

**IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE**

<b>STATE OF TENNESSEE,</b>	)	
	)	
<b>Appellee,</b>	)	<b>Knox County Criminal 108568</b>
	)	
<b>v.</b>	)	<b>C.C.A. No. E2018-01439-CCA-R3-CD</b>
	)	
<b>TYSHON BOOKER,</b>	)	<b>S. Ct. No. E2018-01439-SC-R11-CD</b>
	)	
<b>Appellant.</b>	)	

**BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES  
UNION OF TENNESSEE**

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## I. STATEMENT OF THE ISSUE

Whether Tennessee’s minimum 51-year sentence, mandatorily imposed on juveniles convicted of first-degree murder, violates the Cruel and Unusual Punishment Clauses of the U.S. and Tennessee Constitutions in that it does not conform to society’s evolving standards of decency as evinced by most states’ sentencing schemes and denies juveniles of a “meaningful opportunity to obtain release based on demonstrated maturity.”

## II. INTEREST OF AMICUS CURIAE

The American Civil Liberties Union (“ACLU”) is a nationwide, non-profit, non-partisan public interest organization of more than one million members dedicated to defending the civil liberties guaranteed by the United States Constitution. The American Civil Liberties Union of Tennessee (“ACLU-TN”) is a state affiliate of the national ACLU with more than eleven thousand members throughout Tennessee. The protection of young people from excessive sentences and extreme punishments is of paramount importance to both organizations. The ACLU and its affiliates have been at the forefront of numerous state and federal cases addressing the treatment of juveniles in the criminal justice system.

ACLU-TN is dedicated to the principles of liberty and equality embodied in the United States Constitution and the Tennessee Constitution. This case squarely implicates the ACLU-TN’s mission to ensure that the criminal justice system keeps communities safe, treats people fairly, and uses fiscal resources wisely. ACLU-TN regularly

participates in cases in state and federal court involving constitutional and civil rights questions, as counsel and *amicus curiae*.

### III. SUMMARY OF ARGUMENT

Among the fifty states, Tennessee is nearly alone in the way it condemns children to die in prison. Tennessee’s requirement that juvenile offenders convicted of first-degree murder serve at least 51 years before being eligible for release is an extreme outlier when compared to most other states and does not reflect society’s evolving standards of decency. Not only does Tennessee’s 51-year sentence cut against national trends and the trend of Supreme Court jurisprudence, it denies children a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Miller v. Alabama*, 567 U.S. 460, 480 (2012) (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010)). It is therefore an unconstitutional violation of the Cruel and Unusual Punishments Clause of the Eighth Amendment to the U.S. Constitution, and Article I, §§13, 16 of the Tennessee Constitution.

## IV. ARGUMENT

On January 30, 2018, Tyshon Booker was convicted of felony murder and mandatorily sentenced to life in prison.<sup>1</sup> *See* Tenn. Code Ann. § 40-35-501(h)(2); *Brown v. Jordan*, 563 S.W.3d 196, 202 (Tenn. 2018). He was sixteen at the time of the offense. Because a life sentence in Tennessee is sixty years, *see Brown*, 563 S.W.3d at 200 (citing Tenn. Code Ann. § 40-35-501(h)(1)), his release eligibility date as of the filing of this Brief is not until November 7, 2074.<sup>2</sup> By that time, if he is still alive, Tyshon Booker will be seventy-five years old. If he earns all behavior credits possible, he “may be released, at the earliest,” in 2066 “after service of fifty-one years.” *Id.* at 200-201 (discussing Tenn. Code Ann. § 40-35-501(i)). At that time, he will be sixty-seven years old if he is still alive. However, he will likely die in prison before he reaches the end of his mandatory 51-year sentence.<sup>3</sup> *See* Campaign for the Fair Sentencing of Youth, *Michigan Life Expectancy Data for Youth Serving Natural Life Sentences* at 2

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<sup>1</sup> On March 16, 2018, Tyshon Booker was also sentenced to 20 years’ imprisonment for especially aggravated robbery to be served concurrently with his life sentence.

<sup>2</sup> Tennessee Department of Correction, Felony Offender Information, available at <https://apps.tn.gov/foil-app/details.jsp> (last accessed November 12, 2020).

