

To: BBA Council  
From: BBA Government Relations Department  
Date: December 17, 2013  
Re: Juvenile Life without Parole

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There are several bills currently pending before the Massachusetts legislature that address the issue of juvenile life without parole. These bills vary greatly in their approach to the issue. While there is an active group of advocates working on this, it doesn't appear at this time that any one bill is under active consideration during the current legislative session.

A subcommittee of the BBA's Criminal Law Section reviewed many of the bills and decided not to take a position on a specific bill. Instead, the subcommittee drafted guiding principles that can be used as the lens with which to analyze and evaluate any future bill on this subject. The Criminal Law Section unanimously supports a legislative fix based on the 2012 Supreme Court decision *Miller v. Alabama*. *Miller* held that life without parole sentences for youths under age 18 were only constitutionally permissible if they were not mandatory and issued after a hearing. Under current Massachusetts law, the only available sentence for first degree murder by an offender who is at least 14-years-old at the time of the offense is mandatory life without parole.

The following principles reflect the three areas where the Criminal Law Section was able to find consensus. Support of these principles will give the BBA the flexibility to take a position at the appropriate time. These principles reflect the degree to which the BBA supports juvenile life without parole. A brief summary of those three principles:

- Sentencing Hearing - Defendants convicted of first degree murder, committed prior to their 18<sup>th</sup> birthday, must have the right to an individualized evidentiary sentencing hearing which considers a number of issues specific to juveniles in addition to the traditional factors required by law.
- Parole – Defendants convicted of first degree murder, committed prior to their 18<sup>th</sup> birthday, must have the right to a meaningful parole process if serving a parole eligible sentence. This process includes a statutory right to counsel at parole hearings.
- Application to Persons Serving – Any change in the law should apply retroactively to people currently serving a life sentence without the possibility of parole for an offense committed prior to their 18<sup>th</sup> birthday. We reached out to Joshua Dohan, Director of the state public defender's Youth Advocacy Division, and he reports that this provision would have an immediate impact on roughly 85 people, including about 65 that have been in prison for at least three decades.

Please see the attached report from the Criminal Law Section which expands upon these principles.

## **REPORT TO BBA COUNCIL**

December 17, 2013

### **ISSUE: NEED FOR LEGISLATIVE ACTION ON JUVENILE LIFE WITHOUT PAROLE**

In June 2012, the United States Supreme Court announced its decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012). In its decision the Court held that sentencing schemes mandating life without the possibility of parole sentences for youths under the age of 18 are unconstitutional. However, a sentence of life without parole is constitutionally permissible, but only after a hearing. As the only currently available sentence by statute in Massachusetts for first degree murder where the offender is at least 14- years-old at the time of the offense, is mandatory life without parole, there is a need for corrective legislation to provide a constitutional sentencing process and options for youth, under age 18, convicted of first degree murder.

Given the various bills pending in the legislature on this issue and its ramifications, the Criminal Law Steering Committee decided that it could not reach consensus on any one bill. Moreover, the Committee decided that the better approach would be to discuss the various issues contained in the legislation and determine which issues the Committee could reach consensus and which issues it could not. Notably, the issues upon which the Committee reached consensus were few.

### **THE CONSENSUS ISSUES:**

#### **Sentencing Hearing**

Defendants who are convicted of first degree murder, where the offense occurred prior to the defendant's 18<sup>th</sup> birthday must have the right to an individualized evidentiary sentencing hearing with findings made on the record. In addition to traditional factors pertinent to the purposes of sentencing or required by law, such finding should include, but not be limited to:

- the age of the offender at the time of the offense;
- the role of the offender in the underlying offense;
- hallmark features of adolescence, including immaturity, impetuosity, susceptibility to familial or peer pressure, and the ability to appreciate risks and consequences;
- family and home environment prior to and at the time of the offense;
- history of prior convictions and adjudications;
- the potential for rehabilitation and capacity for change;
- any victim impact statement; and
- other factors deemed relevant for sentencing by the court.

## **Parole**

An offender, sentenced for a murder that occurred before the offender's 18<sup>th</sup> birthday, should have the right to a meaningful parole process that includes a significant evaluation of demonstrated rehabilitation, when there is a parole eligible sentence. Before and during parole hearings, these offenders must have a statutory right to counsel

## **Application to Persons Serving**

People who are currently serving a life sentence without the possibility of parole, for an offense that occurred when they were under age 18, should have the right to go before the court and have a constitutional sentence imposed. It may be an open legal question whether the *Miller* rule is legally retroactive to persons whose convictions are final, but principles of fairness should require the legislature to affirmatively provide this right to those persons.

