSES.*, 04075SB00796JUD, https://www.cga.ct.gov/2015/TOB/S/2015SB-00796-R01-SB.htm (last visited Dec 18, 2023).
[178] Admin, *supra* note 157.

Connecticut As A Model: What The Country Could Look Like Without JLWOP

"Going further than *Miller*"[179] with the legislative action taken in Connecticut would allow Public Act No. 15-84 to have drastic effects in shaping a vision of what a youth criminal's future without a JLWOP sentence can look like nationally. With the sentence banned, juveniles in Connecticut now are subject to new policies and parole services that are aligned with scientific data on adolescent development, namely that criminal activity declines sharply after the age of thirty.[180] In addition scientific studies confirm that long sentences do not act as better deterrents of crime than the shortest possible sentence for the respective crime.[181] In fact, a study conducted by Connecticut's own Institute of Municipal and Regional Policy in 2017 focused on recidivism in the state examined data in Public Act. No. 15-24 and concluded, "The prevalence of offending tends to increase, peaking in late adolescence (ages 15 to 19) and then declining in their early 20s"[182]

Eight years after the ban on JLWOP, Connecticut has been able to move towards more progressive criminal reform policies that fall in line with these scientific findings, such as S.B. 952. This bill, passed in the summer of 2023, broadens parole eligibility, and is specifically targeted at those who commit crimes before the age at which scientists agree the adolescent brain stops maturing and when a sense of impulse control is developed fully. The bill states that a person who commits a crime and is sentenced to more than ten years may be eligible for parole "if such person is serving a sentence of fifty years or less, such person shall be eligible for parole

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[179] Connecticut abolishes life without parole for children, CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH | CFSY (2015), https://cfsy.org/connecticut-abolishes-life-without-parole-for-children/ (last visited Dec 18, 2023).
[180] Ashley Nellis, Ph.D., *America's Increasing Use of Life and Long-Term Sentences*, THE SENTENCING PROJECT (2017), https://www.sentencingproject.org/reports/still-life-americaos-increasing-use-of-life-and-long-term-sentences/ (last visited Dec 18, 2023).
[181] *Id.*
[182] RENEE LAMARK MUIR ET AL., *Recidivism Among Adjudicated Youth on Parole in Connecticut*, (2017), https://imrp.dpp.uconn.edu/wp-content/uploads/sites/3351/2021/09/2017-July-Recidivism.pdf (last visited Dec 18, 2023).

after serving sixty per cent of the sentence or twelve years, whichever is greater, or if such person is serving a sentence of more than fifty years, such person shall be eligible for parole after serving thirty years."[183] As a result, someone who commits a crime during this age range of reduced culpability will be subject to better opportunities for parole. Likewise, it also permits parole at an age where many of the convicts are unlikely to reoffend, past the age of 30 years old. Someone who is twenty-one years old and charged with thirty years in prison for example, has the opportunity to be released at the age of thirty-three instead of fifty in order to provide an opportunity for career and education success that would not be possible under the terms of a longer sentence.

Connecticut's parole system is further fortified by a residential program attempting to reduce recidivism for these individuals. Newly released criminals are mandated to stay in a halfway house for at least ninety days, with the typical stay spanning from three to six months. In partnership with the Connecticut Department of Corrections, the state offers further transitional housing programs in which inmates are housed with another person who is formerly incarcerated and a case manager assigned to the building.[184] In the words of journalist Kelan Lyons of the *Connecticut Mirror*, the attitude of the Connecticut parole board has followed "in the spirit of the bill," the first iteration of it which failed passage in 2021, providing commutations of sentences to eleven prisoners in Connecticut who committed crimes as minors and before the age of 25.[185] The *Mirror* article recorded interviews with these prisoners that documented stories consistent

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[183] Connecticut General Assembly, *AN ACT CONCERNING PAROLE ELIGIBILITY FOR AN INDIVIDUAL SERVING A LENGTHY SENTENCE FOR A CRIME COMMITTED BEFORE THE INDIVIDUAL REACHED THE AGE OF TWENTY-ONE AND CRIMINAL HISTORY RECORDS ERASURE.*, (2023).

[184] Connecticut State & Department of Mental Health and Addiction Services, *Transitional Services*, CT.GOV - CONNECTICUT'S OFFICIAL STATE WEBSITE, https://portal.ct.gov/DMHAS/Divisions/Forensic-Services/Transitional-Services (last visited Dec 18, 2023).

[185] Kelan Lyons, *CT Parole Board Shortens Sentences of 11 Men Convicted of Murder*, CT MIRROR (Jan. 21, 2022), http://ctmirror.org/2022/01/21/parole-board-shortens-sentences-of-11-men-who-committed-crimes-when-they-were-young/ (last visited Dec 18, 2023).

with the opportunities for reform that juveniles who have committed crimes before their brains finished developing are likely to have. Prisoner Demetrius Miller, who acknowledged his guilt, said to the parole board, "The very worst thing that anybody can do in this world, I did." Others expressing the determination to apply themselves for good like prisoner Juan Maldonado who stated, "What I've been doing is try to better myself, and to help those that are in the same or similar circumstance."[186] These moving statements and accounts from real prisoners who experienced confirm that incarcerated youth are capable of undergoing significant, positive change if given the opportunity for early release.

Connecticut's successful legislative actions that ban juvenile life without parole demonstrate its commitments to the progressive legal precedent set by Justice Kennedy and the Supreme Court in the *Miller* Trilogy of cases. The judges and lawmakers involved in *State v. Riley* and the passage of Public Act 15-84 were able to build upon this important series of Supreme Court cases. Furthermore, it is the combination of the Connecticut Supreme Court's decision in *Riley* and the legislature's passage of Public Act 15-84 that brought about necessary and important change to the state's juvenile sentencing process that was consistent with evolving public attitudes about the proper treatment of youthful offenders in the state.

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[186] *Id.*

Chapter Five: State Responses to the Miller Trilogy and Jones: Case Study Two and Conclusions

Tennessee

It should be noted first and foremost that, unlike Connecticut, Tennessee is one of the twenty-two states that has yet to ban JLWOP as a possible sentence for children (See Fig. 1). Yet, the state has implemented some progressive juvenile justice reforms as a result of a 2022 Tennessee's Supreme Court case, *State of Tennessee v. Tyshon Booker.*[187] The ruling, which banned mandatory life sentences for children, can perhaps provide a model for other southern states that may seek to reform their approach to juvenile sentencing.

Southern States such as Tennessee have been historically conservative on the topic of juvenile justice reform. Currently, twenty-seven states have yet to ban juvenile life without parole. It is important to note that eight are in the south, six are in the Midwest, five are in the northeast, and three are in the west. Tennessee has a history of imposing harsh penalties on juvenile offenders (See Fig. 1). In 1989, The Tennessee Sentencing Reform Act was passed and classified all felonies according to their seriousness and a defendant's number of prior convictions. These factors were combined to establish a set of sentencing guidelines. However, in 1995, in response to concerns about legislative prerogatives,[188] the State of Tennessee abolished its Sentencing Commission. The commission was a body made up of specialized professionals in criminal justice who collected and analyzed a broad array of information on sentencing practices in order to make adjustments when necessary. In what can very well be perceived as an abuse of power, in response, the legislature enacted new laws that gradually

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[187] State of Tennessee v. Tyshon Booker, 656 S.W.3d 49 (2022).

