

Amendment to SENATE FILE _____

BY (PROPOSED COMMITTEE ON JUDICIARY BILL BY CHAIRPERSON SODDERS)

(Proposed amendment in red text below.)

A BILL FOR

An Act relating to the commission of a class “A” felony by a person under 18 years of age, providing penalties, and including effective date and applicability provisions.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. LEGISLATIVE FINDINGS AND STATEMENT OF INTENT. The general assembly finds that as stated in the United States Supreme Court in Miller v Alabama, “only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior and that developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds, including parts of the brain involved in behavior control. The Legislature recognizes the findings of the U.S. and Iowa Supreme Courts that youthfulness both lessens a juvenile’s moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society. It is the intent of the Legislature to create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established.

Section 24. Section 902.1, subsection 2, Code 2015, is amended by striking the subsection and inserting in lieu thereof the following:

2. a. Notwithstanding subsection 1, a defendant convicted of murder in the first degree in violation of section 707.2, and who was under the age of eighteen at the time the offense was committed shall receive **individualized consideration and imposition of** one the following sentences, **following a pre-sentence evidentiary hearing:**

(1) Commitment to the director of the department of corrections for the rest of the defendant’s life with no possibility of parole unless the governor commutes the sentence to a term of years.¹

(2) ~~Commitment to the custody of the director of the department of corrections for the rest of~~

¹ We strongly urge deletion of this highlighted sentencing option. While we think the proposed amendment technically complies with the narrowest reading of the Miller, Graham, and Ragland/Null/Pearson cases with this sentencing option included, we do not support even the remote and rare possibility of the imposition of a life sentence without the possibility of parole for juvenile offenders, and we suspect the Court will eventually rule that way as well.

A truly forward thinking bill that incorporates the reasoning of the Court in those cases would provide a meaningful opportunity to demonstrate rehabilitation and release for all juvenile offenders, meaning life *with* the possibility of parole would be the maximum available sentence.

At least 12 states do not allow any option to sentence a juvenile to life without the possibility of parole: Alaska, Colorado, Kansas, Kentucky, Montana, New Mexico, Oregon, Hawaii, Massachusetts, Texas, West Virginia, Wyoming – and the District of Columbia.

~~the defendant's life with the possibility of parole after serving a minimum term of confinement of thirty-five years. Commitment to the custody of the department of corrections for a term of years not to exceed 35 years, with the immediate possibility of parole.~~

(3) Commitment to the custody of the director of the department of corrections for the rest of the defendant's life with the **immediate** possibility of parole.

b. (1) The prosecuting attorney shall provide reasonable notice to the defendant, after conviction and prior to **the pre-sentence hearing, which sentencing option or options the state intends to seek under paragraph "a".** ~~of the state's intention to seek a life sentence with no possibility of parole under paragraph "a", subparagraph (1).~~

(2) In determining which **individualized** sentence to impose, the court **must** consider the **following factors as mitigating and not as aggravating**² ~~all circumstances including but not limited to the following:~~

- (a) **The age of the defendant;**
- (b) **The level of the defendant's maturity;**
- (c) **The impulsiveness of the defendant;**
- (d) **Whether the defendant appreciated the risks and consequences of the defendant's actions;**
- (e) **Whether the ability to conform the defendant's conduct with the requirements of the law was substantially impaired;**
- (f) **The intellectual and mental capacity of the defendant**
- (g) **The defendant's family history;**
- (h) **The defendant's home environment;**
- (i) **The circumstances of the homicide offense, including the extent of the defendant's involvement;**
- (j) **The impact of familial and peer pressures on the defendant in the commission of the offense;**
- (k) **The defendant's ability to manage relations with law enforcement, prosecutors, or defense counsel, or other manifestations of the defendant's incapacity;**
- (l) **The possibility of rehabilitation of the defendant;**
- (m) **The likelihood of the commission of further offenses by the defendant.**³
- (n) **Any other evidence as the court deems relevant to the incompetencies associated with defendant's youth.**

(3) In determining which individualized sentence to impose, the court may consider the following additional factors:

- (a) The impact of the offense on each victim, as defined in section 915.10, through the use of a victim impact statement, as defined in section 915.10, under any format permitted by section 915.13. The victim impact statement may include comment on the sentence of the defendant.
- (b) The impact of the offense on the community.
- (c) The threat to the safety of the public or any individual posed by the defendant.