<sup>3</sup> Tyshon Booker is not alone in facing the harrowing odds of obtaining release at the end of a 51-year sentence. As of 2019, there were 171 people in Tennessee serving life sentences for crimes committed when they were minors. *See* Duane W. Gang, Anita Wadhvani & Adam Tamburin, *3 Takeaways from Our Review of All 185 Tennessee Teen Lifers* (Mar. 6, 2019, 6PM), available at <https://www.tennessean.com/story/news/politics/2019/03/07/tennessee-teen-lifers-tennessean-investigation-cyntoia-brown/3079107002/>.

(2010) (finding that juveniles serving life sentences have an average life expectancy of 50.6 years, much lower than the general prison population).

If Tyshon Booker were convicted in almost any other state, he would be eligible for release *decades* sooner.<sup>4</sup> If he had been convicted in Kentucky, some 60 miles from Knoxville where the crime was committed, he would be eligible for parole after 20-to-25 years. Ky. Rev. Stat. Ann. § 439.3401(2); Ky. Rev. Stat. Ann. § 532.030(1)(parole at 20 years for a person sentenced to a life term and parole at 25 years for a “life without parole” sentence). In Virginia, only 100 or so miles away from Knoxville, he would likewise be eligible for parole after serving 20 years—a difference of 31 years. Va. Code Ann. § 53.1-165.1(E). Tennessee’s mandatory 51-year life sentence is an extreme outlier among states and cuts against the trend toward sentencing schemes that recognize “juveniles are different.” *Miller*, 567 U.S. at 473. This Court should consider evolving community standards of rehabilitation and punishment in determining that Tennessee’s mandatory 51-year sentence for juveniles convicted of first-degree murder does not meet the criteria set forth in *Miller* and *Graham*. Such a lengthy sentence violates the Eighth Amendment to the U.S. Constitution, and Art. I, §§ 13 and 16 of the Tennessee Constitution, as it “gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.” *Graham*, 560 U.S. at 79.

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<sup>4</sup> See Section IV(a), *infra*.



### **A. Tennessee’s 51-Year Sentence Is An Extreme Outlier When Compared To Other Jurisdictions.**

To determine whether a sentencing scheme is “cruel and unusual,” courts should consider “the evolving standards of decency that mark the progress of a maturing society.” *Graham*, 560 U.S. at 58 (citing *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)). “[O]bjective indicia of society’s standards” include “legislative enactments and state practice”—both of which can “show a national consensus against a sentence for a particular class of offenders.” *Miller*, 567 U.S. at 482 (internal quotation marks and citation omitted). Indeed, the Supreme Court has found that the “clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures.” *Atkins v. Virginia*, 536 U.S. 304, 312 (2002) (internal quotation marks and citations omitted). The court’s “own judgment must [also] be brought to bear” in asking “whether there is reason to disagree with the judgment reached by the citizenry and its legislators.” *Id.* (citing *Coker v. Georgia*, 433 U.S. 584, 597 (1977)). The court’s own judgment should be informed by the culpability of the defendant (especially, for juveniles, in light of their age and maturity), the severity of the punishment, and the penological goals furthered by the sentencing scheme. *See Graham*, 560 U.S. at 64-68, 71-74.

As shown in Figure 1 below, Tennessee has one of the longest life sentences—if not *the* longest—of the states that assign definite lengths to life sentences or allow for parole for life sentences. *Cf. False Hope: How Parole Systems Fail Youth Serving Extreme Sentences*, Appendix A at

160-61 (ACLU, Nov. 2016) (listing parole eligibility by state for various offenses). Tennessee’s 60-year sentence, combined with the requirement that those convicted of first-degree murder serve a *minimum* of 51 years, results in juveniles convicted of first-degree murder in Tennessee serving *several decades longer* than those sentenced to life in nearly every other state. Thus, Tennessee’s mandatory 51-year sentence clearly defies the “national consensus.” *Miller*, 567 U.S. at 482 (internal quotation marks and citation omitted).

