

# Status Report: Juvenile Offenders Serving Life Sentences in Iowa

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## Table of Contents

Executive Summary .....	4
Introduction.....	1
Waivers .....	3
Figure 1. Number of Youth Waived to District Court by Judicial Waiver and Statutory Waiver .....	4
Demographics.....	6
Figure 2. Number of Youth Receiving Life Sentences, by Offense Year .....	6
Table 1. Demography of Youth Receiving Life Sentences .....	7
Table 2. Basic Offense Details.....	7
Table 3. Demography of Victims.....	8
Outcomes .....	8
Moving Forward.....	10
Figure 3. Number of Years Currently Served by Youth Serving Life Sentences.....	11
Table 4. Basic Iowa Sentencing Structure .....	12
Conclusion.....	14

The information provided in this report is accurate as of March 12<sup>th</sup>, 2014 as available in Iowa Courts On-Line ([www.iowacourts.state.ia.us](http://www.iowacourts.state.ia.us)), the Iowa Corrections Offender Network (ICON), and the Iowa Legislative Website ([www.legis.iowa.gov/](http://www.legis.iowa.gov/)).

## Executive Summary

Over a century ago the United States started developing and implementing juvenile courts; based upon the concept that juveniles were not as mature as adults, and were more amicable to rehabilitation. Current, ongoing research indicates that the human brain does not fully develop until the early to mid-twenties. This brain development research has been a portion of the impetus to the United States and Iowa Supreme Courts to conclude that juveniles are not as culpable as adults and that sentences for juveniles convicted of serious crimes must be individualized to take into account a youth's development and other relevant factors. While advances have been made in the understanding of brain development, scientists are urging caution when linking brain development with human behavior, as the research in this relationship continues.

The U.S. Supreme Court has handed down three significant decisions regarding the sentencing of youth prosecuted in criminal (adult) courts: Roper v. Simons,<sup>1</sup> Graham v. Florida,<sup>2</sup> and Miller v. Alabama.<sup>3</sup> Each of these decisions changed sentencing possibilities for youth convicted in criminal (adult) courts. Additionally, in 2013 the Iowa Supreme Court, in State v. Ragland,<sup>4</sup> concluded that the U.S. Supreme Court's decision in Miller was a substantive change and in Iowa would apply retroactively.

Since 1964, there have been 48 youth in Iowa who have been sentenced to life-in-prison without the possibility of parole. Seven of those sentences were for convictions on non-homicide offenses, and the remaining 41 were for murder in the first degree. Of these, there have been four inmates released from prison, two upon their deaths, one case was overturned, and one was released on parole.

In 2011, a change to the Iowa Code established a life sentence with a possibility of parole after serving a minimum of 25-years for those youth convicted of a class 'A' felony that was not a murder in the first degree. This change to the Iowa Code was in response to Graham v. Florida. In 2012 Governor Branstad commuted the sentences of the 38 persons serving life-without-parole for murder in the first degree whose offenses had been committed by offenders under age 18. This commutation order specified new sentences of life imprisonment with the possibility of parole after 60 years. The Governor's commutations were in response to Miller v. Alabama. As of this report there are currently 28 inmates who are in the process of court actions based on the Graham and Miller decisions. Additionally, one of the commuted inmates, Kristina Fetters, has been paroled to hospice after her prison term was re-sentenced.

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<sup>1</sup> 543 U.S. 551. Supreme Court of the U.S. 2005.

<sup>2</sup> 560 U.S. \_\_\_\_\_. Supreme Court of the U.S. 2010.

<sup>3</sup> 567 U.S. \_\_\_\_\_. Supreme Court of the U.S., 2012.

<sup>4</sup> (No. 12-1758).

One inmate, Jeffery Ragland, has been resentenced to life-with-the-possibility-of-parole after 25 years by a district court after the Governor's commutations. The State challenged the district court's resentencing, but eventually this resentencing was upheld by the Iowa Supreme Court. As noted earlier, it was in this ruling that the Iowa Supreme Court determined that Miller was a substantive decision and would thus apply retroactively to all juvenile life sentences in Iowa.

In Iowa, the decisions in Graham and Miller have affected not only those youth serving life sentences, but also on youth serving long terms not involving life sentences. In 2013 the Iowa Supreme Court vacated the sentences of Denem Null and Desirae Pearson, remanding the cases to the district court for re-sentencing. Neither of these cases involved murder in the first degree or life-without-parole sentences. At issue in these cases is whether the long mandatory terms included as part of these sentences constituted cruel and unusual punishment given that the offenses were committed when the offenders were under the age of 18.