[188] THE TENNESSEE GOVERNOR'S TASK FORCE ON SENTENCING AND RECIDIVISM & THE VERA INSTITUTE OF JUSTICE, *Final Report of the Tennesse Governor's Task Force on Sentencing and Recidivism: Recommendations for Criminal Justice Reform in Tennessee*, (2015), https://www.vera.org/downloads/publications/tennessee-governors-task-force-sentencing-corrections-vera-report-final.pdf (last visited Dec 18, 2023).

increased the sentencing schemes laid out in The Tennessee Sentencing Reform Act of 1989.[189] The legislature at the time did not spare the children from these "Truth in Sentencing" initiatives. In fact, these gradual sentencing increases aligned with media's focus on the fear of violent, incorrigible children known as "superpreadators," and no effort was made to shield juvenile offenders who were transferred to adult courts from these inflated sentences that also applied to adults.

Prior to November 2022, Tennessee's juvenile justice system was known as "the harshest in the country"[190] because it included an automatic life sentence for juveniles. In 2017, five years prior to this change, Tennessee had thirteen inmates serving life without parole for crimes they committed as children. Furthermore, approximately one hundred inmates convicted as juveniles were serving this mandatory life sentence with parole eligibility limited to their serving fifty-one years in prison first.[191]

Unlike Connecticut, Tennessee's political demographics make legislative juvenile justice reform difficult. Tennessee does not require party affiliation declarations when individuals register to vote. As a result, the most reliable data of citizen partisanship comes from the Pew Research Center's "Religious Landscape Study" conducted in 2014. The survey reveals that 48% of Tennessee residents identify themselves as leaning Republican as compared to only 36% of

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[189] David Raybin, *The Truth About Truth in Sentencing: Tennessee's Experience*, 59 THE TENNESSEE BAR ASSOCIATION (2023), https://www.tba.org/?pg=Articles&blAction=showEntry&blogEntry=85872 (last visited Dec 18, 2023).
[190] Aaryn Urell, *Tennessee Supreme Court Strikes Down Mandatory Life Sentences for Children*, EQUAL JUSTICE INITIATIVE (2022), https://eji.org/news/tennessee-supreme-court-strikes-down-mandatory-life-sentences-for-children/ (last visited Dec 18, 2023).
[191] The Associated Press, *A State-by-State Look at Juvenile Life without Parole*, THE SEATTLE TIMES (Jul. 30, 2017), https://www.seattletimes.com/nation-world/a-state-by-state-look-at-juvenile-life-without-parole/ (last visited Dec 18, 2023).

them identifying as leaning Democrat.[192] The 12% difference is not, however, is not reflected in the makeup of the Tennessee General Assembly. In 2022, the same year that *State of Tennessee v. Tyshon Booker* was decided, the Tennessee House of Representatives had 71 Republicans and 24 Democrats[193] while the Tennessee State Senate had 27 Republicans and 6 Democrats.[194] and the Tennessee State Senate had 27 Republicans and 6 Democrats.[195] With the Republican party holding a significant majority in both houses, more conservative juvenile justice policies typically prevail. Moreover, the state is currently involved in ongoing litigation challenging its latest redistricting plan, which underrepresents some minority voters.[196]

Republican dominance in the legislature has affected the state's inability to pass legislation banning juvenile life without parole or their mandatory life sentencing schemes Republicans are more likely than Democrats to support and enact juvenile criminal reform.[197] For example, in 2017 the state legislature, still dominated by Republicans[198] considered a bill to allow juveniles to be eligible for parole after twenty years in prison It was amended to thirty years in prison, even though some Tennessee legislators believed that these individuals deserved to serve more time for the crimes they committed as youth.[199] Despite their opposition, the bill was eventually enacted.

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[192] The Pew Charitable Trusts, *Party Affiliation among Adults in Tennessee*, PEW RESEARCH CENTER'S RELIGION & PUBLIC LIFE PROJECT, https://www.pewresearch.org/religion/religious-landscape-study/state/tennessee/party-affiliation/ (last visited Dec 18, 2023).
[193] Tennessee House of Representatives, BALLOTPEDIA, https://ballotpedia.org/Tennessee_House_of_Representatives (last visited Dec 18, 2023).
[194] *Id.*
[195] Tennessee State Senate, BALLOTPEDIA, https://ballotpedia.org/Tennessee_State_Senate (last visited Dec 18, 2023).
[196] Jonathan Mattise & Kimberlee Kruesi, *Judges Rule Against Tennessee Senate Redistricting Map Over Treatment of Nashville Seats*, AP NEWS (2023), https://apnews.com/article/tennessee-senate-redistricting-b300de49baf706d862c9f075c8642baa (last visited Apr 20, 2024).
[197] DATA FOR PROGRESS, THE JUSTICE COLLABORATIVE INITIATIVE, AND FAIR AND JUST PROSECUTION, *supra* note 151.
[198] Senate Members - 110th Tennessee General Assembly, https://www.capitol.tn.gov/senate/archives/110GA/members/index.html (last visited Dec 18, 2023).
[199] The Associated Press, *supra* note 191.

It is likely that Tennessee's failure in bringing about legislative juvenile justice reform prompted proponents of reform to utilize the judicial process instead. Often, lawyers, advocates, and other civil rights activist groups such as the ALCU, the Sentencing Project, and the Equal Justice Initiative bring "test cases" to a state's supreme court or the region's federal circuit courts as a means to challenge laws in court when legislative action fails to change them. *State of Tennessee v. Tyshon Booker,* a case brought in 2022, provided an opportunity to bring legal action for reform. One can argue that the facts of the case, the arguments posed, and the justices on the bench created a perfect storm for legal change in a state that had resisted legislative change in the past.