Figure 1: Release Eligibility for Juvenile Convicted of First Degree Murder and Serving Life Sentence

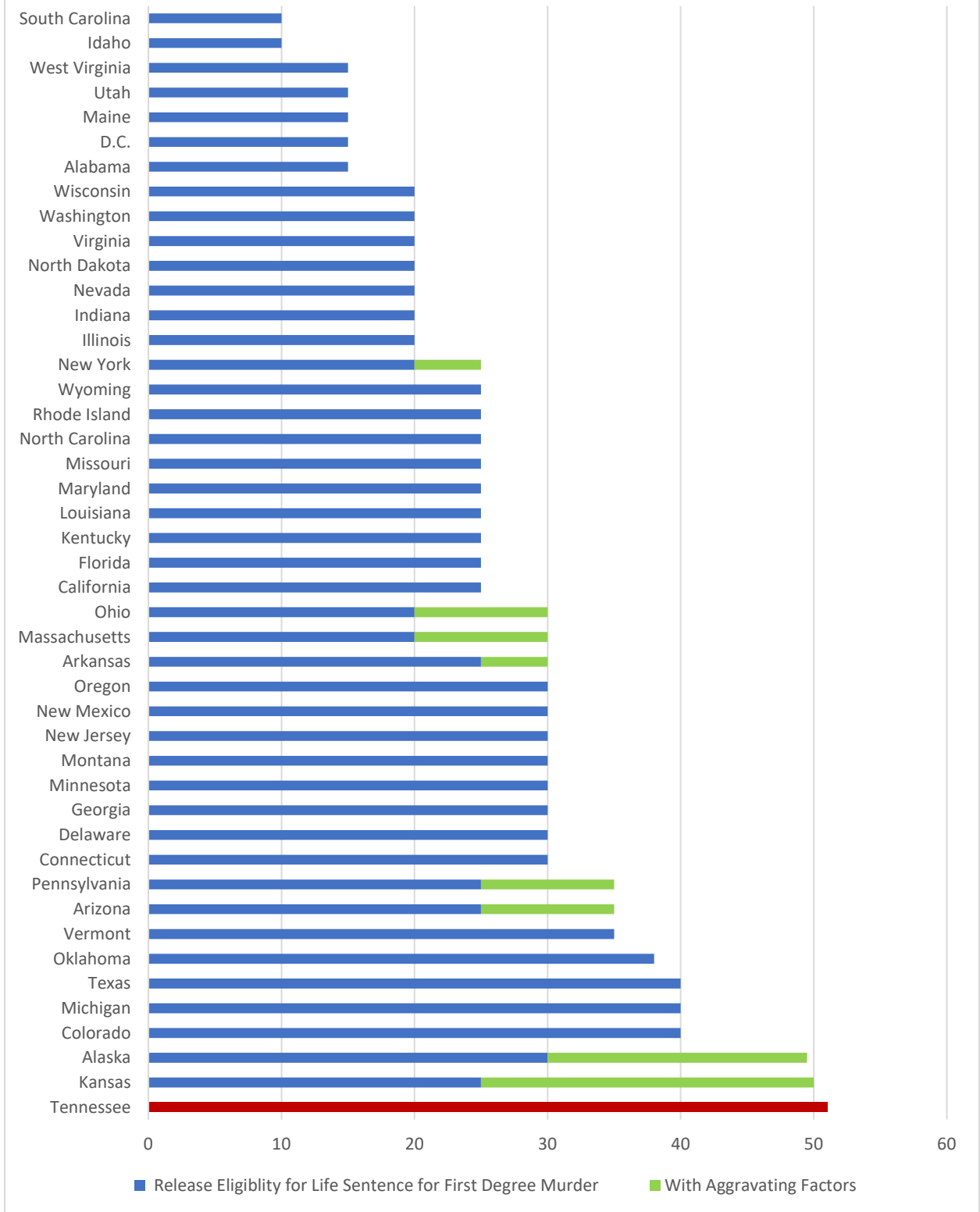


Figure 1 displays, in years, the latest possible<sup>5</sup> release eligibility date for juveniles (and other defendants if no special rule for juveniles exists) sentenced to life in prison or a similar sentence for first degree murder. Figure 1 does not include six states: Hawaii, Iowa, Nebraska, South Dakota, New Hampshire, and Mississippi. Hawaii, Iowa, Nebraska, and South Dakota are not listed as they do not have fixed terms for parole-eligibility for life sentences. *See* Appendix A. New Hampshire and Mississippi are not listed because they do not appear to have a life sentence that is eligible for parole; it appears they have not modified their laws in light of Supreme Court jurisprudence on juvenile sentencing. *See* Appendix A.

Of the 44 states (and the District of Columbia) described in Figure 1, 34 (or 77%) cap the amount of time a juvenile may spend in prison for first degree murder before being eligible for release at 30 years or less. Only 10 impose release eligibility beyond 30 years. And only three (Alaska, Kansas, and Tennessee) impose life sentences with release eligibility over 40 years.