As Iowa looks to address the question of how to sentence youth convicted of offenses that have historically resulted in life sentences, the State must abide by the legal holdings of the Graham and Miller decisions. The U.S. Supreme Court has determined that when youths are sentenced as adults the sentence must take into account numerous factors, including the youth's age and maturity, along with the nature of the offense and the youth's amenability to rehabilitation. Continued use of 'blanket' sentencing structures that result in lengthy prison incarceration, not only those that result in lifetime imprisonment, will likely leave these sentences open to future legal challenges under the Miller decision and the Eighth Amendment prohibition of cruel and unusual punishment. These lengthy sentences may include those applied under 'special sentences' for sex offenses and lifetime registration on the sex offender registry.

This report looks at the current situation in Iowa regarding inmates that have originally been sentenced to life without parole for an offense that was committed when they were a youth. This report is not intended as a policy statement, but a review of the history, court decisions, legislative actions and current situation as of March 12<sup>th</sup>, 2014.

## Introduction

While it was once thought that the human brain was fully developed around the onset of puberty, it is now understood that brain development continues into the early or mid-twenties.<sup>5</sup> Over the last couple of decades the development of imaging technologies such as Magnetic Resonance Imaging (MRI), functional Magnetic Resonance Imaging (fMRI) and positron emission topography (PET) has dramatically increased our understanding of the development and functions of the youthful brain. These technologies and research have proven that there are developmental and operational differences between youth and adults.<sup>6</sup>

Current research shows that one of the last regions of the brain to fully develop is the prefrontal cortex, the region of the brain that is crucial in the “executive” functions (e.g. decision making, reasoning, planning, judgment, expression of emotions, and impulse control). Additionally, fMRI scan research has determined that youth use different regions of their brain than do adults for processing information. There is evidence that youth rely on the amygdala for processing information that would be processed in the frontal lobe by adults.<sup>7</sup> Thus, instead of using the region of the brain that has been identified with “executive” functions, youth are using a region associated with fear, anger, and other reactionary emotions.

However, even with the advancements that have been made in understanding human brain development “...scientists are cautious about leaning too hard on the neurobiology. Research linking brain structure to actual human behavior is still limited. And neuroscientists are clear about the fact that different parts of the brain mature along different timetables. In other words, executive thinking may not reach its peak until 25 but most people are capable of performing many adult functions adequately at an earlier age – probably between 16 and 21.”<sup>8</sup>

Within the last decade the U.S. Supreme Court has handed down three significant decisions regarding the sentencing of youth prosecuted in criminal (adult) courts. The first of these decisions in 2005, Roper v. Simons, abolished the use of capital punishment for youth. This decision was followed in 2010 by Graham v. Florida, which abolished the use of mandatory life sentences without the possibility of parole in cases against youth that involved a non-homicidal offense; and, most recently in 2012, Miller v. Alabama restricted the use of life sentences without the possibility of parole in cases against youth that involved a homicidal offense. While a youth convicted on a homicide

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<sup>5</sup> Beatrice Luna, PhD., “Brain and Cognitive Processes Underlying Cognitive Control of Behavior in Adolescence”, University of Pittsburgh, Oct. 2005.

<sup>6</sup> For purposes of this paper “youth” will be defined as anyone under the age of 18.

<sup>7</sup> AA Baird, SA Gruber, DA Fein, et al., “Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents”, 1999.

<sup>8</sup> Greenblatt, A. (2009, October). What is the Age of Responsibility? *Governing*, 5.

charge can still be sentenced to life in prison without parole, this punishment must now be imposed by the court within the parameters set forth by legislation.

Starting with the Roper decision and continuing through the Miller decision, the U.S. Supreme Court has recognized that a youth's brain is still developing and that these physiological differences between a youth's brain and an adult's brain make the youth less culpable. The Court further acknowledged that because a youth's brain is still developing there exists a greater prospect for rehabilitation.

Because Iowa does not currently have a death penalty the State did not need to respond to the Roper decision. In response to the Graham decision, on July 27<sup>th</sup>, 2011 Governor Branstad signed the following modification to Iowa Code into law:

- §902.1(2) a. Notwithstanding subsection 1, a person convicted of a class "A" felony, and who was under the age of eighteen at the time the offense was committed shall be eligible for parole after serving a minimum term of confinement of twenty-five years.
- b. If a person is paroled pursuant to this subsection the person shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and chapter 908, and rules adopted under those chapters for persons on parole.
- c. A person convicted of murder in the first degree in violation of section 707.2 shall not be eligible for parole pursuant to this subsection.

This change in the Iowa Code sentences a youth convicted of a non-homicide class 'A' felony to a life sentence with the possibility of parole after a minimum confinement of 25 years served. After the mandatory minimum is reached, these inmates may be considered for parole under the same process as any other inmate. At the time of its enactment, this provision applied to seven youth incarcerated in Iowa prisons, and as of this report none of them have been paroled.