***State v. Tyshon Booker* (2022): Facts of the Initial Case:**

In Knoxville, Tennessee, in November 2015, sixteen-year-old Tyshon Booker, entered a car with another juvenile, Bradley Robinson, and a friend of Bradley's, twenty-six-year-old G'Metrik Caldwell. The reason behind this car ride remains disputed, with the State of Tennessee and their witnesses stating that the purpose was a planned robbery. A neighbor of Tyshon Booker, who testified in his criminal trial, stated that Tyshon told them he and Bradley had wanted to rob the victim, a claim the state attempted to corroborate with the evidence taken from the victim's cellphone that was found in Tyshon Booker's pocket upon arrest.[200] Tyshon had further told that neighbor that when G'Metrik Caldwell resisted, that Bradley Robinson yelled at Tyshon, who was carrying a weapon at the time, to shoot.[201] Mr. Booker's version of the events, however, differ. When he testified, he told the court that he had acted in self-defense, explaining that he and Mr. Robinson rode around with G'Metrik Caldwell for some time, smoking marijuana and

[200] *State v. Booker*, *supra* note 187.
[201] *Id.*

taking pills given to him by Mr. Caldwell, something that would have likely altered his mental state at the time of the crime.[202] In his account, Mr. Caldwell pulled the car to the curb and an argument broke out when Tyshon noticed him reaching for something on the floor of the car and turning to the front seat of the car. Bradley Robinson apparently yelled, "He got a gun, bro!" and after hearing this, Tyshon Booker drew his own weapon.[203] What facts are not disputed is that six rounds were fired into G'Metrik Caldwell that day, and he did not survive.[204]

Tyshon Booker and Bradley Robinson, both juveniles at the time, were subsequently arrested and brought to court. The state brought forth two charges of first-degree felony murder and two counts of aggravated robbery, and the jury determined that both boys were guilty on these charges, thereby convicting them. The trial court did not offer Tyshon Booker a sentencing hearing as is customary during a criminal court case such as this one. Instead the two felony murder counts were merged and the judge sentenced this sixteen year old boy to life in prison, as it was the mandatory sentence because these boys were tried as and subject to the same penalties as adults.[205] Under Tenn. Code Ann. § 40-35-501(h)(2), this life sentence is means "a sixty-year term with release after fifty-one years if all applicable sentencing credits are earned and retained."[206] Consequently, Tyshon Booker, if he had the opportunity to be released on parole, would be nearly seventy years old. The vast majority of his life under this sentence would be spent in jail, perhaps all of it, for a crime that he committed as a child, before his brain could finish developing a sense of impulse control and a proper perception of his actions and their consequences.

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[202] *Id.*
[203] *Id.* at 5.
[204] *Id.*
[205] *Id.*
[206] TN Code § 40-35-501 (2021)

State of Tennessee v. Tyshon Booker (2022): Oral Arguments at the Tennessee Supreme Court

The case was appealed to the Tennessee Supreme Court on constitutional grounds. During the oral arguments in State of *Tennessee v. Tyshon Booker* sought to apply the U.S. Supreme Court's rulings in *Miller v. Alabama* and *Graham v. Florida* and to extend the application of the eighth Amendment to Booker's case. The appellant's attorneys based their oral arguments on two prongs. First, they argued that Mr. Booker's mandatory life sentence constituted "a harsher sentence than a similarly situated juvenile would receive anywhere else in the country," and it therefore violated the *Graham* and *Miller* precedents. Alternatively, they argued that even if the court found otherwise, such a lengthy sentence for a juvenile was still a violation of Tyshon Booker's Eighth Amendment rights.[207]

Booker's counsel raised questions about the specific sentences that trigger the protections of *Graham* and *Miller* because the state did not argue that the protections of these landmark cases apply only to those life without parole sentences. The attorneys assert that while the specific facts of the case in *Miller* pertained to a JLWOP sentence that the opinion Supreme Court's decision extended to sentences without a "meaningful opportunity for release."[208] "All of the description of what was wrong with that sentence" (in Graham and Miller), Attorney Harwell argued, "is wrong in Mr. Booker's sentence."[209] The attorney for Mr. Booker goes on to argue that LSWOP for juveniles was defined in *Graham* as sentences without meaningful opportunity of release and therefore Tyshon Booker would have been offered release after fifty-one years. As Justice Kennedy stated in Graham *v. Florida* were reiterated, so too Booker's attorney argued

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[207] TNCourts, STATE OF TENNESSEE V. TYSHON BOOKER, (2022), https://www.youtube.com/watch?v=QOgOOcDowZk.
[208] *Id.*
[209] *Id.*

that the rational in defining these sentences relies upon the fact that they "deny a chance for fulfillment outside of prison walls, deny a chance for reconciliation with society, deny a chance to reenter society, to reenter the community, deny a hope of restoration."[210]

Additionally, Tyshon Booker's defense advocated for the application of *Miller*'s requirement for the consideration of a juvenile's reduced culpability, susceptibility to outside peer pressure like Mr. Booker's friend's supposed shouting at him to shoot, and a juvenile's potential for rehabilitation to be extended to juveniles' cases with possible lengthy sentences such as Tyshon's.[211] His attorney pointed out the very correct assumption that they would be facing "a much different scenario here if there had been an avenue for us to present that evidence to be considered."[212] He also referenced a medical report that they were not permitted to enter into evidence that detailed Tyshon Booker's PTSD, his background, and examples of psychological help that a professional examiner determined would help in rehabilitating him. Notably, these are the types of factors that *Miller* deemed significant as mandatory and necessary in JLWOP sentences, but that could not be considered given Tennessee's mandatory life sentencing scheme that was applied to Tyshon Booker's case.

Tyshon Booker's defense also argued that the mandatory sentencing of a juvenile to at least 51 years to life in prison violated the Eighth Amendment's provision against cruel and unusual punishment. Mr. Booker's defense invoked federal standards for cruel and unusual punishments, defined as "contemporary standards, disproportionality of the sentence, and penological objectives,"[213] concluding that Tennessee's mandatory 51-year sentence fails to meet

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[210] *Id.*
[211] *Id.*
[212] *Id.*
[213] *ibid*

contemporary standards, is wildly disproportionate for a child, and is inconducive to the state's penological objectives.

Noting Tennessee's failure to meet contemporary standards, Booker's attorney argued that "nowhere else would someone convicted of felony murder in Mr. Booker's situation as a juvenile be given even above a 40-year mandatory minimum."[214] Furthermore, to prove the aspect of disproportionality in such a lengthy sentence for a juvenile, the attorney cited the existence of scientific evidence proving the diminished culpability of adolescents. Finally, he made the claim that juvenile sentences like the one imposed on Tyshon Booker go directly against any of the state of federal penological objectives of sentencing. The attorney emphasized: "The idea that a mandatory sentence is imposed on a juvenile in this situation goes against all of the principals of the Sentencing Reform Act regarding consideration of rehabilitation, regarding consideration of a sentence no greater than deserved, regarding an effort to avoid inequalities in the system"[215] The presentation of these three pieces of evidence proved the ways in which this type of mandatory sentencing scheme that requires children to be eligible for parole only after such a long time in prison constitutes cruel and unusual punishment. The consequence is that such sentencing schemes do not permit an opportunity for parole under the Eighth Amendment.

State of Tennessee v. Tyshon Booker **(2022): Ruling**

Tyshon Booker's attorneys ultimately succeeded in reforming juvenile justice in Tennessee by focusing on the cruel and unusual punishment argument. The Tennessee Supreme Court agreed with the appellants in the case that mandatory life sentences for juveniles violate the Eighth Amendment of the U.S. Constitution. It is significant that much like the Connecticut

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[214] STATE OF TENNESSEE V. TYSHON BOOKER, *supra* note 207.
[215] *Id.*

Supreme Court in *State v. Riley* (2015),[216] in its opinion the Tennessee Supreme Court cited both the scientific evidence of reduced culpability in children and the *Miller* Trilogy's affirmation of the need to factor juvenile criminal sentencing schemes. However, while the Connecticut Supreme Court applied this to juvenile life without parole sentences, the Tennessee Supreme Court applies this to mandatory life sentences even if those sentences include parole opportunities.