Unlike Tennessee's 51-year minimum sentence for *all* defendants convicted of first-degree murder, including juveniles, Alaska and Kansas impose 49.5- and 50-year effective sentences in a limited set of cases.

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<sup>5</sup> Some states impose longer mandatory minimums when aggravating factors are present. In Arizona, for example, parole eligibility is at 35 years, instead of 25, if the murder victim was under 15 years of age. *See* Appendix A. Figure 1 displays (in green) the sentence length when aggravating factors apply. Even with aggravating factors, juveniles sentenced in other states are still, more often than not, released sooner than those in Tennessee.

Alaska only imposes a mandatory 49.5-year effective sentence for offenders convicted of first-degree murder with aggravating factors, such as the offender having a prior conviction for homicide. Alaska Stat. Ann. § 12.55.125(a). Otherwise, a defendant convicted of first-degree murder can be sentenced to 30-to-99 years, with discretionary release available at 30 years or less depending on the nature of the conviction. Alaska Stat. Ann. § 33-16-090(b); *see also Walker v. State*, 2017 WL 3126747 (Alaska Ct. App. 2017) (denying *Miller*-type claim of juvenile sentenced to 70 years for first-degree murder as discretionary release was available after 23 years and mandatory release available after 46 years). In Kansas, a “hard 50” sentence is imposed for premeditated first-degree murder when one or more aggravating factors are present. Kan. Stat. Ann. § 21-6623. A conviction for felony murder, like Tyshon Booker’s conviction, would be parole-eligible after 25 years. Kan. Stat. Ann. §21-6620(b). This leaves Tennessee on its own in imposing a mandatory sentence over 40 years for all life sentences.

In addition, over the past decade, 24 states and the District of Columbia have modified their sentencing statutes specifically to address parole eligibility and sentencing for juveniles convicted as adults. In 2017, for example, Arkansas passed a law establishing parole eligibility at 20, 25, or 30 years, depending on the severity of the crime, for those who were under 18 at the time of the offense. Ark. Code Ann. §16-93-621. In 2012, Arizona changed its law to specifically allow for juveniles convicted of first-degree murder and sentenced to life to be parole eligible after 25 years, or 35 if the victim was under the age of 15. Ariz. Rev. Stat. Ann. § 13-751A(2). The District of Columbia and the remaining 22

states—California, Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Kansas, Louisiana, Massachusetts, Missouri, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Washington, West Virginia, and Wyoming—have all enacted similar reforms. *See* Appendix A. These legislative changes demonstrate a trend among states to codify the idea that “juveniles are different.” *Miller*, 560 U.S. at 480. And, again, Figure 1 demonstrates that even in states without juvenile-specific sentencing laws, juveniles sentenced to life will still serve less time in prison than a juvenile sentenced to life in Tennessee. Tennessee’s 51-year sentence is clearly out of step with national trends for juvenile sentencing and does not represent society’s evolving standards.

**B. Tennessee’s 51-Year Sentence Denies Juveniles “A Meaningful Opportunity To Obtain Release Based On Demonstrated Maturity And Rehabilitation.”**

In the last fifteen years, the Supreme Court’s interpretation of the Eighth Amendment’s ban on cruel and unusual punishment has evolved to recognize children’s immaturity and their attendant capacity for change. In *Graham v. Florida*, the Court held that life sentences without the possibility of release for nonhomicide offenses violate the Eighth Amendment. 560 U.S. at 74. At the center of *Graham*’s analysis was the idea that because of their immaturity, “[j]uveniles are more capable of change than adults.” *Id.* at 68 (quoting *Roper v. Simmons*, 543 U.S. 551, 570 (2005)). Given their capacity to change, “the State...must give [juvenile defendants] some meaningful opportunity to obtain release

based on demonstrated maturity and rehabilitation.” *Id.* at 75. While some juveniles “will remain behind bars for life” given the heinousness of their offenses, the Eighth Amendment prohibits “States from making the judgement *at the outset* that those offenders never will be fit to reenter society.” *Id.* (emphasis added).

In *Miller v. Alabama*, the Supreme Court incorporated *Graham*’s mandate of “some meaningful opportunity to obtain release” in reaching the decision that mandatory life without parole sentences for juveniles, even those convicted of homicide, also violate the Eighth Amendment. 567 U.S. at 479. Like in *Graham*, the *Miller* Court reasoned that children have “greater prospects for reform.” *Id.* at 471. And, therefore, because life without parole “forswears altogether the rehabilitative ideal,” it is “at odds with a child’s capacity for change.” *Id.* at 473 (quoting *Graham*, 560 U.S. at 74).