As of March 12<sup>th</sup>, 2014 there have been no legislative changes in response to the Miller decision; however, on February 24<sup>th</sup>, 2014 the Senate Judiciary Committee introduced Senate File 2309 (SF2309). This bill would eliminate the mandatory minimum sentences for certain drug offenses (Iowa Code §124.413 & Iowa Code §902.8A), dangerous weapons (Iowa Code §902.7), habitual offenders (Iowa Code §902.8), prior forcible felonies (Iowa Code §902.11) and 70% sentences (Iowa Code §902.12; unless, the court made a determination that the mandatory minimum sentence was necessitated. The bill would also change Iowa Code §902.1 so that all individuals convicted of a class 'A' felony committed when they were a youth would be eligible for

parole, unless the court made an individualized determination that the youth should not be eligible for parole.

On March 4<sup>th</sup>, 2014, amendment S-5040 was filed by Senator Julian Garrett in response to SF2309. This amendment would not eliminate the mandatory minimum sentences as outlined in the original bill, and would provide two options for sentencing a youth convicted of a class 'A' felony. The court would have the option of sentencing the youth to a life sentence without possibility of parole or a sentencing the youth to a life sentence with possibility of parole after serving a minimum of 35 years that cannot be reduced by earned time.

While there have been no legislative changes to the Iowa Code in response to the Miller decision on July 16<sup>th</sup>, 2012, Governor Branstad commuted the sentences of 38 inmates in Iowa serving life without parole for a homicide offense committed while they were a youth "to a term of life with no possibility for parole or work release for sixty (60) actual years, with no credit for earned time."<sup>9</sup> The following month the Iowa Supreme Court handed down an opinion in State v. Ragland (12-1758) concluding that the U.S. Supreme Court's decision in Miller was a substantive change and would apply retroactively in Iowa.

Between the U.S. Supreme Court's decisions in Roper, Graham, and Miller, Governor Branstad's commutations, and the Iowa Supreme Court decision in Ragland, the stage has been set for the many court challenges for inmates serving life without parole for convictions on crimes committed when they were youth.

### **Waivers**

In Iowa, for youth to have received a life-without-parole sentence they must have been convicted of a class 'A' felony in the criminal (adult) court. There are three ways for a youth to be transferred to the criminal (adult) court. The juvenile court may hold a waiver hearing that determines:

- §232.45(6)
- a. The child is fourteen years of age or older.
  - b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute the public offense.
  - c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have

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<sup>9</sup> Iowa Commutation of Sentence Order (July 16<sup>th</sup>, 2012)



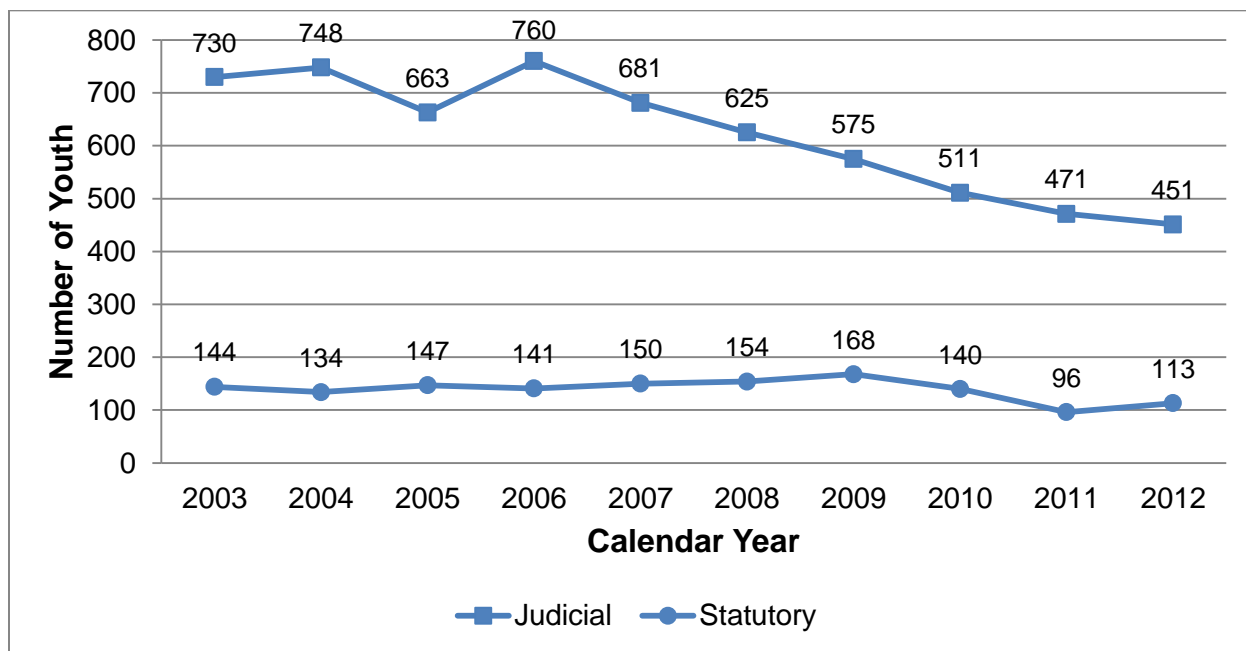
committed the delinquent act, and that waiver of the court’s jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.

