

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
DIVISION V

STATE OF MISSOURI,)
) **Case No. 1331-CR04069-01**
 Plaintiff,)
)
 v.)
)
 JERRI SMILEY,)
)
 Defendant.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

FINDINGS OF FACT

THIS CAUSE came on to be heard on the defendant's motion to declare section 571.015, RSMo unconstitutional as applied to juveniles. The Court has listened to the arguments and reviewed the pleadings; hearing was held in this matter. The Court being fully apprised of the premises of the defendant's motion does hereby enter the following order, findings of fact, and conclusions of law.

Defendant, Jerri Smiley, is charged with 1st Degree Assault and Armed Criminal Action for attempting to cause serious physical injury to Rachel Long by stabbing her with a knife on June 21, 2013. Defendant was 16 years old at the time and was certified to stand trial as an adult on July 19, 2013, by the Honorable David C. Jones.

The defendant turned 17 on September 26, 2013 and is no longer considered a juvenile for the purposes of criminal prosecution. The defendant waived jury trial on May 2, 2014 and this Court set the case for bench trial on August 14, 2014. Defense counsel filed his motion to find the armed criminal action statute unconstitutional on August 6, 2014.

The defendant claims that RSMo §571.015, the armed criminal action statute, is unconstitutional as applied to certified juveniles because RSMo §571.015 “mandates prison time for juveniles, even for a non-homicide offense, and does not allow a judge the discretion to consider the juvenile’s youth, immaturity, and other relevant factors when opposing a sentence.”

RSMo §571.015 provides, in pertinent part, “Except as provided in subsection 4 of this section, any person who commits any felony under the laws of this state by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon is also guilty of the crime of armed criminal action and, upon conviction, shall be punished by imprisonment by the department of corrections and human resources for a term of *not less than three years*. The punishment imposed pursuant to this subsection shall be in addition to any punishment provided by law for the crime committed by, with, or through the use, assistance, or aid of a dangerous instrument or deadly weapon. *No person convicted under this subsection shall be eligible for parole, probation, conditional release or suspended imposition or execution of sentence for a period of three calendar years.*”

Defendant has filed a motion and a supplemental motion arguing that section 571.015 RSMo., Armed Criminal Action, is unconstitutional as applied to juveniles because it requires incarceration and that mandatory incarceration for juveniles is unconstitutional. Defendant argues that section 571.015 violates the 8th Amendment to the United States Constitution and Article I, §21 of the Missouri Constitution. The Court has read the motions of the defendant and the state, along with the exhibits in these motions, as well as the cases and statutes cited in these motions. Additionally, the Court has considered arguments made by counsel in Court.

For reasons discussed below, the Court sustains defendant's motion as to Article I, §21 of the Missouri Constitution and severs the last sentence of subsection one of Section 571.015 RSMo., as to juvenile offenders. The Court further finds that Section 571.015 RSMo., and mandatory incarceration, violate a juvenile's right to due process under Article I, §10 of the Missouri Constitution. The Court wishes to emphasize that it is not holding that incarceration of juveniles is unconstitutional. The Court finds that incarceration for juveniles is often very appropriate and serves legitimate penological goals. The Court's holding is to mandatory incarceration.

The Court's decision is based on an independent review of mandatory incarceration and consideration of objective indicia from within the state of Missouri. This approach has been used by both the United States Supreme Court (*Roper v. Simmons*, 543 U.S. 551, 564 (2005); *Graham v. Florida*, 560 U.S. 48, 61

(2010)), and the Missouri Supreme Court in *State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 408-409 (Mo. banc 2003).

CONCLUSIONS OF LAW

I. JUVENILES ARE LESS CULPABLE THAN ADULTS

For more than 25 years, the United States Supreme Court has held that juveniles are less culpable than adults for the commission of a crime. In *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988), the United States Supreme Court acknowledged that “[i]nexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.”

Seventeen years later, In *Roper v. Simmons*, the United States Supreme Court struck down capital punishment for juvenile offenders. The Court based examining two things. First, it determined that a national consensus had developed against the death penalty due to “the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice.” *Roper v. Simmons*, 543 U.S. at 567.