The court relied upon *Miller* and *Graham* to consider Attorney Harwell's arguments and draw this conclusion, stating, "Although this case involves a life sentence, and not death or life without parole, three essential rules can be derived from the *Thompson*, *Roper*, *Graham*, and Miller line of cases when considering proportionality."[217] In doing so, the Court recognized the precedent these cases set even for different juvenile sentencing schemes. These rules they outlined included three elements. (1) The Eighth Amendment requires punishment for juveniles even outside of juvenile life without parole sentences to be "graduated and proportioned." (2) The "steps must be taken to minimize the risk of a disproportionate sentence when juveniles are facing the possible imposition of a state's harshest punishments." (3) "these steps, whatever they may be, must allow the sentencer to take the mitigating qualities of youth into account."[218] Notably, the court's inclusion of the phrase "a state's harshest punishments" in this case extends includes not only mandatory life sentences for juveniles without parole but also those sentences that are mandated, lengthy, and afford the opportunity of parole. Additionally, the Tennessee Supreme Court in a very progressive move pointed out that the "Tennessee is out of step with the rest of the country in the severity of sentences imposed on juvenile homicide offenders." The

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[216] *State v. Riley*, *supra* note 55.
[217] *State v. Booker*, 656 S.W.3d 49,12 (2022).
[218] *Id.*

Court noted that neighboring states provided earlier opportunities for release and individualized sentencing protocols for juveniles like Tyshon Booker.[219]

In concluding their opinion, the Tennessee Supreme Court determined that it is unconstitutional under the Eighth Amendment of the U.S. Constitution to automatically sentence a child to life imprisonment with no possibility of release for 51 years, and required that sentencing must be individualized and judges must be allowed to consider a defendant's youth and particular associated qualities when sentencing. The Court did not accept Booker's attorneys' argument that a mandatory life sentence of at least 51 years, if granted parole, should be considered a functional equivalent to juvenile life without parole. The Court stated: "Because we conclude that Tennessee's mandatory fifty-one- to sixty-year sentence violates the Eighth Amendment, we need not consider Mr. Booker's arguments that his sentence is equivalent to life without parole and is thus subject to *Miller*"[220] Tyshon Booker's sentence was revised to apply the release eligibility provision that the Tennessee General Assembly enacted in 1989 and never repealed, which moves parole eligibility from fifty-one years of his sixty-year sentence served, to eligibility for supervised release on parole after serving between twenty-five and thirty-six years.[221] Once again, much like Connecticut's S.B. 952, this provides for parole eligibility at an age where juvenile defendants' likelihood to reoffend drops drastically, yet still allows juveniles the opportunity to experience "fulfillment outside of prison walls" and "reconciliation with society,"[222] as Justice Kennedy and Booker's attorneys argued should be required.

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[219] *Id*. at 15.
[220] *Id.* at 18.
[221] *Id.*
[222] STATE OF TENNESSEE V. TYSHON BOOKER, *supra* note 207. https://www.youtube.com/watch?v=QOgOOcDowZk

Potential Implications of the Booker Case for the Future of Lengthy Juvenile Sentences

Although Tennessee did not ban juvenile life without parole sentences in the *Booker* case, the implications of the ruling may well have important consequences for reform in other states that utilize courts and the judicial process. Though the Tennessee Supreme Court refused to recognize mandatory life sentences that still permit parole as functional equivalents to JLWOP sentences as was the case in *Miller v. Alabama*, the arguments posed by Tyshon Booker's attorneys provide a means by which the reasoning of *Miller v. Alabama* (2012) can be extended.

Furthermore, the oral arguments and the court's ruling suggest implications that might allow possible Eighth Amendment challenges for mandatory and lengthy juvenile sentencing protocols that fail to provide for a juvenile's diminished culpability, including juvenile life without parole sentences. As the court indicated in the majority opinion, "the United States Supreme Court has not yet addressed the precise question before us."[223] By deciding that even sentences that permit the opportunity for parole can be unconstitutional, as in this case, the ruling may provide grounds for a possible federal expansion of Eighth Amendment protections for juveniles against the "cruel and unusual punishments." Examples include mandatory sentences for juveniles non-withstanding the definition of "life," and opportunities for parole that fall far later than what would be considered reasonable given their increased capacity for reform. It is significant that the Supreme Court has taken into consideration the changes imposed by states in its opinions before.[224] Actions such as Tennessee's, taken towards reforming the juvenile justice system to conform with evolving standards in other states, can further normalize extending parole eligibility opportunities for youth for other states who have not yet done so.

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[223] *State v. Booker*, 656 S.W.3d 49, 4 (2022).

Conclusions

The analysis of state juvenile justice reform in Connecticut, a liberal state, and Tennessee, which is conservative, reveal that there may be reasonable hope for gradual nationwide abolition of juvenile life without parole by the states and other important juvenile justice reforms, especially if the U.S. Supreme Court continues to undermine the *Miller* Trilogy precedents. Despite their differing political demographics and dynamics, both states adopted policies that are consistent with *Miller*'*s* progressive approach to the treatment of juveniles in the criminal justice system. Just as the *Miller* trilogy cases built upon one another, Connecticut's Public Act No. 15-84, S.B. 952, and Tennessee's *State of Tennessee v. Tyshon Booker* built upon *Miller vs. Alabama* In each case, the modern scientific understanding of the developing adolescent brain factored into the decisions made by Connecticut and Tennessee. As mentioned in Chapter Two, in *Jones v. Mississippi* the U.S. Supreme Court retreated from this pattern by neglecting to raise the standards in juvenile sentencing cases. Nevertheless, even in *State of Tennessee v. Tyshon Booker* (2022) which occurred a full year after the Jones decision was released, the retrogressive *Jones* ruling did not control the Tennessee Supreme Court's holding. Despite the differing ideological perspectives that drive policy making in Connecticut and Tennessee, their policy choices outcomes for JLWOP reform share much in common. Moreover, as noted earlier, each state utilized a specific branch of government to achieve reform, the legislature in Connecticut, and the courts in Tennessee. As a result, there are two good models available to policy makers in others states who seek to undertake reform of JLWOP and related matters. In fact, three states in

2024 have already banned juvenile life without parole already: Illinois,[225] New Mexico,[226] and Minnesota.[227]

In addition, some research suggests that state initiatives for juvenile justice reform also can also benefit from activist groups who lobby at the state level. As previously established, public opinion largely disapproves of juvenile life without parole.[228] The Connecticut ACLU and Connecticut Voices for Children played a role in getting Connecticut to ratify Public Act No. 15-84 and abolish juvenile life without parole, highlighting a benefit of legislative action in that the legislative process inherently encourages the input of public opinion. Though Tennessee has yet to ban JLWOP, in the oral argument hearing for *The State of Tennessee v. Tyshon Booker* (2022), the Court received an amicus brief from religious organizations in support of Booker's arguments against the sentencing scheme for juveniles and referred to it in their questioning of Booker's attorney.[229] Local activist organizations or chapters of larger organizations that advocate for fair sentencing for juveniles have the advantage of tailoring their suggestions to the specific state and its identified areas for reform, rather than just imposing a broad policy change for the entire country, which would be likely to invite more controversy among the states.

