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Supreme Court Decision on Juvenile Sentencing Results in Cruel and Unusual Difficulties for Missouri

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NOTE

Supreme Court Decision on Juvenile Sentencing Results in Cruel and Unusual Difficulties for Missouri

State v. Hart, 404 S.W.3d 232 (Mo. 2013).

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I. INTRODUCTION

Many Americans are familiar with the phrase "cruel and unusual punishment" as it is used in the Eighth Amendment to the U.S. Constitution. But far fewer are acquainted with the history behind these words and the difficulty the Supreme Court of the United States has had in giving definition to this broad phrase. Since the ratification of this amendment in 1791, the Court has drawn and re-drawn the boundaries of what constitutes "cruel and unusual punishment" forbidden by the Constitution, tending to exhibit an increasing sense of decency in the punishments it allows for certain crimes. Most recently, the Court continued this trend by holding in *Miller v. Alabama* that a juvenile cannot be sentenced to life without parole ("LWOP") until the sentencer considers certain mitigating factors, such as the youthful characteristics of the offender.[1]

While the Court's progress can be seen as a beneficial furtherance of civility in an increasingly advanced society, this constant change in the law creates havoc for the states as they struggle to amend their statutes to comply with the Court's most recent decision. After *Miller*, for example, twenty-nine states saw their mandatory sentencing statutes invalidated, requiring immediate, complicated revisions of their criminal codes.[2] In Missouri, this struggle began when the Supreme Court of Missouri decided *State v. Hart*, a case applying the *Miller* decision to state law.[3] As a result of this decision and the resulting invalidation of state law, Missouri's criminal justice system faces several problems that must be dealt with immediately.[4] To comply with the

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1. 132 S. Ct. 2455, 2475 (2012).

2. James Swift, Miller v. Alabama*: One Year Later*, JUV. JUST. INFO. EXCHANGE (June 25, 2013), http://jjie.org/miller-v-alabama-one-year-later/.

3. State v. Hart, 404 S.W.3d 232, 237-38 (Mo. 2013) (en banc) (citing Miller v. Alabama, 132 S. Ct. 2455 (2012)).

4. *See id.*

Supreme Court's most recent Eighth Amendment decision and to resolve these complications, it is vital that the Missouri Legislature revise its criminal code in several ways. This Note discusses those problems and provides guidance to lawmakers as they attempt to adjust to the current state of the law.

Part II gives a brief background of the facts and circumstances surrounding the *Hart* decision. Part III discusses the history of the Eighth Amendment and explores the U.S. Supreme Court's trend toward leniency in the imposition of punishments, culminating with a discussion of the *Miller* decision. Part IV delves into the Supreme Court of Missouri's reasoning behind its decision in *Hart* and the temporary sentencing procedures the court provided. Finally, Part V comments on the many problems currently facing Missouri's criminal justice system since the implementation of the *Miller* decision and the actions that will be required by the legislature in revising the state's criminal code in order to remedy these problems.

II. FACTS AND HOLDING

On the evening of January 24, 2010, seventeen-year-old Laron Hart participated in two separate armed robberies in St. Louis, Missouri.[5] Hart first approached Ms. Hellrich while she was entering her car, demanding her purse and brandishing a handgun to convince her to hand it over.[6] While Hart ran to his stolen blue Oldsmobile Cutlass to leave the scene, Hellrich quickly called the police.[7] Shortly after this robbery and a short distance away, Hart jumped from his Cutlass and approached Mr. Sindelar from behind.[8] Upon grabbing the man's backpack, Sindelar began to struggle and call for help, whereupon Hart pulled out his gun and fired a single, fatal shot into Sindelar's chest.[9] Hart returned to his car and drove away, leaving Sindelar to die.[10]

The next morning, St. Louis police stopped the blue Cutlass following a lengthy chase through rush-hour traffic.[11] Although Hart was not one of the occupants of the car, Hellrich's belongings were found inside.[12] Based on the descriptions given by Hellrich and a witness to Sindelar's murder, police soon arrested Hart, who was subsequently identified by Hellrich and the eyewitness in a police lineup.[13] During a videotaped interrogation, Hart initially denied any involvement in the robberies.[14] When confronted with evidence

5. *Id.* at 234.
6. *Id.* at 235.
7. *Id.*
8. *Id.*
9. *Id.* at 235-36.
10. *Id.* at 236.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*

against him, however, Hart admitted to being present at both robberies, knowing that the robberies would occur beforehand, being outside the car and near the victims during both robberies, and watching an accomplice shoot Sindelar.[15] During the interrogation, Hart consistently denied that he shot Sindelar.[16]

At trial, Hart argued that the incriminating statements he made during the interrogation were compelled and he offered alibi evidence to prove that he was not involved in either robbery.[17] The jury failed to give weight to this evidence and found Hart guilty of first-degree robbery and armed criminal action for the Hellrich robbery, and first-degree murder and armed criminal action for the murder of Sindelar.[18] Thus, the jury found, unanimously and beyond a reasonable doubt, that Hart had killed Sindelar knowingly and deliberately after cool reflection on the matter.[19]

Since Hart had waived jury sentencing prior to trial, he chose to have the trial court decide his punishment if the jury found him guilty of any charges.[20] Because Hart was ineligible for the death penalty due to his age,[21] the only other punishment for first-degree murder authorized by Missouri law was life in prison with no possibility of parole.[22] At the conclusion of the sentencing hearing, Hart was sentenced to LWOP and to concurrent thirty-year sentences.[23]