² In Null, the Iowa Supreme Court makes the point that these factors, enumerated in the U.S. Supreme Court in the Miller v. Alabama case, are both mandatory and mitigating, not aggravating at least 14 times, on pages 29, 30, 31, 33, 34, 41, 42, 44, 58, 59, 69 (3 times), and 74. For example, on page 58: "Further, the typical characteristics of youth, which include immaturity, impetuosity, and poor risk assessment, are to be regarded as mitigating, not aggravating factors, Miller, 567 U.S. at ____." The factors themselves are restated by the Iowa Supreme Court in the Ragland case. Ragland, 836 N.W.2d at 115 n.6, quoting Miller, 132 S.Ct. at 2468.

³ For example, from State v. Null, 836 N.W.2d 41, 75 (Iowa 2013):

Further, the district court must recognize that most juveniles who engage in criminal activity are not destined to become lifelong criminals. Miller, 567 U.S. at —, 132 S.Ct. at 2464, 183 L.Ed.2d at 419; Graham, 560 U.S. at —, 130 S.Ct. at 2029, 176 L.Ed.2d at 844; Roper, 543 U.S. at 570, 125 S.Ct. at 1195–96, 161 L.Ed.2d at 22. The " 'signature qualities' of youth are all 'transient.' " Miller, 567 U.S. at —, 132 S.Ct. at 2467, 183 L.Ed.2d at 422 (quoting Johnson, 509 U.S. at 368, 113 S.Ct. at 2669, 125 L.Ed.2d at 306).

- ~~(d) The degree of participation in the murder by the defendant.~~
- (e) The nature of the offense.
- (f) The defendant's remorse.
- (g) The defendant's acceptance of responsibility.
- (h) The severity of the offense, including any of the following:
 - (i) The commission of the murder while participating in another felony.
 - (ii) The number of victims.
 - (iii) The heinous, brutal, cruel manner of the murder, including whether the murder was the result of torture.
- ~~(i) The capacity of the defendant to appreciate the criminality of the conduct.~~
- ~~(j) Whether the ability to conform the defendant's conduct with the requirements of the law was substantially impaired.~~
- ~~(k) The level of maturity of the defendant.~~
- ~~(l) The intellectual and mental capacity of the defendant.~~
- ~~(m)(i)~~ The nature and extent of any prior juvenile delinquency or criminal history of the defendant, including the success or failure of previous attempts at rehabilitation.
- ~~(n)~~ (j) The mental health history of the defendant.
- ~~(o)~~ (k) The level of compulsion, duress, or influence exerted upon the defendant, but not to such an extent as to constitute a defense.
- ~~(p) The likelihood of the commission of further offenses by the defendant.~~
- ~~(q) The chronological age of the defendant and the features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences.~~
- ~~(r) The family and home environment that surrounded the defendant.~~
- ~~(s) The circumstances of the murder including the extent of the defendant's participation in the conduct and the way familial and peer pressure may have affected the defendant.~~
- ~~(t) The competencies associated with youth, including but not limited to the defendant's inability to deal with peace officers or the prosecution or the defendant's incapacity to assist the defendant's attorney in the defendant's defense.~~
- ~~(u) The possibility of rehabilitation.~~
- ~~(v)~~ (l) Any other information considered relevant by the sentencing court.

(4) The court's consideration of the discretionary factors relating to the nature of the offense pursuant to Section 902.1, subsection 2(b)(2) may not overwhelm the court's due consideration of mandatory mitigating factors provided in Section 902.1, subsection 2(b)(3).⁴

⁴ We note that *Miller* emphasizes that nothing said in *Roper*, *Graham*, or *Miller* is "crime-specific." *Miller*, 567 U.S. at —, 132 S.Ct. at 2465, 183 L.Ed.2d at 420. Certainly the notions that juveniles have less-developed judgment, that juveniles are more susceptible to peer pressure, and that juveniles' characters are not fully formed applies to this and any other case involving a juvenile defendant. Thus, the notions in *Roper*, *Graham*, and *Miller* that "children are different" and that they are categorically less culpable than adult offenders apply as fully in this case as in any other. The approach of *Roper*, *Graham*, and *Miller* is consistent with other areas of the law where the differences between juveniles and adults are well recognized.

State v. Null, 836 N.W.2d 41, 71 (Iowa 2013).