Finally, their similar expansions of parole eligibility for youth in both Tennessee's Supreme Court's decision to apply *Miller*, *Graham*, and *Roper* to sentencing outside of juvenile life without parole, and Connecticut's recent S.B. 952, which expands parole eligibility for those convicted of a crime before the age of twenty-one, are consistent with national polling

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[225] Urell, *supra* note 155.
[226] Heidi, *Several States Consider Bills to End Juvenile Life Without Parole*, (2023), https://www.endfmrnow.org/several-states-consider-bills-to-end-juvenile-life-without-parole (last visited Dec 18, 2023).
[227] SF 2909 Status in the Senate for the 93rd Legislature (2023 - 2024), https://www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF2909&ssn=0&y=2023 (last visited Dec 18, 2023).
[228] DATA FOR PROGRESS, THE JUSTICE COLLABORATIVE INITIATIVE, AND FAIR AND JUST PROSECUTION, *supra* note 151.
[229] STATE OF TENNESSEE V. TYSHON BOOKER, *supra* note 207. https://www.youtube.com/watch?v=QOgOOcDowZk

statistics[230] on these topics. This trend to expand parole eligibility, exemplified by these two states, may pave the way for gradual nationwide reform of harsh juvenile sentences such as juvenile life without parole, as more parole opportunities are being offered to children than were available in the past. Consequently, it may be possible to create a landscape more amenable to the abolition of juvenile life without parole than what currently exists on the United States Supreme Court. Finally, should they choose to do so, states have remarkable power in their hands to abolish the unreasonably harsh and outdated juvenile life without parole sentence through legislative and judicial means that are not exclusive to their location, histories, and current political demographics.

[230] DATA FOR PROGRESS, THE JUSTICE COLLABORATIVE INITIATIVE, AND FAIR AND JUST PROSECUTION, *supra* note 151.

Chapter Six: Policy Proposals, Summary, and Conclusions

The new tide of legislative and judicial abolition and juvenile sentencing reform in the post-*Miller* era has been potent in counteracting the conservative degradation of the *Miller* Trilogy's spirit of reform in the *Jones v. Mississippi* ruling. Given the effectiveness that JWLOP abolition and sentencing reform efforts have had in the states compared to the nearly complete lack of progress federally, a focus on state-by-state sentencing reform may be more effective than pursuing it on a national level. The reform recommendations that this chapter makes will be for a state-by-state approach that relies upon the application of both existing Supreme Court precedents and efforts to reduce recidivism and improve advocacy, are promising and manageable solutions for the states and activists in it to undertake.

Expanding Precedents

There are important similarities between public sentiment about the treatment of juveniles in the criminal justice system when the Supreme Court abolished the death penalty for juveniles in 2005 and the American public's changing attitudes about JLWOP sentences at the present moment. When he represented Evan Miller in *Miller v. Alabama* in 2012, Attorney Bryan Stevenson suggested that a categorical ban on juvenile life without parole, one that would impose a substantial limitation on a state's use of a life without parole sentence, would be "consistent with the Court's understanding about child status and development."[231] As mentioned in Chapter Two, the Supreme Court in *Miller* failed to create a complete categorical ban despite evolving public disapproval of the practice. Likewise, today polling indicates that the American public now also disapproves of juvenile life without parole due to the growing acceptance of

[231] Transcript of Oral Argument at 9, Miller v. Alabama, 567 U.S. 460 (2012) (No. 10-9646)

scientific evidence that the psychological development of juvenile offenders sets them apart from adult offenders and therefore requires a sentencing system tailored to their needs.

As discussed previously in Chapter Two, the Supreme Court based its 2005 decision in *Roper v. Simmons* on three factors, namely, international acceptance of the death penalty for youth, the popularity of the death penalty for youth in the states, and scientific evidence pointing to an inherent disproportionality of punishment for the juvenile mind at that stage of adolescent development.[232] Addressing the first factor that influenced the Court's decision to abolish the death penalty for children at the time *Roper* was decided, the United States was the only country in the entire world to impose that sentence on juveniles.[233] In his majority opinion, justice Kennedy pointed out that, "Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty." According to the Juvenile Law Center's 2023 data, the United States is the only country in the world to allow the sentence of life without parole for juveniles.[234] Given the significance of the precedent set by *Roper*, America's unique imposition of JLWOP should also be considered when determining the unconstitutionality of the practice under the Eighth Amendment.

All three *Miller* cases have established the need to factor in the existence and direction of domestic policy when determining whether a punishment can be considered cruel and unusual. While most states did not abolish JLWOP sentences after the decisions in *Graham* or *Miller* in 2010 and 2012, a new, more promising trend has now emerged. In 2023, Illinois became the 26th state in the union to ban juvenile life without parole, and as of 2024, twenty-eight states have

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[232] *Roper*, *supra* note 42.
[233] *Id.* at 575.
[234] Juvenile Life Without Parole (JLWOP) | Juvenile Law Center, *supra* note 13.

banned the sentence.[235] News reports [236] and legislative records [237] confirm that the state of Michigan may soon become the twenty-ninth state to abolish juvenile life without parole. As a result, over half of the states in America have now banned juvenile life without parole sentences. In addition, five states still have the sentence as an option for children, but currently has no one serving it.[238] The rapid reforms in just last twelve years that have taken place in these states that now ban or limit the application of juvenile life without parole actually outpace the rate of change that occurred following the *Roper* ruling that declared the death penalty sentence unconstitutional for children.

Lastly, the acceptance of the brain science around adolescent development has also expanded since the *Miller* decision. Just a year before *Miller v. Alabama* was argued and decided in 2012, the science regarding the point at which the maturation of the adolescent brain was complete was still considered "emerging" among professionals.[239] However, in the decade that followed, neuropsychologists have largely come to the consensus that the brain, primarily the prefrontal cortex, the part of the brain that controls prompts logic and reason in decision making does not finish developing until the age of 25. Prior to that time, brains in juveniles rely heavily on the limbic system, a group of systems in the cerebrum of the brain governing intensity of emotions including fear, anger, and the fight or fight response.[240] Only recently have the

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[235] Roussell, *supra* note 147.
[236] Senate and House Introduce Bipartisan Legislation to End Juvenile Life Without Parole in Michigan, MICHIGAN SENATE DEMOCRATS (Mar. 3, 2023), https://senatedems.com/blog/2023/03/03/senate-and-house-introduce-bipartisan-legislation-to-end-juvenile-life-without-parole-in-michigan/ (last visited Mar 19, 2024).
[237] Matthew Fahr, *State Considering Juvenile Life without Parole Sentencing Ban*, THE OAKLAND PRESS (Jan. 7, 2024), https://www.theoaklandpress.com/2024/01/07/state-considering-juvenile-life-without-parole-sentencing-ban/ (last visited Mar 19, 2024).
[238] Roussell, *supra* note 147.
[239] Tony Cox & Sandra Aamodt, *Brain Maturity Extends Well Beyond Teen Years*, https://www.npr.org/2011/10/10/141164708/brain-maturity-extends-well-beyond-teen-years (last visited Mar 19, 2024).
[240] Sharma et al., *supra* note 20.

scientific and legal communities come to agree that juvenile culpability for criminal offenses is inherently different than for adults because juveniles cannot possess the same mens rea as adult offenders. Rather, it is substantially reduced and thus cannot completely meet the mental state required to convict a juvenile for a specific crime like homicide that requires intent. Moreover, the current scientific understanding of a child's "diminished capacity," recent studies providing evidence that rational decision making depends upon changes in the brain's function and maturation alone,[241] and the increased credibility given to the accuracy of the age-crime curve, are consistent with the factors that influenced the Supreme Court's decision in *Roper*.