Hart appealed his convictions for first-degree murder and armed criminal action to the court of appeals.[24] While the appeal was pending, the U.S. Supreme Court announced its decision in *Miller v. Alabama*.[25] Hart pointed out that *Roper v. Simmons* bars juvenile offenders from being sentenced to death[26] and claimed that the recent *Miller* decision reaches the same conclusion with respect to life sentences without parole.[27] He therefore argued that both punishments authorized by Section 565.020 – Missouri's first-degree murder statute – have been declared unconstitutional for juvenile offenders,[28]

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15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*; *cf.* MO. REV. STAT. § 565.020 (2012).
20. *Hart*, 404 S.W.3d at 236; *cf.* MO. REV. STAT. § 557.036.4(1) (2012 & Supp. 2013).
21. *See* Roper v. Simmons, 543 U.S. 551 (2005) (holding that the death penalty is categorically prohibited for juvenile offenders under the Eighth Amendment).
22. *Hart*, 404 S.W.3d at 236; *see also* MO. REV. STAT. § 565.020.2 (2012).
23. *Hart*, 404 S.W.3d at 236.
24. *Id.*
25. 132 S. Ct. 2455 (2012) (holding that the Eighth Amendment forbids sentencing a juvenile to life without parole without consideration of particular circumstances of the crime or the offender's age and development).
26. 543 U.S. 551 (2005).
27. *Hart*, 404 S.W.3d. at 237.
28. *See generally* MO. REV. STAT. § 565.020 (2012).

and as a result of there being no valid punishment therein, the statute was void as applied.[29] Hart argued that this fact made his conviction under the statute unconstitutional.[30] Due to these arguments, the state moved to transfer the appeal to the Supreme Court of Missouri pursuant to Article V, Sections 3 and 11 of the Missouri Constitution.[31]

The Supreme Court of Missouri, in an opinion by Judge Paul Wilson, held that the trial court's sentencing of Hart to life imprisonment without parole violated the Eighth Amendment's ban on cruel and unusual punishment.[32] The court stated that the constitutional defect in Hart's sentence for first-degree murder was not its length or the fact that he would be ineligible for parole, but that "it was imposed without any opportunity for the sentencer[33] to consider whether this punishment [was] just and appropriate in light of Hart's age, maturity, and the other factors discussed in *Miller*."[34] The court disagreed with Hart that Section 565.020 is void of any valid punishment as applied to juveniles, holding that LWOP is still a valid sentence as long as the factors in *Miller* are considered.[35] The court therefore remanded the case to the trial court for re-sentencing for the first-degree murder conviction.[36] Thus, whenever a juvenile offender is convicted of first-degree murder, the punishment of life imprisonment without parole is constitutionally permissible as long as the sentencer employs the individualized analysis required by *Miller* to determine whether such a punishment is just and appropriate under the circumstances.

III. LEGAL BACKGROUND

A. History and Text of the Eighth Amendment

The Eighth Amendment to the Constitution of the United States provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[37] When the Constitutional Convention ratified this language in 1791, the framers were drawing on ideals and

29. *Hart*, 404 S.W.3d at 237.

30. *Id.*

31. *Id.* at 236; *see also* MO. CONST. art. V, §§ 3, 11 ("The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of . . . a statute or provision of the constitution of this state.").

32. *Hart*, 404 S.W.3d at 238.

33. The Supreme Court of the United States uses the term "sentencer" in *Miller* to refer to whichever entity has the responsibility under state law to determine a defendant's sentence. Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012). The Supreme Court of Missouri uses the same term. *See*, *e.g.*, Deck v. State, 381 S.W.3d 339, 344 (Mo. 2012) (en banc).

34. *Hart*, 404 S.W.3d at 238.

35. *Id.* at 238-39.

36. *Id.* at 250.

37. U.S. CONST. amend. VIII.

principles that can be traced back to as early as the eleventh century.[38] The English Magna Carta of 1215 was also an important influence on the framers of the Constitution, serving "to inspire and justify action in liberty's defense" and serving as a template for the language used in the American document.[39] But universally acknowledged as the greatest influence on the passage of the Eighth Amendment was Article 10 of the English Bill of Rights of 1689, the language of which was almost identical to that adopted by the framers.[40]

During the late seventeenth century, England was suffering a series of abuses inflicted by King James II related to religious persecution and his plans to act as an absolute monarch.[41] James II was deposed during the Glorious Revolution of 1688-89 and replaced by William III and Mary II, permanently establishing Parliament as the ruling power in England.[42] It has been stated that the "[a]buses during the reign of James II . . . provided the historical background of the provisions of the [English] Bill of Rights."[43] This document, drawn up after James II fled the country, was designed to prevent a reappearance of such abuses in England.[44] This text, including the language that was to become the United States' Eighth Amendment,[45] had a profound effect on the American founders in 1787, men who were fighting a similar battle to prevent a reoccurrence of the oppression of King George III.[46]

The first adoption of this language from the English Bill of Rights was in Virginia, where the Virginia Convention, meeting in Williamsburg in 1776, enacted the Virginia Declaration of Rights.[47] This document, passed in the heat of rebellion against British oppression of the American colonies, espoused the inherent and natural rights of men, including the right to be free from cruel and unusual punishments.[48] The Virginia Convention that ratified

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38. Celia Rumann, *Tortured History: Finding Our Way Back to the Lost Origins of the Eighth Amendment*, 31 PEPP. L. REV. 661, 666, 674 n.99 (2004).