In addition, if a youth aged 16 or 17 is charged with a forcible felony or a specific exclusion felony as defined in Iowa Code §232.8(1)(c) the case will be prosecuted in the criminal (adult) court “unless the court transfers jurisdiction of the child to the juvenile court upon motion and for good cause.”<sup>10</sup>

Finally, In Iowa “[o]nce a child sixteen years of age or older has been waived to and convicted of an aggravated misdemeanor or a felony in the district court, all criminal proceedings against the child for any aggravated misdemeanor or felony occurring subsequent to the date of the conviction of the child shall begin in district court...”<sup>11</sup> While Iowa has this version of the ‘once an adult, always an adult’ waiver provision, it would be a unique case for this type of waiver to have been used for a youth for an offense that would result in a life sentence.

As can be seen in the figure below, while there has been little change in the frequency of statutory juvenile waiver to adult court in Iowa over the past decade, the number of judicial waivers has steadily decreased since FY2006:

**Figure 1. Number of Youth Waived to District Court by Judicial Waiver and Statutory Waiver**



Source: Iowa Justice Data Warehouse (JDW)

<sup>10</sup> Iowa Code 232.8(1)(c)

<sup>11</sup> Iowa Code 232.45A(2)

- Over this 10 year period there have been 35 youth waived on Class 'A' Felonies;
- Five of those class 'A' Felony waivers were through the judicial process, with the remaining 30 waived through the statutory process.

The number of youth eligible for life sentences without the possibility of parole over the last ten years has been very small, 35 out of 7,602 waivers (0.5%). Of the 35 youth waived on a class 'A' felony, five were through the judicial process and 30 through the statutory process.

The five youth waived to the criminal (adult) court through the judicial process, one was eventually convicted of murder in the first degree,<sup>12</sup> three were convicted of lesser charges, and one was acquitted. The single youth convicted was Edgar Concepcion, whose sentence was among those commuted by the Governor, and who is currently challenging the Governor's commutation as an illegal sentence.

The 30 cases that were excluded from the jurisdiction of the juvenile court and immediately processed in the criminal (adult) court, eight were convicted on the original charge, ten were convicted of a lesser charge, one was returned to the juvenile court and adjudicated a delinquent, ten cases were dismissed, and one case they did not file on the class 'A' offense.

One of the 30 cases that were statutorily waived and eventually convicted on a murder in the first degree<sup>13</sup> was after the Governor's commutations. This youth, Isaiah Sweet, was given a sentence of life without parole on March 11<sup>th</sup>, 2014. During sentencing Judge Michael Shubatt said "that he considered the "cold-blooded" nature and planning of the crime, and he did not think Sweet could be rehabilitated."<sup>14</sup> The judge also noted that "While the defendant's maturity level at the time of the crime is debatable these were not the crimes of impetuosity" and "the defendant may be young but that has not stopped him from showing the world who he is. He is extremely dangerous." This life without parole sentence is the first in Iowa since the Miller decision, and the sentence was imposed after consideration by the judge.

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<sup>12</sup> State v. Edgar Concepcion Jr. , 02341 FECR021931 (2009)

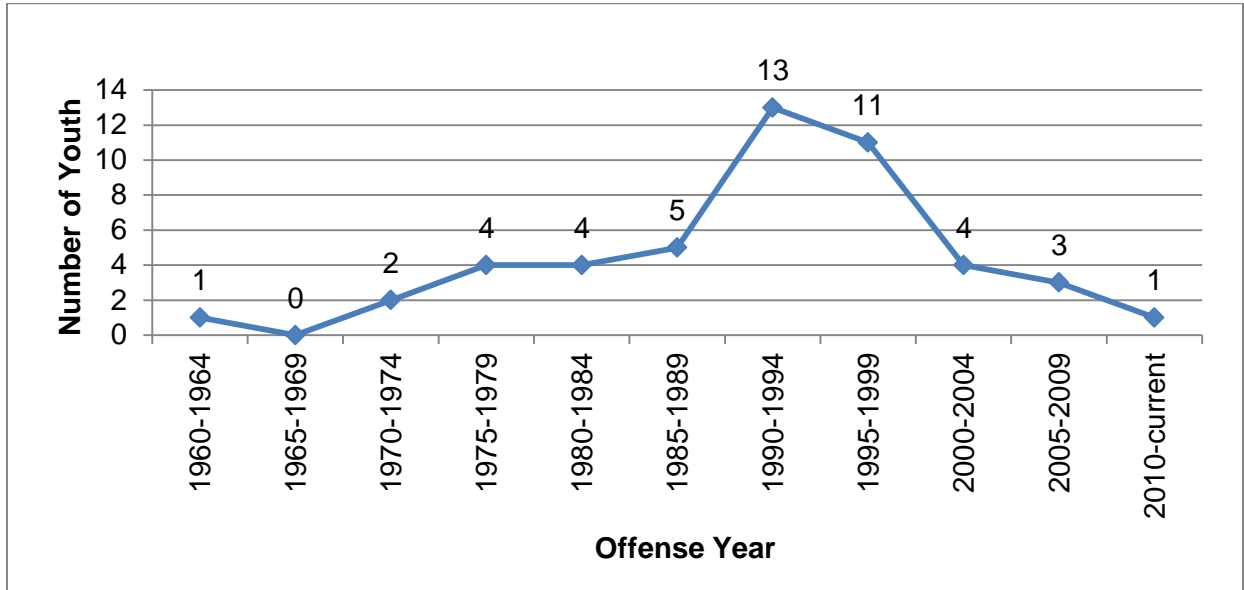
<sup>13</sup> State v. Isaiah Sweet, 01281 FECR008734 (2012)