More specifically, the *Roper* Court emphasized these qualities in juveniles: (1) a "lack of maturity and an underdeveloped sense of responsibility;" (2) a vulnerability and susceptibility to "negative influences and outside pressures, including peer pressure;" and fact that the character of juveniles is not fully formed and in fact "transitory."[242] This assessment of juvenile psychological development identified in *Roper* should also be applied to children facing JLWOP sentences. Furthermore, these ideas are even more widely accepted now than they were by the scientific community than they were when *Roper* was decided. In *Roper*, Justice Kennedy, writing for the majority stated that "these differences render suspect any conclusion that a juvenile falls among the worst offenders."[243] He therefore made the determination that they could not be subject to the punishment of death that had been permitted by the states for the worst offenders. As in *Roper*, advocates of life without parole argue that the sentence is appropriate and necessary in order to keep dangerous youth offenders, whom they believe cannot be reformed, locked away from the public. Importantly, according to recent research in the last 5 years,[244]

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[241] Casey et al., *supra* note 25.
[242] *Roper*, 543 U.S. 551, 570 (2005).
[243] *Id.*
[244] Casey et al., *supra* note 25.

these assumptions are erroneous. As *Roper* determined, once diminished culpability was established, the penological justifications for the punishments apply with lesser force than for adults.[245] Finally, the Court's precedent in the *Miller* Trilogy determined that "the characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate."[246] In other words, theses precedents strengthen the arguments made by many juvenile reform advocates that JWLOP and similar sentences may be unconstitutional because they are cruel and unusual and therefore violate the Eighth Amendment.

Legal scholars and advocates have been increasingly reinforcing constitutional arguments against JLWOP sentencing practices. Scholarly research highlights new legal arguments about racial disparities that may further undermine the justifications for JLWOP sentences. For example, Savita Sivakumar wrote in the *Dartmouth Law Journal* that "studies have conclusively found that black and Latinx youths are far more likely to be sentenced to JLWOP than their white counterparts." Furthermore, "in every state where JWLOP is still used, the rate of JLWOP for Black youth is above that for white youth."[247] She goes on to argue that the disproportionate racial impact of JWLOP on Black youthful offenders may further violate the Eighth Amendment, citing important arguments about made in *Furman v. Georgia* (1972), which she acknowledges was reversed 1976. Sivakumar further contends that those disparate impact arguments remain compelling. She argues, "The current impact of JLWOP violates the second tenet of Justice Douglas' argument against the death penalty in *Furman v. Georgia* because without fair reason, the State 'inflicts upon some people a severe punishment that it does not inflict upon others.'"[248]

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[245] *Roper*, 543 U.S. 551, 571 (2005).
[246] *Miller*, 567 U.S. 460, 473 (2012)
[247] Savita Sivakumar, *Kids Will Be Kids: Why Juvenile Life without Parole Has Reached the End of Its Sentence*, 18 DARTMOUTH L.J. 31 (2020).
[248] *Id.*

While currently, it is not likely that the Supreme Court will accept these arguments, state courts and legislatures may find this line of thinking helpful as they seek to advance JLWOP sentencing reforms.

Additionally, scholars have advocated for the application of other Supreme Court standards to JWLOP cases under the Sixth Amendment that could prove particularly manageable for states to incorporate so as to protect youth's rights. For example, Margaret Helein, writing in *The American University Law Review,* argues that "the same standards for investigation into and presentation of mitigation evidence at sentencing in capital proceedings must govern JLWOP proceedings. This is the only option that comports with the requirements of the Sixth and Eighth Amendments to the U.S. Constitution."[249] Doing so will ensure a clear standard in JLWOP sentencing proceedings nationwide to further mitigate against violation of these defendants' constitutional rights under the Sixth Amendment.

The Sixth Amendment mandates a "right to counsel,"[250] something that would be reinforced and more clearly defined by the case of *Strickland v. Washington* (1984) in which the Supreme Court laid out the "*Strickland* standard." The *Strickland* standard is defined as a two-pronged test, the first prong being that the defendant has to prove that "counsel's performance" was deficient and in order to do so, "must show that counsel's representation fell below an objective standard of reasonableness."[251] The court added that this "objective standard of reasonableness" would be defined by professional standards and guidelines,[252] which Helein points out, include the American Bar Association's Defense Standards. For example, the court

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[249] Margaret Helein, *"Youth Matters": Why Demanding the Same Heightened Level of Mitigation in Juvenile Life without Parole Sentencing Proceedings as Is Required in Capital Sentencing Proceedings Is the Only Constitutional Option*, 71 AM. U. L. REV. 2061 (2022).
[250] U.S. Constitution. amend. VI
[251] *Strickland v. Washington*, 466 U.S. 668, 669 (1984).
[252] *Id.*

noted that "counsel has a duty to make reasonable investigations," and if they do not there must be a reasonable explanation for it.[253] The second prong requires that the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[254] Should both prongs be provable in a case, a defendant has the grounds to pursue an IAC (ineffective assistance of counsel) claim on appeal. If accepted by the appellate judge, the judge may order a new trial.[255]

The presentation of mitigating evidence in cases with ineffective counsel has been a prevalent issue in the outcomes of JLWOP and other juvenile life sentencing cases,[256] including in the case study of *State of Tennessee v. Tyshon Booker* discussed in Chapter Five. According to the oral argument, in his original trial, Mr. Booker was unable to present a medical report that detailed his PTSD, his background, and examples of psychological help that a professional examiner determined would help in rehabilitating him, all of which constitute mitigating factors, into evidence. [257] The presentation of mitigating evidence was also an issue in *Jones v. Mississippi*.[258] However, Helein argues that the promise of a possible *Strickland* standard application to juvenile sentencing cases was affirmed in the Court's opinion in *Jones.*[259] In that case, the majority stated in a note that "…the defendant may have a potential ineffective-assistance-of-counsel claim, not a Miller claim—just as defense counsel's failure to raise relevant mitigating circumstances in a death penalty sentencing proceeding can constitute a potential ineffective-assistance-of-counsel problem"[260]