39. Nat'l Archives & Records Admin., *The Magna Carta*, NAT'L ARCHIVES, http://www.archives.gov/exhibits/featured_documents/magna_carta/ (last visited Oct. 4, 2014).

40. Rumann, *supra* note 38, at 666-67.

41. John P. Kenyon, *James II*, ENCYCLOPEDIA BRITANNICA, http://www.britannica.com/EBchecked/topic/299989/James-II (last updated June 10, 2014).

42. *Id.*

43. Rumann, *supra* note 38, at 669-70 (internal quotation marks omitted).

44. *Id.* at 670.

45. The original language read, "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *English Bill of Rights 1689*, YALE L. SCH., http://avalon.law.yale.edu/17th_century/england.asp (last visited Oct. 5, 2014).

46. *See generally* Nat'l Archives & Records Admin., *Constitution of the United States: A History*, NAT'L ARCHIVES, http://www.archives.gov/exhibits/charters/constitution_history.html (last visited Oct. 5, 2014).

47. Rumann, *supra* note 38, at 673.

48. This language is found in Section 9 of the Virginia Declaration of Rights. Nat'l Archives & Records Admin., *The Virginia Declaration of Rights*, NAT'L

the newly-formed Constitution of 1787, led by James Madison and George Mason, insisted that this language be included, along with additional amendments that would become the Bill of Rights.[49] After a heated debate among the colonies, the Bill of Rights, including the Eighth Amendment, was passed and became part of the U.S. Constitution in 1791.[50]

B. Historical Developments in Eighth Amendment Jurisprudence

Since the ratification of the Eighth Amendment, courts have continuously reinterpreted its language. Many of these modifications were a result of changing times and societal expectations, leading courts to acknowledge "evolving standards of decency" while setting the boundaries of the amendment.[51] These changes have greatly altered criminal law in the United States and have been the source of intense debate, especially pertaining to the imposition of the death penalty.[52] These changes have also been a source of difficulty for states as they attempt to amend their laws to comply with the Court's evolving standards while simultaneously trying to avoid a standstill in their criminal justice systems. At any rate, the constant variations have resulted in a rich history of Eighth Amendment case law.

In the case of *State of Louisiana* ex rel. *Francis v. Resweber*, decided in 1947, the U.S. Supreme Court assumed, but never explicitly held, that the "cruel and unusual punishments" clause of the Eighth Amendment applied to the states.[53] Fifteen years later, however, in *Robinson v. California*, the Court expressly held that the clause was in fact incorporated and applied to the states.[54] From this point forward, state governments would join the federal government in following the dictates of the Eighth Amendment, avoiding the imposition of any punishment determined to be "cruel and unusual."[55]

The U.S. Supreme Court has also forbidden the use of certain punishments under the amendment's language, regardless of the crime in question. In *Wilkerson v. Utah*, decided in 1878, the Court determined that drawing and quartering, public dissection, burning alive, and disembowelment all consti-

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ARCHIVES, http://www.archives.gov/exhibits/charters/virginia_declaration_of_rights.html (last visited Oct. 5, 2014).

49. *See* Bernard Schwartz, THE GREAT RIGHTS OF MANKIND: A HISTORY OF THE AMERICAN BILL OF RIGHTS 165-66 (Rowman & Littlefield Publishers, Inc., expanded ed. 1992).

50. Rumann, *supra* note 38, at 674-79 & n.99.

51. Trop v. Dulles, 356 U.S. 86, 100-01 (1958).

52. *See generally* James S. Liebman, *Slow Dancing With Death: The Supreme Court and Capital Punishment, 1963-2006*, 10 COLUM. L. REV. 1 (2007); Frederick C. Millett, *Will the United States Follow England (and the Rest of the World) in Abandoning Capital Punishment?*, 6 PIERCE L. REV. 547 (2008).

53. 329 U.S. 459, 462-63 (1947).

54. 370 U.S. 660, 667 (1962).

55. *See id.*

tuted cruel and unusual punishment disallowed by the Eighth Amendment.[56] Well over a century later, the Court determined in *Atkins v. Virginia* that the use of the death penalty for mentally handicapped offenders was barred by the amendment, holding that the reduced capacity of such individuals takes away the purposes of deterrence and retribution that accompany such a punishment.[57] And more recently, in *Roper v. Simmons*, the Court instituted an unqualified prohibition against sentencing a juvenile offender to death, citing the "instability and emotional imbalance of young people" as a reason for its decision.[58]

Over the years, determining what exactly constitutes "cruel and unusual punishment" has proved to be difficult. The U.S. Supreme Court first addressed this issue in the case of *Trop v. Dulles*.[59] There, the Court declared that the Eighth Amendment barred the punishment of expatriation for desertion from the U.S. Army during wartime.[60] In doing so, Chief Justice Earl Warren held that the Eighth Amendment's scope is not static, and thus it must "draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[61] Thus, the Court decided that interpretations of the "cruel and unusual punishments" clause were to be approached with an eye toward current societal norms and accepted behaviors.[62] The amendment's language is thus not a "hollow shibboleth," but a statement of living principles to be adapted to the changing times.[63]

With the case of *Furman v. Georgia* came a more specific set of principles to determine what punishments violate the Eighth Amendment.[64] In a set of consolidated murder and rape cases, the Court determined, in a surprisingly brief opinion, that the imposition of the death penalty in each case violated the "cruel and unusual punishments" clause.[65] However, Justice Brennan's concurrence revealed the real substance of the decision. While examining in great detail the history and justifications for the passage of the Eighth Amendment, Brennan stated that there were "four principles by which we may determine whether a particular punishment is 'cruel and unusual.'"[66]