The Court also conducted its own independent review and held that the punishment of the death penalty was not appropriate since the culpability of juvenile offenders was less than that of an adult. *Roper v. Simmons*, 543 U.S. at 572-573. The Court relied on amici briefs that discussed biological differences between juveniles and adults and how the lack of brain development in a juvenile contributes to a juvenile's diminished culpability. *Id.* at 569. The Court went further to discuss why juveniles are not as culpable as adults. *Id.* "First, children have a 'lack of maturity and an underdeveloped sense of responsibility' leading to recklessness, impulsivity, and heedless risk taking." *Id.* "Second, children 'are more vulnerable...to negative influences and outside pressures,' including from their family and peers; they have limited 'control over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings." *Id.* Finally, "a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievable depravity.'" *Id.* The *Roper* court continued:

Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment...The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would

be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, “[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.”

Id. at 570. (citation omitted)

Finally, the Court discussed how retribution and deterrence did not justify executing juveniles. *Id.* at 571. “Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” *Id.* Deterrence did not justify the death penalty because the penological purpose of deterrence is not achieved in the same way when sentences are applied to juveniles since “the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence.” *Id.*

Five years later, juvenile justice continued to evolve in *Graham v. Florida*, where the Court struck down laws that allowed juveniles to be sentenced to life without parole for non-homicide offenses. *Graham v. Florida*, 560 U.S. at 81. As with *Roper*, the Court determined whether there was a national consensus and then did an independent review. *Id.* at 61.

The Court determined that even though many legislatures allowed juvenile offenders to be sentenced to life without parole, the actual practice was so

infrequent that a national consensus had developed against it. *Id.* at 67.

Additionally, the Court also cited to *Thompson* and noted that the fact that states allow juveniles to be tried in adult court does not provide an indication as to what *sentence* is appropriate for the offender. *Id.* at 66. Specifically, the Court stated:

Many States have chosen to move away from juvenile court systems and to allow juveniles to be transferred to, or charged directly in, adult court under certain circumstances. Once in adult court, a juvenile offender may receive the same sentence as would be given to an adult offender, including a life without parole sentence. But the fact that transfer and direct charging laws make life without parole possible for some juvenile non-homicide offenders does not justify a judgment that many States intended to subject such offenders to life without parole sentences.

Id.

The *Graham* Court then conducted its own independent review and reaffirmed its holdings from *Roper* about a juvenile's diminished culpability, recognizing that "parts of the brain involved in behavior control continue to mature through late adolescence." *Graham v. Florida*, 560 U.S. at 68. This includes the frontal lobes of the brain, which are tied to "a variety of cognitive abilities including decision making, risk assessment, ability to judge future consequences, evaluating reward and punishment, behavioral inhibition, impulse control, deception, responses to positive and negative feedback and making moral

judgment.” (Defendant’s Exhibit B, pp. 25-27) The *Graham* Court also discussed how this diminished culpability was even lower for juveniles who commit non-homicide offenses and that a life without parole sentence was similar to the death penalty in that “the sentence alters the offender's life by a forfeiture that is irrevocable.” *Graham v. Florida*, 560 U.S. at 69.

As with *Roper*, the *Graham* Court discussed the penological justifications for a life without parole sentence for a juvenile offender who did not commit a homicide offense. *Id.* at 71-74. “It does not follow, however, that the purposes and effects of penal sanctions are irrelevant to the determination of Eighth Amendment restrictions.” *Id.* at 71. “A sentence lacking any penological justification is by its nature disproportionate to the offense.” *Id.* The Court’s analysis focused on retribution, rehabilitation, incapacitation, and deterrence. *Id.*

Regarding retribution, the *Graham* Court stated that retribution for a crime was legitimate but that “[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.” *Id.* (citation omitted) Further, the Court, citing to *Roper*, held that “[w]hether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult.” *Id.*

Regarding deterrence, the *Graham* Court reaffirmed *Roper* by pointing out that the same traits that make a juvenile less culpable than an adult make him “less susceptible to deterrence.” *Id.* at 72.

Regarding incapacitation, the *Graham* Court noted while it can be necessary to protect the community from recidivism, a sentence of life without parole was not justified for a non-homicide offense. *Id.* A sentence of life without parole improperly concludes that the juvenile cannot be rehabilitated and prevents him from showing that he is. *Id.* at 73.