## **THE NON-CONSENSUS ISSUES:**

### **Distinctions between Degrees of Murder**

The nature of second degree murder as a lesser offense than first degree murder should be reflected in sentencing options. To the extent that parole-eligible sentences are made available to youth convicted of first degree murder, the minimum available sentence prior to parole eligibility for an adolescent who is convicted of first degree murder should not be less than the minimum available sentence prior to parole eligibility for an adolescent who is convicted of second degree murder.

### **Juvenile Life without Parole (JLWOP)**

#### *(a) Abolish Juvenile Life without Parole*

Juvenile sentencing law is evolving and the basis for prohibiting the mandatory imposition of life without parole on youth under the age of 18 also justifies the categorical bar of the sentence. The diminished culpability of youth and increased likelihood of rehabilitation is well recognized in law and science. As actual rehabilitation cannot be measured or predicted at the time of sentencing, subsequent review is required throughout the term of the sentence and, therefore, juvenile life without parole cannot be an appropriate sentencing option.

#### *(b) Retain Juvenile Life without Parole*

The United States Supreme Court has prohibited the mandatory imposition of a sentence of life without parole for youth under the age of 18 but does not categorically prohibit this sentence for juveniles, as it has done in other cases. The penalty should be rare, but must be preserved for use in the most heinous of offenses. The continuing evolving nature of the science of maturation and how to apply it to individual adolescents also speaks against completely eliminating the sentence at this time.

## **Jurisdiction**

### *(a) Juvenile Court Jurisdiction*

Youth are fundamentally different from adults, and the US Supreme Court mandates that these distinctions be considered by the court. The Juvenile Courts have the most experience with this unique population and is fully capable of handling complex cases, demonstrated by their existing authority over all violent offense against the person, other than murder. As in youthful offender cases, the trial of youth for murder in the juvenile court should be open to the public and the infrequent occurrence of these cases is not likely to interfere with or impede the Juvenile Courts' ability to devote the necessary time to promptly deal with their other caseload responsibilities.

### *(b) Superior Court Jurisdiction*

The unique and complex nature of murder cases requires trial before a court with significant experience with these cases. Since 1996, all juveniles between 14 and 17 who were charged with murder were tried in the Superior Court, and before that time, juveniles were subject to transfer for trial in Superior Court. The Superior Court is best equipped to consider murder cases, which must proceed by indictment, and should retain the jurisdiction it currently has over the trial. There is also a realistic concern that murder trials, which are open to the public, and generally are attended by members of the public in addition to the families and friends of both the defendant and the victim, could interfere with or impede the Juvenile Courts' ability to devote the necessary time to promptly deal with their other caseload responsibilities.

## **Judicial Look-Back/Resentencing**

### *(a) Judicial Look-Back Option*

The parole process is legally insufficient to provide the "meaningful opportunity" for review and potential release, mandated by *Miller*, and is a function of the politically-based executive branch. A judicial look-back or resentencing process provides necessary reconsideration of a young person's lifelong sentence based on demonstrated rehabilitation by an independent authority.

### *(b) Parole Only-Option*

Parole eligible sentences provide the appropriate vehicle for an individual to be reviewed for potential release. A judicial look-back or resentencing is unnecessarily duplicative, prevents closure for the family members of victims, and does not exist in other areas of the law. Offenders will receive their sentence through an evidentiary hearing and may have the right to parole review without the creation of a new judicial process.

### *(c) Re-Petition/Hybrid Option*

If Life without the Possibility of Parole remains an available sentencing option, the legislature should provide individuals who, after conviction and a sentencing hearing, receive such a sentence, to petition the court after a reasonable and specified period of time for the imposition of a different lawful sentence. If unsuccessful, the person sentenced to Life without Parole for an offense

occurring before their 18<sup>th</sup> birthday would not be permitted to re-petition for a different sentence until a specific period of time has elapsed.

While there is consensus that sentence review should exist for people sentence to Life without Parole for an offense occurring before their 18<sup>th</sup> birthday, if Life without Parole remains a sentencing option for defendants in these cases, there is no consensus on the timing of a petition or re-petition for a different lawful sentence.

**Criminal Law Steering Committee Proposed Position:**

The Criminal Law Steering Committee reached consensus on the need for legislation and supports a legislative fix to the issues and implications of the *Miller v. Alabama* decision. However, the Committee does not recommend that the BBA Council support any particular legislative bill at this time.