The primary principle, which Brennan believed formed the predicate for the application of the other requirements, was that "a punishment must not by its severity be degrading to human dignity."[67] Second, a punishment must

56. 99 U.S. 130, 135-36 (1878).
57. 536 U.S. 304, 321 (2002).
58. 543 U.S. 551, 578 (2005).
59. 356 U.S. 86 (1958).
60. *Id.* at 103.
61. *Id.* at 100-01.
62. *See id.*
63. *Id.* at 103.
64. 408 U.S. 238 (1972).
65. *Id.* at 239-40.
66. *Id.* at 281-82 (Brennan, J., concurring).
67. *Id.* at 281.

not be "obviously inflicted in wholly arbitrary fashion."[68] Third, a punishment is barred if it is "clearly and totally rejected throughout society."[69] And finally, no punishment that is found to be "patently unnecessary" should be applied.[70] In laying down these criteria for determining what constitutes a "cruel and unusual punishment," Brennan expected courts to apply a cumulative analysis of the implication of all four principles, expecting that these principles would give greater guidance when applying the Eighth Amendment.[71]

In 1991, in the case of *Harmelin v. Michigan*, the Court further explained when a punishment violates the Eighth Amendment.[72] In affirming petitioner's conviction of possessing more than 650 grams of cocaine, the Court held that the imposition of mandatory LWOP without the consideration of mitigating factors was not cruel and unusual punishment.[73] In making this determination, the Court stated that a punishment violates the Eighth Amendment only when a "comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality."[74] These situations, the opinion continued, would thus be "exceedingly rare."[75]

With these principles and guidelines in mind, the Court recently decided two cases with far-reaching implications, especially as they pertain to the decision in *Hart*. In 2010, the Court decided the case of *Graham v. Florida*, addressing the issue of whether the punishment of life imprisonment without parole against a juvenile non-homicide offender violated the Eighth Amendment.[76] The petitioner, Graham, was sixteen years old when he committed armed burglary, and a Florida trial court sentenced him to probation as a result.[77] When the court discovered that Graham had violated his probation by committing other crimes, he was found guilty of the armed burglary charges and sentenced to LWOP.[78]

In declaring that such a punishment was "cruel and unusual," the Court applied the "evolving standards of decency" test espoused in *Trop*.[79] The Court held that there were two prongs to be applied in this test: (1) Evidence of a national consensus against the sentencing practice at issue,[80] and (2) the

68. *Id.*
69. *Id.*
70. *Id.*
71. *See id.*
72. 501 U.S. 957 (1991).
73. *Id.* at 961, 995.
74. *Id.* at 1005 (Kennedy, J., concurring).
75. *Id.* at 963 (majority opinion) (internal quotation marks omitted).
76. 560 U.S. 48, 52-53 (2010).
77. *Id.* at 53-54.
78. *Id.* at 57.
79. *Id.* at 58 (quoting Estelle v. Gamble, 429 U.S. 97, 102 (1976)); *see also* Trop v. Dulles, 346 U.S. 86, 101 (1958).
80. *Graham*, 560 U.S. at 62.

Court's independent judgment.[81] In applying the first prong, the majority recognized that only eleven jurisdictions within the United States have imposed juvenile LWOP sentences for non-homicide crimes.[82] The Court was thus persuaded that such sentences are "exceedingly rare" and that a national consensus had developed against their imposition.[83]

In applying the second prong, which requires independent judicial analysis, the Court considered the culpability of the offender, the severity of the punishment, and whether the sentence serves legitimate "penological" justifications.[84] The majority explained, as the Court did in *Roper*, that there are certain differences between juveniles and adults that make juveniles "less deserving of the most severe punishments."[85] These differences are juveniles' lack of maturity, their increased vulnerability to negative influences, and the fact that their character traits are not as fully developed.[86] As for the severity of the punishment, the Court pointed out that LWOP sentences are the second most severe penalty behind a sentence of death.[87] Finally, the Court determined that such a punishment against a juvenile does not satisfy any of the recognized penological principles – retribution, deterrence, incapacitation, or rehabilitation.[88] For these reasons, the Court declared that a life sentence without possibility for parole for a juvenile, other than for murder, is "cruel and unusual punishment," thus violating the Eighth Amendment when applied to a juvenile offender.[89]

Most recently, the Court decided the landmark case of *Miller v. Alabama*.[90] In two consolidated cases, juveniles were convicted of murder and sentenced to LWOP.[91] In neither case did the sentencing authorities have discretion to impose a different punishment, nor were they able to consider whether the offenders' youth and attendant circumstances made a lesser punishment more appropriate.[92] In the lower courts, both the Arkansas Supreme Court and the Alabama Court of Criminal Appeals disagreed with arguments invoking the *Roper* rationale that mandatory sentences of LWOP for juveniles violated the Eighth Amendment.[93] The lower courts also found that

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81. *Id.* at 67 (citing Roper v. Simmons, 543 U.S. 551, 568 (2005) and Kennedy v. Louisiana, 554 U.S. 407, 436-38 (2008)).

82. *Id.* at 64.

83. *Id.* at 65-67 (quoting Atkins v. Virginia, 536 U.S. 304, 316 (2002)).

84. *Id.* at 67.

85. *Id.* at 68 (citing Roper v. Simmons, 543 U.S. 551, 569 (2005)).