The constitutional difference arises from a juvenile's lack of maturity, underdeveloped sense of responsibility, vulnerability to peer pressure, and the less fixed nature of the juvenile's character. *Miller*, 567 U.S. at —, 132 S.Ct. at 2464, 183 L.Ed.2d at 418; *see also Graham*, 560 U.S. at —, 130 S.Ct. at 2026, 176 L.Ed.2d at 841; *Roper*, 543 U.S. at 569–70, 125 S.Ct. at 1195–96, 161 L.Ed.2d at 21–22. If a district court believes a case presents an exception to this generally applicable rule, the district court should make findings discussing why the general rule does not apply. *See, e.g., Simmons*, 99 So.3d at 28; *Fletcher*, 112 So.3d at 1036–37. In making such findings, the district court must go beyond a mere recitation of the nature of the crime, which the *75 Supreme Court has cautioned **cannot overwhelm** the analysis in the context of juvenile

(5) The court shall state the reasons for the determination of the individualized sentence it imposes on the record at sentencing after consideration of the mandatory factors the court must consider pursuant to Section 902.1, subsection 2b(2).

Sec. 3 2. Section 902.1, Code 2015, is amended by adding the following new subsections:

NEW SUBSECTION. 3. a. Notwithstanding subsections 1 and 2, a defendant convicted of a class "A" felony, other than murder in the first degree in violation of section 707.2, and who was under the age of eighteen at the time the offense was committed shall receive one of the following sentences **following a pre-sentence hearing**:

~~(1) Commitment to the director of the department of corrections for the rest of the defendant's life with the possibility of parole after serving a minimum term of confinement of twenty-five years.~~ **Commitment to the custody of the department of corrections for a term of years not to exceed 25 years as fixed by the court at sentencing with the immediate possibility of parole.**

~~(2) Commitment to the custody of the director of the department of corrections for the rest of the defendant's life with the possibility of parole after serving a minimum term of confinement as determined by the court.—~~

~~(3) Commitment to the custody of the director of the department of corrections for the rest of the defendant's life with the~~ **immediate** possibility of parole.

b. (1) The prosecuting attorney shall provide reasonable notice to the defendant, after conviction and prior to **the pre-sentence hearing of which sentencing option or options the state intends to seek** ~~of the state's intention to seek a life sentence with a mandatory minimum term of confinement of twenty-five years under paragraph "a", subparagraph (1).~~

(2) In determining which **individualized** sentence to impose, the court **shall consider the following factors as mitigating and not as aggravating** ~~all circumstances including but not limited to the following~~:

- (a) The age of the defendant;
- (b) The level of the defendant's maturity;
- (c) The impulsiveness of the defendant;
- (d) Whether the defendant appreciated the risks and consequences of the defendant's actions;
- (e) Whether the ability to conform the defendant's conduct with the requirements of the law was substantially impaired;
- (f) The intellectual and mental capacity of the defendant
- (g) The defendant's family history;
- (h) The defendant's home environment;
- (i) The circumstances of the homicide offense, including the extent of the defendant's involvement;
- (j) The impact of familial and peer pressures on the defendant in the commission of the offense;
- (k) The defendant's ability to manage relations with law enforcement, prosecutors, or defense counsel, or other manifestations of the defendant's incapacity;
- (l) The possibility of rehabilitation of the defendant;
- (m) The likelihood of the commission of further offenses by the defendant.
- (n) Any other evidence as the court deems relevant to the incompetencies associated with defendant's youth.

(3) In determining which individualized sentence to impose, the court may consider the following additional factors:

(a) The impact of the offense on each victim, as defined in section 915.10, through the use of a victim impact statement, as defined in section 915.10, under any format permitted by section 915.13. The victim impact statement may include comment on the sentence of the defendant.

sentencing. *See Graham*, 560 U.S. at —, 130 S.Ct. at 2032, 176 L.Ed.2d at 847; *Roper*, 543 U.S. at 572–73, 125 S.Ct. at 1197, 161 L.Ed.2d at 24

State v. Null, 836 N.W.2d 41, 74-75 (Iowa 2013) (*emphasis added*).

