ENDING MANDATORY MINIMUM SENTENCES FOR CHILDREN

Juvenile Sentencing Project
Quinnipiac University School of Law

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This memo addresses mandatory minimum penalties for children sentenced as adults, discusses existing legislation that eliminates the practice or otherwise limits the sentences that can be imposed on children in adult court, and proposes legislation to permit sentencers to depart from mandatory minimum penalties when sentencing children.

I. U.S. SUPREME COURT RECOGNIZES THAT YOUTH MATTERS FOR SENTENCING

In *Miller v. Alabama*, 567 U.S. 460 (2012), the U.S. Supreme Court held that mandatory life imprisonment without parole for juvenile homicide offenders violates the Eighth Amendment's prohibition on cruel and unusual punishment. The Court explained that "children are constitutionally different from adults for purposes of sentencing," and, thus, that "a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 471, 489.

Miller is grounded in youths' reduced culpability and greater capacity for reform, an understanding gleaned in large part from "developments in psychology and brain science [showing] fundamental differences between juvenile and adult minds." *Id.* at 471-472 (citing *Graham v.* Florida, 560 U.S. 48, 68 (2010)). The *Miller* Court explained: "Those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessen[] a child's moral culpability and enhance[] the prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed." *Id.* at 472 (internal quotation marks omitted).[1]

II. EXAMPLES OF RESTRICTIONS ON MANDATORY MINIMUM SENTENCES FOR CHILDREN IN ADULT COURT

Since *Miller*, courts and legislatures across the country have begun to recognize that sentencers must have discretion in all cases to fashion a sentence that gives adequate

[1] For more on the underlying brain science, *see, e.g.*, B.J. Casey et. al. *The Adolescent Brain*, 1124 Ann. NY Acad. Sci. 111 (March 2008); L. Steinberg, *Cognitive and Affective Development in Adolescence*, 9 Trends Cogn. Sci. 69 (Feb. 2005).

mitigating effect to youth.[2] Thus, they have rejected mandatory minimum sentences as applied to children,[3] or have otherwise sought to cap or limit the sentences that can be imposed on children in adult court. Examples include:

- **Washington** - In 2005, Washington passed legislation exempting juvenile offenders from mandatory minimum penalties for certain serious crimes.[4] In 2017, the Washington Supreme Court went further, relying on *Miller* to conclude that "sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant, even in the adult criminal justice system," and requiring that trial courts "consider mitigating qualities of youth at sentencing and . . . have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements." *State v. Houston-Sconiers*, 391 P.3d 409 (2017).

- **District of Columbia** - The District of Columbia recently enacted the Comprehensive Youth Justice Amendment Act of 2016, which, among other reforms, abolishes mandatory minimum sentences for juvenile offenders.[5]

- **Iowa** - In 2014, the Iowa Supreme Court looked to *Miller* to hold that mandatory minimum sentences violate the state constitutional prohibition on cruel and unusual punishment when applied to juvenile offenders. *State v. Lyle*, 854 N.W.2d 378, 402 (Iowa 2014), *as amended* (Sept. 30, 2014). The court reasoned that a sentencer must have discretion to "craft[] a punishment that serves the best interests of the child and of society," explaining that "youth and its attendant circumstances and attributes make a broad statutory declaration denying courts this very discretion categorically repugnant" to the state constitution. *Id.* at 402-403.

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[2] The American Law Institute's most recent draft of the Model Penal Code on Sentencing similarly eliminates mandatory minimum sentences for juvenile offenders to ensure discretion in sentencing. Section 6.14, addressing the sentencing of offenders under the age of 18, provides, in relevant part: "The court shall have authority to impose a sentence that deviates from any mandatory-minimum term of incarceration under state law." Model Penal Code: Sentencing § 6.14(6) (Am. Law Inst., Proposed Final Draft, 2017) (approved May 24, 2017). The accompanying commentary explains: "[A]n unusual degree of flexibility, and power to individualize sentences, ought to be part of adult penalty proceedings for offenders under the age of 18. No provision in law stands farther removed from this principle than a mandatory minimum penalty." *Id.*

[3] Such limits on mandatory sentences for juvenile offenders align with a recent national trend away from mandatory minimum sentences for all offenders. *See, e.g.*, Ram Subramaniam & Ruth Delaney, Vera Institute of Justice, *Playbook for Change? States Reconsider Mandatory Minimum Sentences* 8-12 (2014) (noting that "at least 29 states have taken steps to roll back mandatory sentences since 2000," citing legislation expanding judicial discretion, limiting automatic sentence enhancements, and repealing or revising mandatory minimum sentences).

[4] *See* Wash. Rev. Code. § 9.94A.540(3)(a) (exempting juveniles from the mandatory minimum sentences otherwise applicable for first-degree murder, certain first-degree assaults, first-degree rape, and sexually violent predator escape).

[5] *See* D.C. Code § 24-403.01(c)(2)(A) ("[N]otwithstanding any other provision of law, if the person committed the offense while under 18 years of age: (1) The court may issue a sentence less than the minimum term otherwise required by law.").

- **Nevada -** In 2017, Nevada enacted legislation allowing judges to depart downward from mandatory minimum sentences by up to 35% for juvenile offenders "if the court determines that such a reduction is warranted given the age of the person and his or her prospects for rehabilitation."[6]

- **Louisiana –** In Louisiana, a child who commits a crime at age 14, regardless of its severity, may not be imprisoned beyond his or her 31st birthday.[7]

- **Federal –** H.B. 1949, currently pending before the U.S. House of Representatives, would give federal courts the authority, in the case of a juvenile, to impose a sentence that is thirty-five percent below the statutory minimum so as to reflect the juvenile's age and prospect for rehabilitation.[8]

III. MODEL LEGISLATION TO END MANDATORY MINIMUM SENTENCES FOR CHILDREN

Below is model legislation that would allow sentencers to depart from mandatory minimum sentences when the defendant committed the offense as a juvenile.

> *When sentencing a person who was under 18 years of age at the time of the offense, the sentencer shall have authority to impose a sentence that deviates from any mandatory minimum term of incarceration, notwithstanding any other provision of law.*
>
> *In determining whether to exercise this authority, the court shall consider in mitigation the distinctive characteristics of youth, including diminished culpability and greater prospects for reform.*

[6] *See* Nev. Rev. Stat. § 176.017(2).
[7] *See* La. Child. Code, art 857(B).
[8] *See* HB 1949, 116th Cong, 1st Sess. (U.S. 2019), https://www.congress.gov/116/bills/hr1949/BILLS-116hr1949ih.pdf