Neither *Graham* nor *Miller* comprehensively explain what a “meaningful opportunity to obtain release” might entail, especially in the context of long-term sentences that offer only a small chance of release towards the end (or perhaps past) a juvenile’s expected lifespan. However, *Graham*’s sophisticated description of rehabilitation suggests that a “meaningful opportunity” would include a “chance for fulfillment outside prison walls,” “a chance for reconciliation with society,” and “the opportunity to achieve maturity of judgment and self-recognition of human worth and potential.” 560 U.S. at 74; *see also People v. Contreras*, 411 P.3d 445 (Cal. 2018) (discussing the same). The achievement of rehabilitation—not just a last breath of air outside the prison walls but

a life *rejoined* to society—necessarily contemplates more than a “de minimus quantum of time outside prison.” *Contreras*, 411 P.3d at 454.

Indeed, the Supreme Court

viewed the concept of “life” in *Miller* and *Graham* more broadly than biological survival; it implicitly endorsed the notion that an individual is effectively incarcerated for “life” if he will have no opportunity to truly reenter society or have any meaningful life outside of prison.

*Casiano v. Comm’r of Correction*, 115 A.3d 1037, 1046-47 (Conn. 2015); *Cf. Sarah French Russell, Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment*, 89 Ind. L. J. 373, 383 (2014) (interpreting “meaningful opportunity” under Supreme Court jurisprudence to entail (1) release at a meaningful point in time, (2) a realistic likelihood of release, and (3) meaningful participation in the parole process).

Accordingly, high courts in California, Connecticut, Iowa, Maryland, New Jersey, Ohio, Oregon, and Wyoming have held that sentences over 50 years do not provide juvenile offenders with a meaningful opportunity for rehabilitation as required by *Graham*. *See Contreras*, 411 P.3d at 454 (50- and 58-year nonhomicide sentences); *Casiano*, 115 A.3d at 1046-47 (50-year sentence); *State v. Null*, 836 N.W.2d 41, 72 (Iowa 2013) (effective 52.5-year sentence); *Carter v. State*, 192 A.3d 695, 702 (Md. 2018), *reconsideration denied* (Oct. 4, 2018) (effective 50-year sentence); *State v. Zuber*, 152 A.3d 197, 213 (N.J. 2017) (effective 55-year sentence); *White v. Premo*, 443 P.3d 597, 605 (Or. 2019), *cert. dismissed sub nom. Kelly v. White*, 140 S. Ct. 993 (2020) (nearly 67-year sentence); *Bear Cloud v.*



*State*, 334 P.3d 132, 142 (Wyo. 2014) (45-year sentence); *see also Williams v. State*, No. 121,815, 2020 WL 5996442, at \*14 (Kan. Ct. App. Oct. 9, 2020) (“We are unaware of any state high court that has found a single sentence in excess of 50 years for a single homicide provides a juvenile with a meaningful opportunity for release.”).

At best, Tyshon Booker faces the prospect of “geriatric release.” *Null*, 836 N.W.2d at 71. At worst, he will die in prison. “[A] fifty year term and its grim prospects for any future outside of prison effectively provide a juvenile offender with ‘no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.’” *Casiano*, 115 A.3d at 1047 (quoting *Graham*, 560 U.S. at 79).

#### IV. CONCLUSION

For the foregoing reasons, *amicus curiae* ACLU-TN urges the Court to grant Appellant Tyshon Booker’s request for relief and hold that, in accordance with *Miller*, *Graham*, and the evolving standards of societal decency reflected in the enactments and judicial decisions of Tennessee’s fellow states, Tennessee’s 51-year mandatory life sentence for juveniles convicted of first-degree murder violates the U.S. and Tennessee Constitutions’ prohibitions against cruel and unusual punishment.

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC FILING COMPLIANCE**

Under Tennessee Supreme Court Rule 46, 3.02, I hereby certify that this brief contains 2,379 words as calculated by Microsoft Word, and it was prepared using 14-point Century Schoolbook font with 1.5x line spacing.

