

Arizona, Other States Need Resentencing Guidelines for JLWOP Youth



The current law of the land prohibits the use of mandatory sentences of life without the possibility of parole (LWOP) for juvenile offenders due to [Miller v. Alabama](#). That case's standards also apply to offenders previously given natural life sentences for homicide offenses because of

the Supreme Court's ruling in [Montgomery v. Louisiana](#). It is unclear, however, how these important changes in law will translate into actual practices.

Some of the practical challenges associated with these changes in law pertain to the interpretation of specific standards governing juvenile sentencing and release decision-making processes, e.g., transient immaturity, irreparable corruption and meaningful opportunities for release.

These standards address important principles identified by the Supreme Court in support of its reasoning as to why sentencing juveniles to life requires different considerations from adults: a) juveniles have diminished culpability because of their developmental and neurological immaturity; b) juveniles have more of a capacity for change than adults. Yet minimal attention has been devoted in Arizona toward providing decision-making authorities with guidelines for implementing these special juvenile considerations.

Twenty-nine states had life sentences for juveniles without the opportunity for parole when the Miller case was decided. Arizona was one of those states, so the 34 juveniles given LWOP sentences before the Miller decision need to be resentenced.

Arizona did not commute its juvenile natural life sentences to indeterminate-life terms of imprisonment as did 17 other jurisdictions. As a consequence, the courts in Arizona must implement the individualized sentencing process prescribed in Miller when the 34 become eligible for resentencing.

In the Miller decision, the court was not banning life sentence for juvenile offenders, but equated a life sentence with a death sentence, which means life sentences for juveniles now require the kinds of individualized determinations that are required for death sentences. However, a number of legal scholars have questioned whether Arizona and other states will implement the intent and spirit of the standards governing these individualized sentencing processes.

The legal officials who will participate in these resentencing and future sentencing procedures for juveniles convicted of homicide offenses are expected to take into account whether the offense reflected the offender's transient immaturity or the juvenile's irreparable corruption. While many expert witnesses and other consulting professionals are aware of the contributions of immaturity to various forms of behavior, there is a lack of credible evidence in the scientific literature on how to make valid recommendations about whether or not a juvenile is irreparably depraved or unlikely to change. As a consequence, lawyers in Arizona and other jurisdictions are struggling with how to develop effective strategies for presenting evidence to dispute claims of irreparable corruption.

The Miller decision also has implications for how parole boards and other releasing authorities insure that juveniles

are afforded meaningful opportunities for release. In order to address this new legal requirement, some states have developed specialized criteria for guiding releasing authorities in the implementation of Miller requirements.

Thus far, Arizona has not followed the lead of California and other jurisdictions that modified their parole procedures and criteria for determining a juvenile lifer's suitability for release. Arizona has 74 juveniles who were sentenced to 25 years to life. They will be eligible for release by the [Arizona Board of Executive Clemency](#) under Miller, but not all of them will have access to legal counsel to assist them in making a case of their suitability for release. The availability of legal counsel in these parole processes also will vary from state to state.

In Arizona, the [Arizona Justice Project](#) is a nonprofit group of lawyers and volunteers who are developing strategies in conjunction with the [Sandra Day O'Connor Post-Conviction Law Clinic](#) and faculty and students from the [Office of Offender Diversion and Sentencing Solutions](#) (OODSS) in the School of Social Work at Arizona State University to assist inmates seeking release pursuant to Miller requirements. The Arizona Justice Project "reviews and assists in cases of actual innocence or cases in which a manifest injustice has occurred."

The pilot project with the OODSS was developed to assist lawyers working with the wrongly convicted in helping them address their reentry concerns. The student social workers in this pilot program not only provide supportive services to inmates experiencing reentry difficulties, but also assist inmates at their release hearings by presenting responsive release plans that address relevant risks and needs. This strategy, employed by the Arizona Justice Project for collaborating with faculty and students from the School of Social Work, is an interim solution to a pressing problem.

In 2018, the number of inmates in Arizona who will become eligible for consideration for release will begin to exceed the capacity of the pilot project. This project and other legal assistance programs serving these offenders will have to make difficult decisions in selecting cases for their assistance. This is unfortunate because the release planning provided by the reentry team has helped assuage a number of concerns from the defense community about releasing inmates who were disconnected from family and other relevant supports needed for a successful reintegration in society. Clearly, advocates in Arizona and other jurisdictions need to push for funding of this and other kinds of initiatives to work on the translation of Miller principles into meaningful opportunities for release of juvenile lifers.

The pilot project has already produced positive outcomes in addressing reentry and release planning issues. In addition, it is demonstrating the importance of promoting similar forms of interprofessional training with a focus on principles of holistic defense in sentencing juveniles from indigent backgrounds to a LWOP sentence. Indeed, similar interprofessional training programs are needed for preparing social workers and lawyers in the sentencing of juveniles in states that have maintained LWOP sentences for irreparably corrupt youth.

Thus far, the federal government and most states have not identified special funding for the purposes of training releasing authorities, lawyers, judges and other professionals in how to develop effective strategies for responding to Miller requirements. An equally important concern is in the future sentencing of juveniles convicted of homicide offenses. For these youth, they deserve to have their judges have clear guidelines for interpreting Miller standards. These youth also should have public defenders and mitigation specialists who have access to the kinds of training and supports currently available to mitigation professionals in capital cases.

The U.S. Supreme Court is requiring that given the seriousness of LWOP sentences that practitioners must connect the seriousness of a youth's offense to special circumstances of youth. In order to avoid claims of ineffective assistance of counsel in these matters, the juvenile justice community must take affirmative steps to make sure that lawyers and mitigation specialists are prepared to develop and present evidence of "transient immaturity" in making a case for leniency when youth are convicted of heinous offenses.

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