Finally, regarding rehabilitation, the *Graham* Court stated that rehabilitation did not justify a sentence of life without parole for a non-homicide offense because the sentence implied that rehabilitation was not possible. *Id.* at 74. “For juvenile offenders, who are most in need of and receptive to rehabilitation,... the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more evident.” *Id.*

What is of particular interest to this Court is the *Graham* Court’s observation that the same traits that make juveniles less culpable also “put them at a significant disadvantage in criminal proceedings.” *Id.* at 78. The Court noted that juveniles have less understanding about the criminal justice system and have difficulties trusting adults, stating:

Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by one charged with a juvenile offense... These factors are likely to impair the quality of a juvenile defendant's representation. A categorical rule avoids the risk that, as a result of

these difficulties, a court or jury will erroneously conclude that a particular juvenile is sufficiently culpable to deserve life without parole for a non-homicide.

Id. at 78-79.

Two years later, in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), the United States Supreme Court joined together two lines of 8th Amendment precedent. The first line of precedent consisted of “categorical bans on sentencing practices based on mismatches between the culpability of a class of offenders and the severity of a penalty.” *Id.* (citation omitted). The second line “prohibited mandatory imposition of capital punishment, requiring that sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death.” *Id.* at 2363-2364. By joining these two lines of precedent, the Court held that mandatory sentences of life without parole for juveniles violated the 8th Amendment to the United States Constitution. *Id.* at 2364.

The *Miller* Court reaffirmed the rationale of *Roper* and *Graham* “that children are constitutionally different from adults for purposes of sentencing.” *Miller v. Alabama*, 132 S.Ct. at 2464. Further, the *Miller* Court cited to points made in *Roper* and *Graham* about factors that contribute to a juvenile’s diminished culpability. *Id.* at 2464-2466. Moreover, the *Miller* Court indicated that the science supporting these holdings has only become stronger. *Id.* at 2465. (Footnote 5)

The *Miller* Court also reaffirmed *Graham*'s holding that the fact that a legislature allows a juvenile to be tried as an adult says nothing as to its intent about a juvenile being sentenced as an adult. *Id.* at 2473-2474.

Regarding penological justifications, the Court in *Miller* held that the absence of a penological justification for a sentence of life without parole for a non-homicide offense diminished the justification of a sentence of life without parole for a homicide offense. *Id.* at 2465-2466. Before a sentence of life without parole could be justified for a homicide, the sentencer had to consider youth and its attendant circumstances. *Id.*

Of significant importance to this Court was that the Court in *Miller* held that youth, and all that comes with it, must be considered before imposing a life without parole sentence. *Id.* The Court stated a number of factors that a sentencer needed to consider when sentencing a juvenile: age, involvement in the crime, home conditions, inability to remove himself from them, immaturity, inability to foresee consequences, circumstances of the crime and how family and peer influences contributed. *Id.* at 2467-2468. Further, the *Miller* Court, citing to *Graham*, included to these factors the impact that the juvenile's youth has on his representation and how they put them at a significant disadvantage in criminal proceedings." *Id.* (citation omitted)

The *Miller* Court's analysis differed from *Roper* and *Graham* in the sense that since it was not issuing a categorical bar on a sentence, the focus on consensus was not necessary. *Miller v. Alabama*, 132 S.Ct. at 2472-2473. Further, it

justified its approach on the belief, which it had mentioned in *Graham*, that just because the legislatures had allowed juveniles to be tried as adults, it did not mean that the legislatures had endorsed them being *sentenced* as adults. *Id.* at 2473-2474.

The Court finds it is inescapable that juveniles who commit crimes are not as culpable as adults who commit the same crimes. The cases of *Thompson*, *Roper*, *Graham*, and *Miller* cite to both scientific studies and social science reasoning that conclude juveniles are not as morally culpable as adults. The Court further finds that the cases of *Thompson*, *Roper*, *Graham*, and *Miller* demonstrate an evolution in our jurisprudence that the focus of what makes a sentence disproportionate for juveniles is on the offender and not a comparison of the sentence and the crime. The Court further finds that this jurisprudence requires the factors discussed in these cases to be considered when sentencing a juvenile offender in an adult court.