<sup>14</sup> Franzman, David. "Isaiah Sweet Sentenced to Life in Prison, No Chance for Parole." KCRG. Cedar Rapids. 11 March 2014. <http://www.kcrg.com/home/top-9/Isaiah-Sweet-Sentenced-to-Life-in-Prison-No-Chance-for-Parole-249566451.html>.

## Demographics

Since 1964, in Iowa there have been 48 juveniles who have received a life sentence without the possibility of parole. With the exception of a single decade (1990-1999), the number of juveniles receiving a life sentence has been relatively unchanged. The decade of the 1990's, however, saw half (24 of 48) of all the Class 'A' convictions of juveniles seen during this 50-year period.

**Figure 2. Number of Youth Receiving Life Sentences, by Offense Year**



Source: Iowa Department of Corrections

- For the time period of 1960 – 1989 and 2000 – current (43 years) the average number of life sentences for youth was less than one per year (0.6);
- For the time period of 1990 – 1999 (10 years) the average number of life sentences for youth was 2.4 per year.

The majority of juvenile lifers are male (92%) and white (69%), although two of the three youngest at the time of the offense were female. The youths ranged in age between 14 and 17 year of age.<sup>15</sup> Most were 17 years old at the time of the offense (44%); however, a quarter (25%) were 15 years or younger.

<sup>15</sup> Iowa's minimum age for transfer to the criminal court is 14 years of age. Iowa Code §232.45(6)(a).

**Table 1. Demography of Youth Receiving Life Sentences**

<b>Sex</b>	<b>n</b>	<b>%</b>
Male	44	91.7%
Female	4	8.3%
<b>Race</b>	<b>n</b>	<b>%</b>
White	33	68.8%
Black	14	29.2%
Asian	1	2.1%
<b>Age at Time of Offense</b>	<b>n</b>	<b>%</b>
14	4	8.3%
15	8	16.7%
16	15	31.3%
17	21	43.8%
<b>Total</b>	<b>48</b>	<b>100.0%</b>

Source: Iowa Corrections Offender Network (ICON)

- Of the four female offenders, two were 14 at the time of their offense and two were 17;
- All four of the female offenders were convicted on charges of murder in the first degree.

Most juvenile lifers were convicted of murder in the first degree (85%). Three were convicted of kidnapping in the first degree resulting in the death of the victim and four received life sentences for non-homicide offenses. Nearly 60 percent (58.3%) had an accomplice and only a third (35%) acted alone. Most offenses occurred in counties that were primarily urban (60%).

**Table 2. Basic Offense Details**

<b>Convicting Offense</b>	<b>n</b>	<b>%</b>
Murder in the first degree	41	85.4%
Kidnapping in the first degree (with homicide)	3	6.3%
Kidnapping in the first degree (without homicide)	4	8.3%
<b>Other(s) Present</b>	<b>n</b>	<b>%</b>
Yes	29	60.4%
No	17	35.4%
Unknown	2	4.2%
<b>Offense Location</b>	<b>n</b>	<b>%</b>
Urban	29	60.4%
Rural	19	39.6%
<b>Total</b>	<b>48</b>	<b>100.0%</b>

Source: Iowa Corrections Offender Network (ICON)

- All three kidnapping in the first degree cases that involved a homicide were accompanied by a conviction for murder in the second degree;
- Urban settings include the counties of Black Hawk, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Story and Woodbury counties.

There have been 45 victims of juveniles who received a life sentence. The number of victims does not equal the number of offenders because in some cases there was more than one offender or more than one victim.