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[253] *Id.* at 691.
[254] *Id.* at 694
[255] Helein, *supra* note 249.
[256] *Id.*
[257] STATE OF TENNESSEE V. TYSHON BOOKER, *supra* note 207.
[258] *Jones*, *supra* note 52.
[259] Helein, *supra* note 249.
[260] *Jones*, 593 U.S. ___, at 15

Presently, the *Strickland* standard does apply to capital punishment cases, and as this thesis argues, and as Helein notes in her law review Comment, the Supreme Court has already likened JWLOP sentences to capital punishment for youth, and affirmed the potential application of *Strickland* standards to juvenile life sentencing.[261] The adoption of *Strickland* standards in JWLOP sentencing by state and district courts for those youth who face JWLOP sentences extends the protections they have. Furthermore, it may even improve fair sentencing outcomes by opening the door up for them to make more uniform and precise IAC claims, as retrials have the potential to result in a new verdict, or even an acquittal.[262]

Policy Recommendations

For a state-by-state approach to reform, states should benefit from a diverse selection of solutions rather than relying upon legal reforms alone. This thesis has shown a direct correlation between the rhetoric surrounding youth outcomes in detention, and sentencing policies and practices in individual states. With belief in criminal youth and their capability for reform, such as that exhibited by the Miller Court, came policy reform across the states. One way of exhibiting a belief in these children is to implement and invest in re-entry programming and anti-recidivism efforts. Life without parole sentences exist to keep those deemed incapable of reform from reentering society out of fear of re-offense. The creation of the superpredator myth in the 1990s resulted in states subjecting youthful offenders to life without parole sentences. Notably, these laws, and the fears of permanently incorrigible youth that cannot reform to live and work in society, still exist.[263] However, advocates and researchers contend that present rates of recidivism

[261] Helein, *supra* note 249.
[262] *Id.*
[263] Admin, Equal Justice Initiative, *supra* note 32.

are so high only because of a lack of effective reentry programming.[264] Eliminating a fear of re-offense for juveniles, and capitalizing on what has been scientifically proven as a greater capacity for reform in youth,[265] are factors that must be considered by policy makers in states seeking to ban the sentence of life without parole for juveniles.

There are many successful examples of re-entry programming and anti-recidivism efforts that many legal scholars, policy analysts, and social scientists have identified. Studies from the Office of Juvenile Justice and Delinquency have shown that the most successful reentry programs are specialized and tailored towards youth with components of individualized care and counseling. These studies confirm that those who received this care to be twice as less likely to recidivate as their counterparts not receiving this care.[266] Successful re-entry and anti-recidivism programs can take many shapes and forms, and examples of them are not confined to states that are liberal leaning.

For example, the Prison Entrepreneurship Program or (PEP), which began in the Houston's Cleveland Correctional Facility in Texas, a red state. It has become one of the most successful prison reentry programs for adults adjusting to life outside of prison and seeking opportunity for work and stable job-retention.[267] Through teaching them entrepreneurship skills with business professionals and facilitating a mandated "Business Plan Competition" which requires enrolled incarcerates to create their own business plans to use post-release,[268] the PEP has achieved a 7% recidivism rate.[269] Additionally, 100% of graduates receive employment in the

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[264] A Second Chance: The Impact of Unsuccessful Reentry and the Need for Reintegration Resources in Communities, https://cops.usdoj.gov/html/dispatch/04-2022/reintegration_resources.html (last visited Mar 24, 2024).
[265] Ulmer and Steffensmeier, *supra* note 29.
[266] Nancy G. Calleja et al., *Reducing Juvenile Recidivism Through Specialized Reentry Services: A Second Chance Act Project*, 5 OJJDP JOURNAL OF JUVENILE JUSTICE (2016).
[267] Results – Prison Entrepreneurship Program, https://www.pep.org/results/ (last visited Mar 25, 2024).
[268] In Prison – Prison Entrepreneurship Program, https://www.pep.org/in-prison/ (last visited Mar 25, 2024).
[269] Results – Prison Entrepreneurship Program, *supra* note 267.

90 days after they are released, and 100% of them retain that employment for at least twelve months, with the national unemployment rate average for prisoners being 50%.[270] This program is one that demonstrates the effectiveness of re-entry programs with a focus on successful reintegration into the present economy and combatting the causes for unemployment that are most commonly faced by those newly released from prison. Similar programs would be particularly beneficial to individuals incarcerated as juveniles because this population has had less time to build beneficial work habits than their adult counterparts and may require additional support in building work skills and in creating possible job opportunities for themselves.

Youth-specific reentry programs have also found success through building educational and occupational readiness skills. The Urban Youth Reentry Program, a program of the Urban League which presently operates in New Jersey, Georgia, Connecticut, Oklahoma, and Louisiana is one such program. The Urban Youth Reentry Program or, UYRP, includes a core program which includes "four-week career readiness programming, occupational skills training, case management, educational interventions and support, legal and other supportive services, and work-based learning,"[271] all of which have been proven effective in reentry programming.[272] Additionally, the services are inclusive of youth up to the age of 24,[273] an age range consistent with our modern scientific understanding of the developmental ceiling for adolescent brain growth.[274] Though a relatively new program, founded only in 2020, UYRP has seen promising

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[270] *Id.*
[271] Data For Progress, The Justice Collaborative Initiative, and Fair and Just Prosecution, "A Majority of Voters Support An End To Extreme Sentences For Children" (Data For Progress, July 2020), https://www.fairandjustprosecution.org/staging/wp-content/uploads/2020/07/Juvenile-Life-Without-Parole-Polling-Report.pdf.
[272] ADIAH PRICE-TUCKER ET AL., *Sucessful Reentry: A Community-Level Analysis*, (2019), https://iop.harvard.edu/sites/default/files/2023-02/IOP_Policy_Program_2019_Reentry_Policy.pdf.
[273] The Dvision of Workforce Development, *Urban Youth Reentry Program: A Signature Program of the National Urban League*, (2021), https://nul.org/sites/default/files/2023-01/NUL_1Sheet_UrbanYouthReentry_2022.pdf.
[274] Sharma et al., *supra* note 20.

results for youth who are newly released from prison. Two-thirds of youth in the program entered employment, and 98% of youth involved did not return to prison after their release,[275] which is evidence of the success that youth-specific programming can have on their outcomes post-release. With continued success, this re-entry program may serve as a valuable blueprint and reference for other states and jurisdictions seeking to reform their reentry and anti-recidivism programming for youth.

Funding for programs of this kind can be obtained via grants from federal agencies and funding from Congressional acts. For example, The Second Chance Act, ratified by Congress in 2008 allocates funding to allow state, local, tribal governments, and nonprofit organizations to succeed in their work to reduce recidivism.[276] Federal agencies, such as the Office of Juvenile Justice and Delinquency, an office of the United States Department of Justice assist in the distribution of these funds through their Second Chance Act Youth Reentry Program. In 2023 alone, the office awarded sixteen grants and provided reentry programs with $15,751,817 in financial aid.[277] With access to this funding, all fifty states can receive support for any future efforts in reducing recidivism for juvenile offenders who have the capability of succeeding as is the case with the aforementioned programs in Texas and Connecticut.