II. A JUVENILE’S DIMINISHED CULPABILITY SHOULD BE CONSIDERED REGARDLESS OF THE CRIME AND PUNISHMENT

The state has argued that *Roper*, *Graham*, and *Miller* are not applicable to this case since in those cases the issue was the death penalty or life without parole. The Court finds this argument unpersuasive. While it is true that the holdings of *Roper*, *Graham*, and *Miller* applied only to death and life without parole sentences, that is because those were the issues presented to the Court. The issue

of mandatory sentences in general for certified juveniles was not before the Court. Defendant, however, has not argued that the specific holdings of *Roper*, *Graham*, and *Miller* support her argument; rather, defendant has argued that the *rationale* behind those decisions is what supports her argument. This Court agrees.

The United States Supreme Court has specifically held that “none of what is said about children-about their distinctive (and transitory) mental traits and environmental vulnerabilities-is *crime specific*.” *Miller v. Alabama*, 132 S.Ct. at 2455 (emphasis added). *Roper*, *Graham*, and *Miller* do not limit consideration of a juvenile’s youth and attendant circumstances (as the defendant calls them, the “juvenile factors”) to crimes with a possible sentence of death or life without parole. Thus, implicit in the Supreme Court’s analysis, is that the factors applicable to a juvenile should be considered *regardless* of the nature of the offense.

Thus while the specific issue in *Miller* was mandatory life without parole for a homicide, the Court was clear that the “juvenile factors” should be considered for any offense with any punishment; and logically, it would make no sense not to consider these factors for any offense. The same factors that play a role when a juvenile commits the heinous offense of first degree murder also play a role when a juvenile commits a less heinous offense. For example, a juvenile’s lack of development of frontal lobes, his inability to foresee the consequences of his actions, and his susceptibility to outside influences are just as relevant to his crime whether that crime is first degree murder, first degree assault, or first degree

tampering. Additionally, if these factors are only considered when death or life without parole is the possible sentence, then only the most heinous offenders receive the benefit of having the “juvenile factors” taken into consideration before incarceration.

The United States Supreme Court has stated, “[t]he Eighth Amendment's prohibition of cruel and unusual punishment ‘guarantees individuals the right not to be subjected to excessive sanctions.’” *Miller v. Alabama*, 132 S.Ct. at 2463. (citing to *Roper v. Simmons*, 543 U.S. at 560 (2005). “That right, we have explained, ‘flows from the basic ‘precept of justice that punishment for crime should be graduated and proportioned’ to both the offender and the offense.” *Id.* (emphasis added) In *Graham v. Florida*, 560 U.S. at 59, the Court specifically stated, “[t]he concept of proportionality is central to the 8th Amendment.” (emphasis added) As this Court has already stated, *Roper*, *Graham*, and *Miller* show us that for purposes of measuring proportionality in juvenile cases, the Court has gradually turned its focus away from comparing the punishment versus the offense and has directed its focus on the *offender*. “[A]n offender’s juvenile status can play a central role’ in considering a sentence’s proportionality.” *Miller v. Alabama*, 132 S.Ct. at 2466. (quoting Chief Justice Roberts’s concurring opinion in *Graham v. Florida*, 560 U.S. at 90). Thus, for juveniles, the standard for measuring proportionality is no longer a “gross disproportionality” standard where the sentence is compared to the offense and only struck down if it is grossly

disproportional to the offense. (See, for example, *State v. Pribble*, 285 S.W.3d 310, 314 (Mo. banc 2009)).

Recently, the Iowa Supreme Court, in *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014), addressed this issue when it held that mandatory minimum prison time for juvenile offenders who had been sent to prison, violated the Iowa Constitution's ban on cruel and unusual punishment. The *Lyle* Court stated:

Accordingly, the heart of the constitutional infirmity with the punishment imposed in *Miller* was its mandatory imposition, not the length of the sentence. The mandatory nature of the punishment establishes the constitutional violation. Yet, article I, section 17 requires the punishment for all crimes "be graduated and proportioned to [the] offense." (citation omitted). In other words, the protection of article I, section 17 applies across the board to all crimes. Thus, if mandatory sentencing for the most serious crimes that impose the most serious punishment of life in prison without parole violates article I, section 17, so would mandatory sentences for less serious crimes imposing the less serious punishment of a minimum period of time in prison without parole. All children are protected by the Iowa Constitution. The constitutional prohibition against cruel and unusual punishment does not protect all children if the constitutional infirmity identified in mandatory imprisonment for those juveniles who commit the most serious crimes is

overlooked in mandatory imprisonment for those juveniles who commit less serious crimes. *Miller* is properly read to support a new sentencing framework that reconsiders mandatory sentencing for all children. Mandatory minimum sentencing results in cruel and unusual punishment due to the differences between children and adults. This rationale applies to all crimes, and no principled basis exists to cabin the protection only for the most serious crimes.