- (b) The impact of the offense on the community.
- (c) The threat to the safety of the public or any individual posed by the defendant.
- (d) The degree of participation in the offense by the defendant.
- (e) The nature of the offense.
- (f) The defendant's remorse.
- (g) The defendant's acceptance of responsibility.
- (h) The severity of the offense, including any of the following:
 - (i) The commission of the offense while participating in another felony.
 - (ii) The number of victims.
 - (iii) The heinous, brutal, cruel manner of the offense, including whether the offense involved torture.
- ~~—(i) The capacity of the defendant to appreciate the criminality of the conduct.~~
- ~~—(j) Whether the ability to conform the defendant's conduct with the requirements of the law was substantially impaired.~~
- ~~—(k) The level of maturity of the defendant.~~
- ~~—(l) The intellectual and mental capacity of the defendant.~~
- ~~—(m)-(i) The nature and extent of any prior juvenile delinquency or criminal history of the defendant, including the success or failure of previous attempts at rehabilitation.~~
- ~~—(n)-(j) The mental health history of the defendant.~~
- ~~—(o) The level of compulsion, duress, or influence exerted upon the defendant, but not to such an extent as to constitute a defense.~~
- ~~—(p) The likelihood of the commission of further offenses by the defendant.~~
- ~~—(q) The chronological age of the defendant and the features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences.~~
- ~~—(r) The family and home environment that surrounded the defendant.~~
- ~~—(s) The circumstances of the offense including the extent of the defendant's participation in the conduct and the way the familial and peer pressure may have affected the defendant.~~
- ~~—(t) The competencies associated with youth, including but not limited to the defendant's inability to deal with peace officers or the prosecution or the defendant's incapacity to assist the defendant's attorney in the defendant's defense.~~
- ~~—(u) The possibility of rehabilitation.~~
- ~~—(v)-(l) Any other information considered relevant by the sentencing court.~~
- (4) The court's consideration of the discretionary factors relating to the nature of the offense pursuant to Section 902.1, subsection 3(b)(2) may not overwhelm the court's due consideration of mandatory mitigating factors provided in Section 902.1, subsection 3(b)(3).**
- (5) The court shall state the reasons for the determination of the individualized sentence it imposes on the record at sentencing after consideration of the mandatory factors the court must consider pursuant to Section 902.1, subsection 3(b)(2).**

NEW SUBSECTION. 4. If a defendant is paroled pursuant to subsection 2 or 3, the defendant shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and 908, and rules adopted under those chapters for persons on parole.

5. The parole board shall adopt rules for persons who are eligible for parole pursuant to subsection 2 or 3 or who become eligible pursuant to section 6 following resentencing, that shall provide for a meaningful opportunity for release⁵, and such rules shall include prior notice to the inmate and the inmate's attorney of record of documents and reports to

⁵ “What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Graham v. Florida*, 560 U.S. 48, 75, 130 S. Ct. 2011, 2030, 176 L. Ed. 2d 825 (2010), as modified (July 6, 2010).

“The notion that the reasoning of *Roper* was limited to the death penalty cases was proven wrong in *Graham*, and the notion that *Graham*'s reasoning was limited to nonhomicide cases was proven wrong in *Miller*.” *State v. Null*, 836 N.W.2d 41, 67 (Iowa 2013).

be reviewed by the board, an opportunity for the inmate to demonstrate rehabilitation through the presentation of evidence, consideration of the mandatory mitigating factors provided in subsection 2 and 3, an opportunity for independent psychological evaluation, a risk assessment that considers age as a mitigating factor rather than aggravating, a personal interview with the offender, and the assistance of counsel.⁶ The rules shall also provide any decision by the board shall include specific reference and consideration of any and all mitigating factors.

6. The department of corrections shall not limit access to programming and treatment including but not limited to education, substance abuse, anger management, and vocational training for youthful offenders, solely because of their crimes or length of their sentence. If an offender qualifies for placement in a minimum security correctional facility based on objective measures determined by the department, the placement shall not be categorically denied based on a life sentence, or duration of a term of years.

Sec. ~~34~~. Section 903A.2, subsection 5, Code 2015, is amended to read as follows:

5. Earned time accrued by inmates serving life sentences imposed under section 902.1 shall not reduce the life sentence, ~~but~~ or any mandatory minimum sentence imposed under section 902.1, except that earned time accrued shall be credited against the inmate's life sentence if the life sentence is commuted to a term of years under section 902.2, ~~but shall not reduce any mandatory minimum sentence imposed under section 902.1.~~

Sec. ~~5 4~~. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Sec. ~~6 5~~. APPLICABILITY. The sentencing provisions of this Act shall apply to a person who was convicted of a class "A" felony prior to, on, or after the effective date of this Act and who was under the age of eighteen at the time the offense was committed.

⁶ The board of parole has not yet adopted administrative rules that are consistent with the Graham and Miller decisions by the U.S. Supreme Court, and the Ragland, Null, Pearson, and Lyle decisions by the Iowa Supreme Court. This is critically important. After Ragland's case in which he won a right to parole by the Iowa Supreme Court, he was summarily denied parole without notice to him or his attorney, no opportunity to present evidence of his rehabilitation, and failure to account for the factors listed as mitigating factors.