/s/ Stella Yarbrough

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I certify that a true and exact copy of the foregoing Brief was served electronically or mailed via U.S. first class mail, postage prepaid, this 23rd day of November, 2020 to:

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## APPENDIX A

### How long does a juvenile serve on a life sentence for first-degree murder?

State	Time Served until Parole or Release Eligibility	Juvenile Specific Rule?
Alabama	The lesser of 85% of sentence or 15 years <sup>1</sup>	No
Alaska	One-half of 99-year sentence <sup>2</sup> ; or, discretionary parole at one-third of sentence or mandatory parole at two-third of sentence, depending on severity <sup>3</sup>	No
Arizona	25 years; 35 years if victim under 15 years old <sup>4</sup>	Yes
Arkansas	30 years for capital murder (including felony murder); 25 years if first degree <sup>5</sup>	Yes
California	25 years <sup>6</sup>	Yes

<sup>1</sup> Ala. Code § 15-22-28(e).

<sup>2</sup> Alaska Stat. Ann. § 12-55-12599(j)(sentence for first-degree murder is 30-99 years; 99 years if aggravating factors exist).

<sup>3</sup> Alaska Stat. Ann. §33-16-090(b)(discretionary and mandatory parole). *See also Walker v. State*, 2017 WL 3126747 (Ct. App. Alaska 2017)(denying Miller claim of juvenile sentenced to 70 years for first-degree murder; not an LWOP sentence as discretionary release is available after 23 years and mandatory release after over 46 years).

<sup>4</sup> Ariz. Rev. Stat. Ann. § 13-751(A)(2). *See also State v. Soto-Fong*, ---P.3d---, 2020 WL 5987900 (Ariz. 2020)(rejecting Miller claim to aggregate de-facto life sentences).

<sup>5</sup> Ark. Code Ann. § 16-93-621(a)(2)(A); *see also* Ark. Code Ann. § 5-10-101 (defining capital murder to include felony murder).

<sup>6</sup> Cal. Penal Code § 3051.

Colorado	40 years <sup>7</sup>	Yes
Connecticut	30 years <sup>8</sup>	Yes
Delaware	30 years <sup>9</sup>	Yes
D.C.	15 years <sup>10</sup>	Yes
Florida	25 years <sup>11</sup>	Yes
Georgia	30 years <sup>12</sup>	Yes
Hawaii	N/A. Length set by parole board <sup>13</sup>	Yes
Idaho	10 years <sup>14</sup>	No
Illinois	20 years minus good behavior credit <sup>15</sup>	No
Indiana	20 years <sup>16</sup>	No
Iowa	N/A. Length set by sentencing court <sup>17</sup>	Yes

<sup>7</sup> Colo. Rev. Stat. § 18-1.3-401(4)(c); Colo. Rev. Stat. § 17-22.5-104 (juvenile-specific law).

<sup>8</sup> Conn. Gen. Stat. Ann. §54-125a(f)(1)(juvenile offenders sentenced to over 50 years eligible for parole after 30 years; if sentence between 10 and 50, eligible after 60% or 12 years, whichever is greater). *See also Casiano v. Comm’r of Correction*, 115 A.3d 1037, 1046-47 (Conn. 2015)(50–year sentence without possibility of parole is subject to *Miller* claim).

<sup>9</sup> Del. Code Ann. tit. 11, § 4204A(d)(2).

<sup>10</sup> D.C. Code Ann. §24-403.03(a).

<sup>11</sup> Fla. Stat. Ann. § 921.1402(2)(parole review after 25 years if sentence over 25 years; review after 20 years if sentence is 20-25 years; review after 15 years if se

<sup>12</sup> Ga. Stat. Ann. §17-10-6.1.

<sup>13</sup> Haw. Rev. Stat. § 706-656(1). In Hawaii, juveniles convicted of first-degree murder and sentenced to life with the possibility of parole have their parole eligibility date set by a parole board shortly after sentencing; the parole board then begins the process of creating a rehabilitation plan.

<sup>14</sup> Idaho Code Ann. §18-4004 (if no aggravating factors).

<sup>15</sup> 730 Ill. Comp. State. Ann. 5/3-3-3(a)(2).

<sup>16</sup> Ind. Stat. §11-13-3-2.