Id. (The Court notes that page numbers are not available)

Lyle did not deal with mandatory incarceration but with mandatory minimums when a juvenile is actually sent to prison. Nevertheless, the logic of *Lyle* is clear, and this Court finds it compelling. *Miller* cannot be read to apply to just the most heinous crimes where life without parole is a potential sentence. As with Iowa's constitution, the Missouri Constitution protects all juveniles not just the ones who commit the most heinous offenses. This Court holds that the mitigating factors the United States Supreme Court held must be considered when a certified juvenile faces life without parole must also be considered when a juvenile faces any amount of prison time for any offense. This Court finds that children are not just constitutionally different for purposes of sentencing when the possible sentence is life without parole. They are constitutionally different for purposes of sentencing regardless of what the possible sentence is.

III. STATUTES THAT REQUIRE JUVENILES TO BE INCARCERATED PREVENT COURTS FROM CONSIDERING

ALL RELEVANT FACTORS AND VIOLATE ARTICLE I, §21
OF MISSOURI'S CONSTITUTION

The state does not dispute that a juvenile's youth and his or her attendant circumstances (what the defendant has called the juvenile factors) should be considered at sentencing. The State's argument is that Armed Criminal Action is not unconstitutional because it allows "for the sentencer to absolutely consider all mitigators and aggravators, including youth or background in determining the sentence should the defendant be found guilty of the offense." The Court finds this unpersuasive. The state merely makes a conclusory assertion and offers no substantive argument to back up its claim other than to state that the Armed Criminal Action statute is not unconstitutional because it only mandates a minimum prison sentence.

This too is unpersuasive. If a sentencing Court is truly going to "absolutely consider all mitigators and aggravators, including youth or background in determining the sentence should the defendant be found guilty of the offense," then the Court must also be allowed to suspend a prison sentence if that reflects its belief that this is the appropriate disposition. In other words, the Court must be able to go where the "juvenile factors" lead it.

Thus, if after "absolutely" considering all of the relevant factors, the Court concludes that it would not be just and appropriate to send the juvenile to prison for three calendar years, then it must have the flexibility to suspend any prison sentence. The Armed Criminal Action statute (as well as other crimes with

mandatory incarceration provisions) does not allow a judge to do that and the state's argument that this is not unconstitutional because three years is only a minimum sentence is without merit.

In Missouri, the legislature has determined that adults who use a weapon in the commission of a felony are not worthy of probation until they spend three years in prison. If a juvenile, however, is less culpable than an adult for his crimes, then it logically follows that he is less culpable than an adult for using a weapon as well. The requirement that the juvenile, like the adult who commits the same crime, must also spend three years in prison, does not allow the Court to consider that diminished culpability for the Armed Criminal Action charge even though the diminished culpability for many juveniles is substantial given their age, background, living circumstances, and levels of maturity – physical, emotional, social, and intellectual. Juveniles as young as 12 can be certified as adults, and certain crimes, including the one defendant is charged with, have no minimum age. *See* Section 211.071.1. With children as young as 12 (or younger), being sentenced for adult crimes, the Court finds that it is inevitable that the culpability for certain juveniles will be so diminished that the Court will conclude that incarceration is neither just nor appropriate. Given that the degree of culpability among juveniles varies substantially, it is only logical to conclude that just as the culpability of some juveniles will warrant them receiving the maximum amount of incarceration possible, the culpability of other juveniles will warrant them receiving no incarceration. The Armed Criminal Action statute, however, requires

three years in prison regardless and prevents the Court from considering this diminished culpability. Further, Armed Criminal Action's mandatory three years in prison is imposed regardless of the seriousness of the felony. Thus, the Court cannot consider the seriousness of the underlying felony either.