**Table 3. Demography of Victims**

<b>Sex</b>	<b>N</b>	<b>%</b>
Male	26	57.8%
Female	19	42.2%
<b>Relationship to Offender(s)</b>	<b>N</b>	<b>%</b>
Family	4	8.9%
Acquaintance / Friend	21	46.7%
Stranger	17	37.8%
Unknown	3	6.7%
<b>Total</b>	<b>45</b>	<b>100.0%</b>

Source: Iowa Corrections Offender Network (ICON)

- More males were victims than females (58% vs. 42%);
- Victims were more likely to be known by offenders – acquaintances (47%) and family members (9%) – than to be strangers (38%).

### **Outcomes**

Prior to the Supreme Court decisions there were limited options available to youth to be released from a life sentence. There was the possibility the conviction and sentence could be overturned by a higher court, or the Board of Parole could recommend commutation to the Governor, who could then commute the sentence to a term of years.

According to monitoring by the Department of Corrections and the Division of Criminal and Juvenile Justice Planning, the median age of death for “lifers” in Iowa is 58 years of age.<sup>16</sup> Since 1964, two of the 48 youth sentenced to life have died in prison: George Eason and John Kyle. Eason committed suicide on January 1<sup>st</sup>, 2011 at age 34 after serving 17 years and Kyle died of natural causes on June 18<sup>th</sup>, 2011 at age 64 after serving 48 years.

Of these 48 inmates there has only been one conviction and sentence that has been overturned by the Iowa Supreme Court. In 1978 Terry Harrington was convicted of

<sup>16</sup> Stageberg, P. & Roeder-Grubb, L. (2011). Iowa Prison Population Forecast FY2011-2021. (p. 20). Retrieved from: <http://www.humanrights.iowa.gov/cjpp/images/pdf/Forecast2011.pdf>

murder in the first degree; the conviction was overturned in 2003. After having served 24 and one-half years, Harrington was released from prison on April 17<sup>th</sup>, 2003. The Iowa Supreme Court found that police and prosecutors committed misconduct by concealing reports from the defense and coercing false testimony from third party witnesses.

As of March 12<sup>th</sup>, 2014 of the remaining 45 inmates initially sentenced to life sentences, 14 have been resentenced through the courts or had their sentence commuted, nine are awaiting resentencing, 19 have filed a motion to correct an illegal sentence or have requested a hearing to determine if sentence is to be modified, one has received parole, and there are two cases that have only been commuted by the governor.

On December 3<sup>rd</sup>, 2013, Kristina Fetters was granted parole by the Iowa Board of Parole. When Fetters was initially sentenced to her life sentence she had been the youngest person in Iowa history to receive this sentence. While the Miller decision made Fetters' parole possible, there was further impetus for her release because she is suffering from stage-four breast cancer. The parole granted allowed Fetters to be placed in a hospice care program, and was based upon a compassionate release with the understanding that if her health were to improve that the parole would be reviewed. She was released to hospice care on December 10<sup>th</sup>, 2013.

One of the resentenced cases, Jeffrey Ragland, was resentenced on August 28<sup>th</sup>, 2012 in the district court to a term of life in prison with a possibility of parole after 25 years. This followed Governor Branstad's July 16<sup>th</sup>, 2012 commutation of the sentences for the 38 juvenile lifers convicted of murder in the first degree. The State challenged this resentencing and on August 16<sup>th</sup>, 2013 the Iowa Supreme Court upheld the district court's resentencing.<sup>17</sup> It was during the Ragland decision that the Iowa Supreme Court confirmed that the decision in Miller was substantive and would apply retroactively to all juvenile life sentences in Iowa.

On January 31<sup>st</sup>, 2014 Yvette Louisell had her sentence reduced to a 25 year sentence by the district court. As Ms. Louisell has already served over 25 years in prison she was immediately eligible for release as her sentence had expired; however, on February 6<sup>th</sup>, 2014 the Iowa Supreme Court stayed the lower court's decision after an appeal from the Attorney General's Office. As of this report this appeal is still pending.

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<sup>17</sup> State v. Ragland, 12-1758. Supreme Court of Iowa. 2013.