86. *Id.* (quoting *Roper*, 543 U.S. at 569).

87. *Id.* at 69 (quoting Harmelin v. Michigan, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring)).

88. *Id.* at 71 (citing Ewing v. California, 538 U.S. 11, 25 (2003) (plurality opinion)).

89. *Id.* at 82.

90. 132 S. Ct. 2455 (2012).

91. *Id.* at 2460.

92. *Id.*

93. *Id.* at 2461, 2463.

such a sentence was not unduly harsh when compared with the crime committed.[94]

Upon granting petitioner's writ of certiorari, the Supreme Court reversed both convictions.[95] The Court began by citing language in *Roper* and *Graham*, emphasizing that children are constitutionally different from adults for purposes of sentencing and, due to their youthful characteristics,[96] are less deserving of the most severe punishments.[97] *Graham* barred LWOP sentences for juveniles only for non-homicide crimes.[98] However, the Court stated that the distinctive traits found in children are not crime-specific, but "are evident in the same way, and to the same degree, when (as in both cases here) a botched robbery turns into a killing."[99] Thus, the mandatory sentencing schemes found here prevent the sentencer from taking into account these important youthful characteristics and therefore contravene *Graham's* foundational principle: "that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[100]

As a result of this analysis of precedent, the Court held that the Eighth Amendment forbids a sentencing scheme that mandates LWOP for juvenile offenders.[101] By requiring that all children convicted of homicide receive LWOP, regardless of their age, youthful characteristics, and the nature of the crime, such mandatory sentencing schemes violate the principle of proportionality, and thus the Eighth Amendment.[102] And so, the Court held that the judge or jury must have the opportunity to consider mitigating circumstances that might make the sentence unjust before imposing the penalty of LWOP on juvenile offenders.[103]

Indeed, the Court's ever-changing standards of decency regarding the Eighth Amendment have required states to repeatedly alter their criminal codes to keep up with the fluctuating law. It was with this trend and legal background in mind that the Supreme Court of Missouri decided *State v. Hart*.

IV. INSTANT DECISION

In the instant case, the Supreme Court of Missouri analyzed the recent decisions of the U.S. Supreme Court in *Miller* and *Roper* to determine wheth-

94. *See id.*
95. *Id.* at 2475.
96. *See supra* notes 85-86 and accompanying text.
97. *Miller*, 132 S. Ct. at 2464 (quoting Roper v. Simmons, 543 U.S. 551, 569 (2005) and Graham v. Florida, 560 U.S. 48, 68 (2010)).
98. *See supra* notes 76-89 and accompanying text.
99. *Miller*, 132 S. Ct. at 2465.
100. *Id.* at 2466.
101. *Id.* at 2469.
102. *Id.* at 2475.
103. *Id.*

er Hart's sentence of LWOP for a murder committed when he was a minor violated the Eighth Amendment. The court began by citing the relevant language of Missouri Revised Statutes Section 565.020[104] and holding that the language of that section was plain and unambiguous: "Because Hart was seventeen years old at the time he committed this murder, the sentencer was required to sentence him to 'either death or imprisonment for life without eligibility for probation or parole.'"[105] However, due to the decision in *Roper*, which barred the death penalty for offenders under the age of eighteen, Hart could not be sentenced to death under the Eighth Amendment.[106] Thus, LWOP was the only punishment authorized under the Missouri statute when a juvenile offender committed a first-degree murder.

The court determined that Hart's first argument, holding that a criminal statute that fails to provide a valid punishment is void, was correct.[107] Hart also argued that, since *Roper* eliminated the punishment of death for his crime, and because the U.S. Supreme Court's recent decision in *Miller* eliminated the punishment of LWOP for minors, Section 565.020 was void as applied to juvenile offenders and therefore he could not be convicted under that statute.[108] The court held that this argument was flawed.[109] The decision in *Miller* did not categorically bar the sentencing of a juvenile to LWOP but merely held that such a sentence was unconstitutional when there was no consideration of the particular circumstances of the crime or the offender's age and development.[110] Thus, Hart could still be sentenced to LWOP for the murder, but, in doing so, the procedures for sentencing outlined in *Miller* must be followed by the lower court.

Applying *Miller* to the present case, the court found that "the constitutional defect in Hart's sentence for first-degree murder is not its length or the fact that he will not be eligible for parole."[111] Instead, Hart's sentence violated the Eighth Amendment because it was imposed without any opportunity for the sentencer to consider whether the punishment was appropriate in light of Hart's age, maturity, and other factors as discussed in *Miller*. As a result, the court remanded the case to the trial court for re-sentencing using the individualized analysis required to determine whether LWOP was a just sentence in light of Hart's actions.[112] If the sentencer determines on remand that such a punishment was appropriate under all of the circumstances, the sentence is constitutional under *Miller*, and Section 565.020 will have provided a consti-

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104. *See* MO. REV. STAT. § 565.020 (2012).

105. State v. Hart, 404 S.W.3d 232, 237 (Mo. 2013) (en banc).

106. Roper v. Simmons, 543 U.S. 551, 578 (2005).

107. *Hart*, 404 S.W.3d at 237; *see also* State v. Harper, 510 S.W.2d 749, 750 (Mo. Ct. App. 1974).

108. *Hart,* 404 S.W.3d at 237.

109. *Id.*

110. *Id.* at 237-38.

111. *Id.* at 238.