Advocacy Recommendations

Based on commonalities between the successes of case-study states Connecticut and Tennessee, and on additional research, one particularly successful channel to change the opinions of state legislatures and courts to embrace limits on sentencing for children appears to be public

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[275] *Id.*
[276] OJJDP FY 2023 Second Chance Act Youth Reentry Program | Office of Juvenile Justice and Delinquency Prevention, (2023), https://ojjdp.ojp.gov/funding/opportunities/o-ojjdp-2023-171707 (last visited Mar 24, 2024).
[277] *Id.*

advocacy efforts driven by criminal law reform organizations. In the example provided by Connecticut's passage of Public Act No. 15-84, the Connecticut ACLU and Connecticut Voices for Children played a pivotal role in informing that decision. Additionally, religious organizations, and activist organizations such as the Juvenile Law Center filed amicus briefs[278] that were considered by the judges who decided the case of *the State of Tennessee v. Tyshon Booker* (2022). These organizations possess the ability to utilize their institutional credibility and knowledge of additional scientific evidence to inform policy makers in the lawmaking processes in their respective states.

Studies have shown that decision-making by policymakers may be limited by "bounded rationality," the fact that they do not have the ability to gather and consider all evidence relevant to the policy problems at hand.[279] This prompts them to either pursue goals prioritizing certain information or act on gut feelings or existing beliefs to resolve the issue quickly.[280] Those who have performed extensive research on the role of scientific evidence on policymaking argue that the best approach to combat this lies in "reducing ambiguity, to persuade policymakers to frame a problem primarily in one particular way and, therefore, to demand scientific evidence to help solve that problem."[281] Moreover, it is recommended that those attempting to influence policy with scientific evidence utilize "persuasion" or "framing" strategies through

> telling simple and easily understood stories which manipulate people's biases, apportioning praise and blame and highlighting the moral and political value of solutions; and recognizing the importance of interpreting new scientific evidence through the lens of the beliefs and knowledge of influential actors.[282]

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[278] State v. Booker | Juvenile Law Center, (2020), https://jlc.org/cases/state-v-booker (last visited Mar 26, 2024).
[279] Simon, Herbert A. *Administrative behavior*. Simon and Schuster, 2013.
[280] Paul Cairney & Kathryn Oliver, *Evidence-Based Policymaking Is Not like Evidence-Based Medicine, so How Far Should You Go to Bridge the Divide between Evidence and Policy?*, 15 HEALTH RES POLICY SY 35 (2017).
[281] *Id.*
[282] *Id.*

Criminal reform organizations such as The Equal Justice Initiative, The ACLU, Juvenile Law Center, Campaign for the Fair Sentencing of Youth, and The Sentencing Project are all situated in an optimal position to capitalize on these methods to influence state lawmakers and judges regarding the data collected about youth and sentencing because of the local community connections that they have. For example, several of these named organizations participate in representing juveniles who have been unfairly treated by the criminal justice system and can provide narratives that incorporate the evidence that they use in their advocacy.

As noted earlier in this thesis, public opinion already does not support sentencing juveniles to die in prison,[283] and advocates are uniquely equipped in our federalist system to leverage their power of the vote to influence their state and local politicians. Research on this topic conducted in 2003 by Paul Burnstein has shown that three-quarters of the time when its impact is gauged, public opinion has shown to influence policy.[284] Additionally, approximately 33% of the time, this impact is of substantial policy importance, and estimated to be a fair bit more.[285] Findings also seem to suggest that the impact of public opinion on policy "remains substantial when the activities of interest organizations, political parties, and elites are taken into account."[286] Therefore, it is crucial that these organizations advocating for criminal law reform focus their efforts not only on state legislatures and judiciaries, but also on public education. Overall, increasing public education and adopting the approaches of advocacy campaigns utilized by criminal justice reform organizations could have an even broader impact on the agendas of lawmakers and judges.

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[283] DATA FOR PROGRESS, THE JUSTICE COLLABORATIVE INITIATIVE, AND FAIR AND JUST PROSECUTION, *supra* note 151.
[284] Paul Burstein, *The Impact of Public Opinion on Public Policy: A Review and an Agenda*, 56 POLITICAL RESEARCH QUARTERLY 29 (2003).
[285] *Id.*
[286] *Id.*

Summary and Conclusions

As the Supreme Court halted juvenile sentencing reform in their ruling in *Jones v. Mississippi*, it is the states that have taken up the juvenile sentencing reform effort in the progressive spirit of the *Miller* Trilogy. Currently, 28 states across the country, over half, have banned JLWOP.[287] Abolition through legislative and judicial measures in the states following the Supreme Court's recent inaction, shows no sign of stopping either, as the recent state reforms discussed earlier confirm. These state efforts aimed at improving the fair sentencing of youth seem to transcend political divides in a particularly divided nation. As discussed above, reforms in Connecticut and Tennessee provided insight into the specific reform paths that different states can take to achieve this reform. The Connecticut example highlights the effectiveness of a combined legislative and judicial effort, and Tennessee's policy change demonstrates how reform can be achieved by judicial means when the legislature fails to act in accordance with public sentiment that supports reform. Notably, both states chose to preserve and implement the values and precedent set by the Supreme Court in the *Miller* Trilogy. Tennessee and Connecticut adopted the *Roper*, *Graham*, and *Miller* Court's practices of embracing scientific evidence, prioritizing evidence of evolving standards of decency, and exhibiting a belief in a juvenile offender's capacity to reform.

Tailored approaches are required for continued state-by-state reform across the states that have and have not abolished both JLWOP and mandatory life sentencing schemes. Given significance of judicial involvement and an adherence to the *Miller* Trilogy holdings discussed throughout the thesis, the expanded application of the *Roper* precedent and *Strickland* standards could fortify legal safeguards for youth facing homicide charges in adult court systems. In

[287] Roussell, *supra* note 147.

addition, as noted, activist groups in particular have already been effective catalysts to legislative and judicial reform in the states. Catering to their strengths, certain advocacy tactics to improve interactions with public officials and voters in the state are crucial for the success of activist campaigns against JLWOP and mandatory life sentences for children in the future. Yet, as previously discussed, these sentences prevail in the criminal justice systems of many states today because of the prevalence of the 1990's superpredator myth, which characterized many juvenile offenders as incorrigible criminals who could not be reformed.[288] The removal of these sentencing practices from the criminal codes of states across the U.S. would benefit enormously from the advancement of reentry programming for juveniles that reduce recidivism and improve their post-release outcomes.

The ideological rigidity of the current Supreme Court, dominated by movement conservatives, pumped the brakes on juvenile sentencing reform in *Jones.* Given their views on this question, it is highly unlikely that the Court will act to ameliorate the plight of youth defendants facing life sentences. However, continued widespread sentencing reform initiatives at the state level, combined with the legal policy suggestions discussed above could very well end extreme juvenile sentencing practices, and hopefully, foster a much-needed change in American legal culture to the benefit of our nation's youth.

[288] Admin, Equal Justice Initiative, *supra* note 32.

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