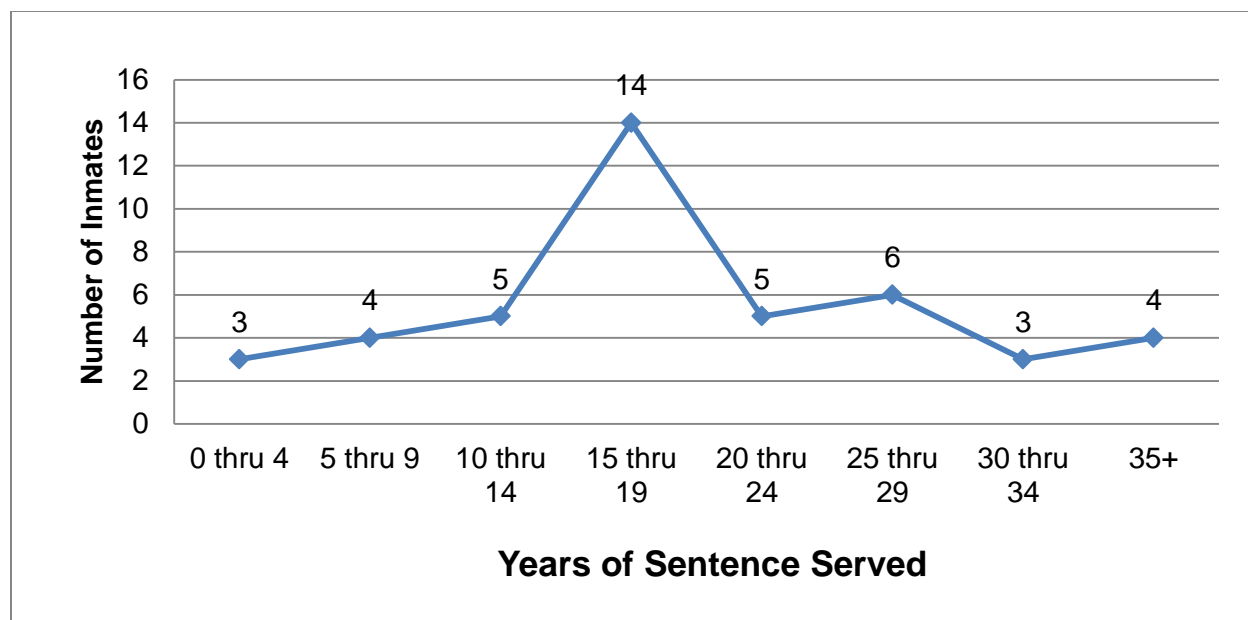
## Moving Forward

As noted earlier, the combination of the U.S. Supreme Court's decisions, Governor Branstad's commutations, and the Iowa Supreme Court's decisions have set the stage for a number of legal challenges concerning the sentences of inmates serving prison terms for offenses committed prior to age 18.

One of the primary questions that will arise as Iowa's courts and legislature wrestle with these sentencing issues is at what point these youthful offenders should be eligible for parole. The U.S. Supreme Court has indicated that the sentences of these young offenders must be individualized to reflect the characteristics of each youth, the youth's susceptibility to rehabilitation, and the nature and seriousness of the conviction offense. The Court has not, however, established at what point a sentence needs to be individualized. May a mandatory 25-year term allow for sufficient individualization to be Constitutional, or must any legislatively-required term involve a shorter mandatory term? What are the limitations on mandatory sentences that do not involve life terms? In any case, it appears from the Ragland decision that the Governor's commutations of Iowa's juvenile "lifers" does not meet the requirements of Miller and that those commutations will likely be overturned.

As previously noted, there are seven cases in Iowa that were affected by the Graham decision and the change in Iowa Code §902. As of this writing, these seven cases have averaged just under 20 years of time served, with a range of just over 8.5 years to just over 31 years. If the amended Iowa Code §902 were applied to these cases, two would immediately be eligible for parole, two more within about five and one-half years, and the remainder eligible after 10 years or more.

**Figure 3. Number of Years Currently Served by Youth Serving Life Sentences**



Source: Iowa Department of Corrections

Note: This table includes all 44 youth still incarcerated who were originally sentenced to life-without-parole

Currently there are 37 inmates serving time in Iowa's prison convicted of murder in the first degree committed when they were youths. The average number of years served for these 37 inmates is just short of 20 years. If a 'blanket' 25-year mandatory minimum sentence were applied to all 37 of these remaining inmates, there would immediately be 11 (30%) eligible to be considered for parole, and another five over the next five years.

If the 60-year mandatory minimum from the Governor's commutation is upheld for these 37 inmates, it would be almost 19 more years before the first inmate would be eligible for parole consideration (at the age of 78). This will be 21 years beyond the median age of death for all lifers in Iowa, and right at the point of life expectancy in the United States (78.7 years).<sup>18</sup>

Iowa's current sentencing structure starts off with a basic grid that quickly becomes complicated with mandatory minimums, sentencing enhancements, and earned time. The changes that are necessary for compliance with Graham and Miller will only make this complicated sentencing structure more chaotic.