112. *Id.* at 238-39.

tutionally permissible punishment.[113] If, however, the sentencer is not persuaded, Hart's claim will succeed and his conviction for first-degree murder will not stand.[114]

Finally, the court outlined the procedures for re-sentencing under *Miller*. No consensus has emerged in the wake of *Miller* regarding whether the state or defendant should bear the burden of proof or what that burden of proof should be.[115] Thus, the court held that, until it receives further guidance, a juvenile offender cannot be sentenced to LWOP unless the state persuades the sentencer beyond a reasonable doubt that the sentence is just and appropriate under the facts and circumstances at hand.[116] If the state fails to persuade the sentencer of this proposition, Hart cannot receive that sentence and Section 565.020 would be declared void as applied on the ground that it fails to provide a constitutionally valid punishment for the crime.[117]

V. COMMENT

As a result of the Supreme Court of Missouri's application of *Miller v. Alabama* in its recent decision in *Hart*, Missouri's criminal justice system faces several pressing problems that must be rapidly dealt with. Missouri's current criminal code is now unsettled with regard to first-degree murder sentencing, leaving defense attorneys unsure of how to counsel juvenile clients facing homicide charges. A great number of juvenile offenders previously sentenced to LWOP remain in prison,[118] ready to file appeals and habeas petitions, but unsure about whether the new law will be applied retroactively in Missouri. Additionally, as it now stands, Missouri's criminal code only supplies one constitutionally permissible punishment for juveniles who have committed homicide, leaving open the possibility that otherwise culpable offenders will be able to get off with unjustifiably lighter sentences.[119] In the face of these pressing issues, it is imperative that the Missouri Legislature take action by revising the current criminal code.

113. *Id.* at 239.

114. *Id.*

115. *Id.* at 241.

116. *Id.*; *see also* Cunningham v. California, 549 U.S. 270, 289-90 (2007).

117. *Hart*, 404 S.W.3d at 242.

118. Jennifer Mann, *Missouri's Top Court Hears Two Cases of St. Louis Juveniles Given Life Sentences*, ST. LOUIS POST-DISPATCH (Apr. 30, 2013, 4:16 PM), http://www.stltoday.com/news/local/crime-and-courts/missouri-s-top-court-hears-cases-of-st-louis-juveniles/article_8d6e3310-43d8-54fb-b40d-d72c73755430.html.

119. *Id.*

A. Difficulties Currently Facing Missouri's Criminal Justice System

"As it now stands, *Miller v. Alabama* has left states in disarray as to how to conform to the ruling."[120] Immediately following the Supreme Court's decision in that landmark case, twenty-nine states faced the difficulty of amending their existing laws, all of which had previously mandated LWOP for juveniles convicted of first-degree murder, to conform to the decision.[121] Missouri is among these states standing in disarray with its current criminal code in limbo.

Juveniles incarcerated pursuant to mandatory sentencing schemes have already begun to file appeals and habeas petitions in an attempt to have their cases re-tried under the new law.[122] However, the decision has not yet been made on whether the ruling in *Miller* will be applied retroactively in Missouri, delaying a final redetermination of these cases. Since the U.S. Supreme Court did not appropriately address the retroactivity of its ruling in *Miller*, the Missouri Legislature, or the Supreme Court of Missouri, must make a final evaluation on this issue.[123] But until that point, the fate of the eighty-four Missouri inmates convicted before the 2012 ruling remains uncertain.[124] It is vital that the law be settled so that these prisoners may finally accept their fate or be able to challenge it.

Additionally, public defenders and criminal defense attorneys have been placed in a difficult situation, unsure as to what counsel to give to juvenile clients facing homicide charges due to the change in the law. As a result, juveniles' sentencing determinations are continuously delayed, raising possible violations of an accused's constitutional right to a speedy trial promised by the Sixth Amendment.[125] Eric Zahnd, the Platte County prosecutor who also heads a statewide association for prosecuting attorneys, stated that this legal uncertainty "could delay or jeopardize the trials of teens accused of murder."[126]

In addition to the current uncertainty of Missouri's criminal sentencing structure, the existing law after *Miller* would allow culpable juvenile murderers to get away with lighter sentences than they deserve. Missouri's first-degree murder statute currently provides two possible sentences: death or

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120. Lauren Kinell, *Answering the Unanswered Questions: How States Can Comport With* Miller v. Alabama, 13 CONN. PUB. INT. L.J. 143, 148 (2013).

121. *Id.*

122. *Id.* at 149.

123. Sonia Mardarewich, *Certainty in a World of Uncertainty: Proposing Statutory Guidance in Sentencing Juveniles to Life Without Parole*, 16 SCHOLAR123, 136 (2013).

124. Associated Press, *Life Sentence for Juveniles in Missouri Still in Limbo*, OZARK AREA NETWORK (May 21, 2013), http://www.ozarkareanetwork.com/localnews/life-sentence-for-juveniles-in-missouri-still-in-limbo/.

125. *See* U.S. CONST. amend VI; Associated Press, *supra* note 124.