<sup>17</sup> Iowa Code Ann. § 902.1. In Iowa, the sentencing court determines parole eligibility for juveniles sentenced to life; *see also, State v. Zarate*, 908 N.W.2d 831 (Iowa 2018)(invalidating section of sentencing statute that allowed sentencing court the option of JLWOP). The Iowa Supreme Court has ruled a 52.5-year sentence is

Kansas	25-50 years <sup>18</sup>	Yes
Kentucky	25 years <sup>19</sup>	Yes
Louisiana	25 years—after judicial determination <sup>20</sup>	Yes
Maine	15 years <sup>21</sup>	No
Maryland	25 years <sup>22</sup>	No
Massachusetts	20-30 years <sup>23</sup>	Yes
Michigan	40 years <sup>24</sup>	Yes
Minnesota	30 years <sup>25</sup>	No
Mississippi	N/A—does not appear to have parole-eligible life sentence for first-degree murder <sup>26</sup>	No
Missouri	25 years <sup>27</sup>	Yes

unconstitutional under *Miller*, so life sentences likely would have parole eligibility set by the sentencing court at 50 years or less. *State v. Null*, 836 N.W.2d 41 (Iowa 2018).

<sup>18</sup> Kan. Stat. Ann. § 21-6620 (review after 25 years for first-degree and felony murder); *see also* Kan. Stat. Ann. § 21-6618 (juveniles cannot be sentenced to death or LWOP for capital murder); Kan. Stat. Ann. § 21-6623 (“Hard 50” sentencing requirement).

<sup>19</sup> Ky. Rev. Stat. Ann. §640.040; Ky. Rev. Stat. Ann. § 532.030(1).

<sup>20</sup> La. Stat. Ann. § 15:574.4(E)(parole review for juveniles offenders if court determines criteria for release met, including minimum service of 25 years).

<sup>21</sup> Me. Rev. Stat. Ann. tit. 34-A, § 5803(3).

<sup>22</sup> Md. Code Ann., Corr. Servs. §7-301(d)(1)-(d)(2)(eligible after 25 years for life sentence for first degree murder but parole must be approved by governor).

<sup>23</sup> Mass. Gen. Laws. Ann. ch. 279 § 24 (20-30 years depending on severity of crime); *see also Com. v. Costa*, 33 N.E.3d 412, 418 (Mass. 2015)(interpreting statute as setting minimum sentences to serve for parole eligibility).

<sup>24</sup> Mich. Comp. Laws Ann. § 769.25(d)(9) (juvenile sentenced to life must serve 60 year-sentence with 25 to 40 year minimum); *see also* Mich. Comp. Laws Ann. §791.244 (reprieve or commutation for those convicted of first-degree murder considered after 10 years).

<sup>25</sup> Minn. Stat. Ann. § 244.05(4)(b).

<sup>26</sup> Miss. Code. Ann. § 47-7-3(1)(g)(i)(no person convicted of “crime of violence,” including murder, shall be parole eligible). *But see*, Miss. Code Ann. § 97-3-2(2)(allowing parole eligibility at 50% of sentence for crimes of violence); *Wilson v. State*, 295 So. 3D 566 (Miss. Ct. Ap. Jan. 7, 2020)(discussing the contradiction of two statutes).

<sup>27</sup> Mo. Ann. Stat. §558.047(1)(2).

Montana	30 years <sup>28</sup>	No
Nebraska	N/A. Set by Board of Pardons. <sup>29</sup>	Yes
Nevada	20 years <sup>30</sup>	Yes
New Hampshire	N/A—does not appear to have parole-eligible life sentence for first-degree murder <sup>31</sup>	No
New Jersey	30 years <sup>32</sup>	Yes
New Mexico	30 years <sup>33</sup>	No
New York	20-25 years <sup>34</sup>	No
North Carolina	25 years <sup>35</sup>	Yes
North Dakota	20 years <sup>36</sup>	Yes
Ohio	20-30 years <sup>37</sup>	No
Oklahoma	38 years <sup>38</sup>	No
Oregon	30 years <sup>39</sup>	Yes
Pennsylvania	25-35 years <sup>40</sup>	Yes

<sup>28</sup> Mont. Code. Ann. § 46-23-201(4).

<sup>29</sup> In Nebraska, a juvenile sentenced to life for first-degree murder (which carries a range of 40 years to life) is not parole eligible unless and until the Nebraska Board of Pardons reduces the term to a sentence of years. Neb. Rev. Stat. § 28-105.02(1); *see also State v. Castaneda*, 287 Neb. 289, 313 (2014).

<sup>30</sup> Nev. Rev. Stat. Ann. § 213.12135.