<sup>18</sup> Centers for Disease Control and Prevention, 2010 data, April 5, 2013



**Table 4. Basic Iowa Sentencing Structure**

Offense	Potential Sentence	Parole Possible
Class 'A' Felony	Life Imprisonment	No
Class 'A' Felony non-homicide by youth	Life Imprisonment	25 year minimum
Class 'B' Felony – murder in the second degree	50 years	70% minimum
Class 'B' Felony	25 years	Yes
Class 'C' Felony	10 years	Yes
Class 'D' Felony	5 years	Yes

Source: [Iowa Code](#)

Under the current sentencing structure a youth convicted on a class 'A' felony that was non-homicide would become eligible for parole after serving a minimum of 25 years, but a youth convicted of a murder in the second degree, a Class 'B' felony, would not become eligible for parole until serving a minimum of 35 years – 70% of a 50 year sentence. This immediately raises a question of equity, in that the mandatory term for the class 'A' felony is shorter than that for a Class 'B' felony. While the youth convicted of the class 'A' felony would still have a maximum sentence of life, the youth convicted of the class 'B' felony would face a maximum 50 years; this sentence could actually expire in 42.5 years with the accumulation of earned time.

It should be noted that with 58 years-of-age being the median age of death for Iowa "lifers", a youth being imprisoned between the age of 14 and 17 on a murder in the second degree would still essentially face a de facto 'life sentence' if they never receive parole.

With the U.S. Supreme Court's decisions being partially based on brain development science, the lesser culpability of youth and greater opportunity for rehabilitation as Iowa works to restructure its sentencing guidelines for class 'A' felonies for youth, the State should also reconsider its sentences for murder in the second degree for youth, especially considering the equity issue raised above and the likelihood that the current 35-year mandatory minimum is likely to be found unconstitutional.

Already Iowa has seen a couple of sentences that have been successfully challenged on the cruel and unusual punishment basis. On August 16<sup>th</sup>, 2013, the Iowa Supreme

Court vacated the sentences of Denem Null<sup>19</sup> and Desirae Pearson,<sup>20</sup> and remanded the cases to the district court for resentencing. Neither the Null nor Pearson case involved murder in the first degree or life-without-parole sentences. However, using the brain development science and Eighth Amendment, the Iowa Supreme Court decided that the original sentences (Null, 75 year sentence with 52.5 mandatory years and Pearson, 50-year sentence with 35 mandatory years), were cruel and unusual punishment.

On October 9<sup>th</sup>, 2013 the Iowa Supreme Court agreed to hear additional two cases; State v. Taylor (11-1020) and State v. Lyle (11-1339), that both contend cruel and unusual punishments imposed upon youthful offenders. Neither of these cases involves a homicide or life sentence, but both use brain development science to contend cruel and unusual punishment as the basis for the appeals. As of this report, these cases are still pending before the Iowa Supreme Court.

Yet another potential issue involves the implementation of the “special sentence” on youths waived to criminal (adult) court and convicted of class ‘B’ or class ‘C’ felony sex offenses. Such convictions require mandatory lifetime parole supervision and, as of this report, there is no practical way to be removed from this lifetime supervision. It could be argued that this requirement does not meet the standard of individualized sentencing. There may also be similar issues related to lifetime placement on sex offender registries.

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<sup>19</sup> State v. Null, 11-1080. Supreme Court of Iowa. 2013.

<sup>20</sup> State v. Pearson, 11-1214. Supreme Court of Iowa. 2013.

## Conclusion

As Iowa looks to address the question of how to sentence youth convicted of offenses that have historically resulted in life sentences, the State must take into account the U.S. Supreme Court's ruling in Miller that "...the basic 'precept of justice that punishment for crime should be graduated and proportioned' to both the offender and the offense."<sup>21</sup> In other words, when sentencing a youth the courts must take into account numerous factors regarding the youth, including age, developmental maturity, prospect for rehabilitation and the nature of the offense. Imposing a 'blanket' sentencing structure on youth will likely result in future legal challenges under Miller.

While simple solution has often been to enact a law that applies a blanket sentence for a particular offenses, this does not appear to be consistent with the spirit of the Miller decision regarding those sentences that are lengthy when applied to youthful offenders. Under the Miller decision the sentencing of a youth should take into account the individual factors of the youth and the offense, and any new sentencing structure set forth for youth convicted in the criminal (adult) court should give the court discretion when imposing a prison sentence on a youth.

In Iowa, the Miller decision has not only been applied to those convictions where a lifetime without parole sentence was imposed, but has been also applied to convictions that resulted in lengthy prison sentences for young offenders. Due to this substantive interpretation by the Iowa Supreme Court, while amending the sentencing of murder in the first degree by youthful offenders, Iowa may want to take the opportunity to also examine other conviction sentences that result in lengthy prison sentences and/or lifetime correctional supervision for young offenders (e.g. murder in the second degree, robbery in the first degree, lengthy mandatory minimum sentences for specific felony drug offenses, "special sentences" for class 'B' and class 'C' felony sex offenses, lifetime registration on the sex offender registry).

However, while Iowa must do something to address the Miller decision there also must be a balance with the rights of the victims of these crimes. As previously noted, caution must also be exercised when using the current brain development research and linking it to human behavior, as the research in this area continues.

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<sup>21</sup> Miller v. Alabama, 567 U.S. \_\_\_\_\_. Supreme Court of the U.S., 2012.