126. Associated Press, *supra* note 124.

LWOP.[127] However, as the court pointed out in *Hart*, death has been categorically eliminated as a punishment for juveniles under the Supreme Court's decision in *Roper v. Simmons*.[128] Additionally, a juvenile offender can no longer be given the mandatory sentence of LWOP following the decision in *Miller*.[129] Instead, the sentencer must consider the offender's youth and attendant characteristics in deciding whether such a punishment would be just under the circumstances.[130] Therefore, in cases where a sentencer decides that LWOP would not be appropriate, the juvenile murderer cannot be convicted for first-degree murder because a criminal statute that fails to provide a valid punishment is void.[131] Instead, the jury would have to enter a new finding that the juvenile offender is guilty of the lesser offense of second-degree murder under Section 565.021.[132]

This result seems unjust. By foreclosing the opportunity for the sentencer to consider alternative punishments for first-degree murder, a guilty offender may get off more easily than he deserves. Under Missouri's second-degree murder statute, the term of imprisonment could be as little as ten to thirty years.[133] Such a term in comparison with a brutal crime committed seems unnecessarily short. Additionally, evidence shows that juvenile offenders become more similar to adults as they grow older, which may make some adolescents just as deserving of severe punishments as adults.[134] As stated in an amicus brief filed during the *Miller* case, "It is quite clear that, despite their age, certain teenage murderers are more than capable of distinguishing right from wrong and fully appreciating the consequences of their actions."[135] Imposing lighter sentences on juveniles who have committed crimes equally or more terrible than those committed by adults – who, in some cases, may be only a few years older – is a miscarriage of justice.

B. Action Required by the Missouri Legislature in Revising the Criminal Code

As a result of the many difficulties facing Missouri's criminal justice system following *Hart*'s imposition of the Supreme Court's mandate, it is

127. MO. REV. STAT. § 565.020 (2012).

128. State v. Hart, 404 S.W.3d 232, 236 (Mo. 2013) (en banc); *see also* Roper v. Simmons, 543 U.S. 551 (2005).

129. Miller v. Alabama, 132 S. Ct. 2455, 2475 (2012).

130. *Id.*

131. *See* State v. Harper, 510 S.W.2d 749, 750 (Mo. Ct. App. 1974).

132. *Hart*, 404 S.W.3d at 242; *see also* MO. REV. STAT. § 565.021.1(1) (2012).

133. MO. REV. STAT. § 558.011 (2012).

134. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 JUVENILE JUST. 15, 25 (2008), *available at* http://futureofchildren.org/futureofchildren/publications/docs/18_02_02.pdf.

135. Brief for National Organization of Victims of Juvenile Lifers as Amicus Curiae Supporting Respondents at 5, Miller v. Alabama, 132 S. Ct. 2455 (2012) (Nos. 10-9646, 10-9647).

urgent that the Missouri Legislature act to revise the criminal code in order to resolve these issues. The court in *Hart* recognized that the re-sentencing procedure it had outlined could only be a temporary solution.[136] "Under [the Missouri] constitution, only the legislature has the authority to decide whether and how to respond to *Miller* by authorizing additional punishments for juvenile offenders found guilty of first-degree murder."[137]

The Missouri Legislature attempted to revise the code to comply with *Miller* in 2013, but to no avail.[138] Senator Bob Dixon, chairman of the Senate's Judiciary Committee, proposed a measure that left LWOP as a possibility but would have also allowed a court to sentence the juvenile to a fifty-year prison term.[139] The proposal would have made the Supreme Court's ruling apply retroactively.[140] However, opponents of the senator's bill said the plan "would not have solved the problem because fifty years in prison amounts to a life sentence, violating the Court's directive against automatic life sentences for juveniles."[141] The legislature could not reach agreement before adjourning.[142]

The Missouri Criminal Code had not been revised for forty years before May 2014.[143] Recent developments in the legislature coupled with the absolute necessity of resolving the difficulties facing Missouri's criminal justice system may mean hope for change in the near future. A bill passed both houses of the legislature in April 2014 and subsequently became law.[144] The law creates new classes of felonies and misdemeanors, augments sentences for deaths caused by drunk drivers, and increases the number of felony child molestation charges.[145] These developments are hopefully the first step to continued revision of the criminal code, and potentially the legislature will soon turn its attention to Missouri's first-degree murder provisions.

Indeed, the revisions to the criminal code need to focus on four issues: authorization of additional punishments for juvenile first-degree murderers; consideration of mitigating factors before sentencing a juvenile to LWOP; retroactive application of the decision in *Miller*; and determination of whether the prosecution or defense bears the burden of proof in LWOP sentencing.

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136. *Hart*, 404 S.W.3d at 243.

137. *Id.*

138. Associated Press, *supra* note 124.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. Alex Stuckey, *Missouri Legislature Passes Bills Revising State Criminal Code*, ST. LOUIS POST-DISPATCH (Apr. 11, 2014, 3:59 PM), http://lakeexpo.com/news/top_stories/article_3eba46da-c1bc-11e3-8df5-001a4bcf887a.html.

144. Alex Stuckey, *Missouri Legislature Passes Revamp of Criminal Code*, ST. LOUIS POST-DISPATCH (Apr. 24, 2014, 11:00 PM), http://www.stltoday.com/news/local/govt-and-politics/political-fix/missouri-legislature-passes-revamp-of-criminal-code/article_5cc6674a-3b37-53a9-b7e0-e1a8225c78da.html.

145. *Id.*

Additional punishments for juveniles are required under the first-degree murder statute. As stated above, the current provision only contains one constitutionally permissible punishment (LWOP),[146] and in some cases, after consideration of mitigating factors, even that punishment may not be permissible.[147] This leaves open the distinct possibility that the statute will be void as applied to certain culpable offenders, who will then receive the reduced sentence of second-degree murder.