<sup>31</sup> N.H. Rev. Stat. Ann. § 651-A:7 (release eligibility after 18 years except for first-degree murder).

<sup>32</sup> N.J. Stat. Ann. 2C:11-3b(1).

<sup>33</sup> N.M. Stat. Ann. 1978 § 31-21-10(A). *Cf. Ira v. Janecka*, 419 P.3d 161 (N.M. 2018)(parole eligibility after 46 years for nonhomicide 108-year sentence is not de facto life sentence and does not violate *Miller*).

<sup>34</sup> N.Y. Penal Law § 70.40 (McKinney 2011).

<sup>35</sup> N.C. Gen. Stat. Ann. §15A-1340.19A.

<sup>36</sup> N.D. Cent. Code Ann. §12.1-32-13.1.

<sup>37</sup> Ohio Rev. Code Ann. § 2929.03.

<sup>38</sup> Okla. Stat. Ann. tit. 21, § 12.1(must serve 85% of sentence for first-degree murder); *see also Anderson v. State*, 130 P.3d 273, 282-83 (Okla. 2006)(Board of parole calculates life sentence as 45 years, meaning parole eligibility at 38 years).

<sup>39</sup> Or. Rev. Stat. Ann. § 167.107(2)(a).

<sup>40</sup> 18 Pa. Stat. And Cons. Stat. Ann. § 1102.1 (persons under 18 can be sentenced to 25 to life or 35 to life depending on age); Penn. Dept. of Corrections, *Pennsylvania Sentencing Information Fact Sheet*, available at <https://www.cor.pa.gov/community-reentry/Documents/Parole%20Case%20Example/Pennsylvania%20Sentencing%20In>



Rhode Island	25 years <sup>41</sup>	No
South Carolina	10 years <sup>42</sup>	No
South Dakota	N/A. Juveniles only sentenced to term of years, with no minimum or maximum for first-degree murder. <sup>43</sup>	Yes
Texas	40 years <sup>44</sup>	Yes
Utah	15 years <sup>45</sup>	Yes
Vermont	35 years <sup>46</sup>	No
Virginia	20 years <sup>47</sup>	Yes
Washington	20 years <sup>48</sup>	Yes
West Virginia	15 years <sup>49</sup>	Yes
Wisconsin	20 years <sup>50</sup>	No
Wyoming	25 years <sup>51</sup>	Yes

formation.pdf (last visited Nov. 16, 2020)(stating persons are parole eligible after service of minimum sentence). *Cf. Commonwealth v. Felder*, 647 Pa. 17, 18, 187 A.3d 909 (Penn. 2018)(granting appeal on issue of whether 50-year sentence is de facto life sentence).

<sup>41</sup> 13 R.I. Gen. Laws Ann. § 13-8-13.

<sup>42</sup> S.C. Code Ann. § 16-3-20.

<sup>43</sup> S.D. Codified Laws § 22-6-1; see also S.D. Codified Laws § 24-5-1 (parole calculation based on good-behavior credits). In South Dakota, juveniles may only be sentenced to terms of years and not life or life without parole sentences. *See* S.D. Codified Laws § 22-6-1. Like all sentences given in terms of years, this can result in lengthy sentences. *See State v. Quevedo*, 947 N.W.2d 402, 409 (S.D. 2020)(denying *Miller*-type claim where juvenile homicide offender would be parole eligible after 45 years of 90-year sentence).

<sup>44</sup> Tex. Gov't Code Ann. § 508.145.

<sup>45</sup> Utah Code Ann. § 76-3-206(juveniles cannot be sentenced to death or LWOP, only to term of 25 years to life); Utah Admin. Code R.671-201-1 (2018)(“When scheduling an original hearing by administrative review, if the offender was less than 18 years of age at the time of the commitment offense and the offense is eligible for parole, the original hearing shall be scheduled no later than 15 years after the date of sentencing.”).

<sup>46</sup> Vt. Stat. Ann. tit.13, § 2303.

<sup>47</sup> Va. Code Ann. § 53.1-165.1(E).

<sup>48</sup> Wash. Rev. Code Ann. § 9.94A.730(1).

<sup>49</sup> W.Va. Code Ann. § 62-12-13b.

<sup>50</sup> Wis. Stat. Ann. 973.014(1g)(a)(1).

<sup>51</sup> Wyo. Stat. Ann. § 6-10-301(c).