Pennsylvania's approach to revising its laws to comply with *Miller*'s mandate is instructive as an example. Pennsylvania's law, enacted in 2012, provides for permissive sentencing of LWOP or thirty-five years of imprisonment for juveniles convicted of murder.[148] The optional punishment of thirty-five years of imprisonment provides a good balance, ensuring that justice is done while providing offenders a meaningful opportunity to obtain release.[149] To ensure that juvenile murderers are receiving a punishment that fits the crime, Missouri should include a secondary sentence for first-degree murder similar to that found in Pennsylvania's Criminal Code.

Second, Missouri's legislature must comply with the Court's decision in *Miller* by expressly including a set of mitigating factors the sentencer must consider before sentencing a juvenile to LWOP.[150] "The first and most important component of any model sentencing statute is the adoption of mitigating factors for courts to consider when sentencing juveniles convicted of homicidal offenses."[151] The U.S. Supreme Court held that, among other relevant factors, a sentencer should consider the defendant's age, youthful characteristics, and the nature of the crime.[152] Pennsylvania's law also takes into account the impact of the offense on the victim and the community, the threat to public safety posed by the defendant, and the degree of defendant's culpability.[153] Another source of guidance is found in the Federal Sentencing Factors.[154] This statute provides several important factors for courts to consider when determining the appropriate sentences for various crimes. For example, a court should consider:

> (2) The need for the sentence imposed—
> (A) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) To afford adequate deterrence to criminal conduct;

146. MO. REV. STAT. § 565.020 (2012).

147. *See Hart*, 404 S.W.3d at 242.

148. PA. CONS. STAT. ANN. § 1102.1 (West 2014).

149. *See* State v. Ragland, 836 N.W.2d 107, 120-21 (Iowa 2013) (holding that Iowa governor's commutation of convicted juvenile murderers' sentences to life with parole after sixty years did not provide a meaningful opportunity for release).

150. Mann, *supra* note 118.

151. Mardarewich, *supra* note 123, at 143.

152. Miller v. Alabama, 132 S. Ct. 2455, 2475 (2012).

153. PA. CONS. STAT. ANN. § 1102.1(d) (West 2014).

154. 18 U.S.C. § 3553(a) (2012).

> (C) To protect the public from further crimes of the defendant; and
> (D) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner[155]

The Missouri legislature should use these sources as templates in determining what factors to consider in sentencing juveniles to LWOP.

Furthermore, Missouri legislators need to decide whether or not the Court's holding in *Miller* will apply retroactively. The Supreme Court did not address the issue of retroactivity in its opinion, leaving the decision to each individual state to decide whether juveniles previously sentenced to mandatory LWOP will have the opportunity to appeal and challenge their sentencing.[156] Retroactivity would mean a second chance for the eighty-four Missouri inmates who were convicted before the 2012 ruling.[157] Jurisdictions across the country are split on this issue, but the Supreme Court has stated, "[O]nce a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated."[158] In reversing and remanding both juveniles' convictions in *Miller*, the Court also seemed to imply that their decision should be applied in this way. The determination on this matter is extremely important to those currently serving LWOP and their families, as it may mean the difference between a life in prison and eventual freedom.

Finally, the Legislature needs to establish whether the state or defendant should bear the risk of non-persuasion in determining if LWOP is appropriate, as well as the amount of proof required. In finding that no consensus has emerged regarding these questions, the Supreme Court of Missouri held, "Until further guidance is received, a juvenile offender cannot be sentenced to [LWOP] for first-degree murder *unless the state persuades the sentencer beyond a reasonable doubt* that this sentence is just and appropriate under all the circumstances."[159] When deciding if this is the appropriate standard to use, the Missouri Legislature must keep in mind that, under this strictest of evidentiary burdens, it is more likely that an otherwise culpable juvenile offender could avoid justice. However, legislators must take into account the severity of the punishment of LWOP as well.

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155. § 3553(a)(2).

156. Mardarewich, *supra* note 123, at 136.

157. Meghann Mollerus, *Exclusive: Ruling Could Free 84 Juveniles Serving Life Without Parole*, KOMU (Nov. 12, 2012; 1:20 PM), http://www.komu.com/news/exclusive-ruling-could-free-84-juveniles-serving-life-without-parole-37606/.

158. Teague v. Lane, 489 U.S. 288, 300 (1989).

159. State v. Hart, 404 S.W.3d 232, 241 (citing Cunningham v. California, 549 U.S. 270, 290 (2007)) (emphasis added).

VI. CONCLUSION

The Supreme Court of Missouri's recent application of the *Miller* decision in *State v. Hart* has resulted in several issues with the state's criminal justice system that need to be addressed by the Missouri Legislature in its next term. Missouri's criminal law is currently unsettled, leaving many juvenile murder cases in limbo and creating a standstill in legal proceedings. Public defenders and criminal defense attorneys will be unable to provide adequate guidance to their juvenile clients until the law is revised. Additionally, offenders who were sentenced to LWOP previously are left in suspense as to whether the Court's decision will apply retroactively, giving them an opportunity to re-try their cases under new law and avoid life imprisonment. As a result, the Missouri Legislature must avoid the disagreement that hindered its ability to revise the relevant portions of the state's criminal code in 2013 in order to amend the law in four important ways. Legislators must authorize additional punishments for juvenile first-degree murderers, explicitly outline mitigating factors to consider before sentencing a juvenile to LWOP, determine the retroactivity of the decision in *Miller*, and resolve whether the prosecution or defense bears the burden of proof in LWOP sentencing. Until all of these pressing issues are resolved, Missouri's criminal justice system remains at a standstill, indefinitely hindering the fundamental imposition of justice.