A mandatory sentence, regardless of its length, does not allow the Court to fully consider the fact of whether the juvenile was the primary aggressor or just a kid who tagged along because he wanted to be part of the group. It does not allow the Court to fully consider whether the use of the weapon was pre-planned or used impulsively when a fight escalated into a small riot. It does not allow the Court to fully consider what kind of family background the child grew up in – privileged or broken. It does not allow the Court to fully consider whether the juvenile was the principal offender or an accomplice. Most importantly, it does not allow the Court the flexibility to keep juveniles, for whom it believes a prison sentence of any length, would be unjust and inappropriate, out of prison.

Miller clearly stands for the proposition that when determining if a sentence is disproportionate, the focus must be on the offender. This requires the sentencer to consider youth and all that is associated with it. Further, in order for that to have any meaning, the Court must have the flexibility to carry out the disposition that consideration of all the relevant factors leads it to deem appropriate, whether that is prison or not. Requiring a juvenile to be sent to prison, regardless of the length of time he or she must spend there, in cases where consideration of all the relevant factors demonstrates prison is unjust and inappropriate, violates a juvenile's right

to be free from cruel and unusual punishment guaranteed by Article I, §21 of the Missouri Constitution; and the juvenile's right to due process under Article I, §10 of the Missouri Constitution.

The Court finds an argument made by Professor Guggenheim addresses this perfectly:

If most juveniles who commit serious felonies have lessened culpability than most adults who commit the same crimes then it follows that juveniles who commit minor crimes (probably) also have lessened culpability than adults. As a result, the Constitution forbids ignoring these probabilities and automatically imposing a mandatory adult-like sentence on a child. This is because the statutory punishment would be based on an (sic) non-rebuttable presumption that the juvenile who committed the crime is equally morally culpable as an adult who committed the same act. This impermissibly allows the state to forgo having to prove material facts--the propriety of punishing a juvenile based on the same combination of deterrence, incapacitation and retribution which is appropriate for an adult--by presuming them to be true. It violates the juvenile's substantive liberty interest....The substantive right in this situation is a juvenile's right not to be treated invariably as an adult for sentencing purposes, not that the sentence itself violates the child's substantive right. In order to determine what sentence is

proper to impose on the juvenile, there must be a hearing on the question at which the state must bear its burden of proving that the juvenile deserves the same sentence that the legislature would impose automatically on an adult. After *Graham*, it is impermissible to deem children as morally culpable as adults and any effort that does is an impermissible legislative shortcut.

Martin Guggenheim, *Graham v. Florida and a Juvenile's Right to Age-Appropriate Sentencing*, 47 Harv. C.R.-C.L. Rev. 457, 491-492 (2012).

This Court holds that the hearing that Professor Guggenheim refers to is not the certification hearing. It is true that under Sections 211.071(6) and 211.071(7), the certification judge is required to consider the juvenile's age and maturity before transferring his case to adult court and subjecting him to the possibility of a sentence involving incarceration in an adult prison. It is also true that there is case law in Missouri that, at first, could be seen to support this argument. In *State v. Andrews*, 329 S.W.3d 369, 377 (Mo. banc 2010), the Court held that since Section 211.071(6) requires a judge to consider a juvenile's youth before transfer, "Missouri's statutory scheme expressly considers the youthfulness of the child before he or she is exposed to the possibility of a mandatory life without parole sentence for first degree murder." *Id.* at 377. *Andrews*, however, was decided before *Miller*, and *Miller* specifically refutes this analysis. The *Miller* Court specifically stated:

Even when States give transfer-stage discretion to judges, it has limited utility. First, the decision maker typically will have only partial information at this early, pretrial stage about either the child or the circumstances of his offense. Miller's case provides an example. As noted earlier, ...the juvenile court denied Miller's request for his own mental-health expert at the transfer hearing, and the appeals court affirmed on the ground that Miller was not then entitled to the protections and services he would receive at trial... But by then, of course, the expert's testimony could not change the sentence; whatever she said in mitigation, the mandatory life-without-parole prison term would kick in. The key moment for the exercise of discretion is the transfer—and as Miller's case shows, the judge often does not know then what she will learn, about the offender or the offense, over the course of the proceedings.

Second and still more important, the question at transfer hearings may differ dramatically from the issue at a post-trial sentencing. Because many juvenile systems require that the offender be released at a particular age or after a certain number of years, transfer decisions often present a choice between extremes: light punishment as a child or standard sentencing as an adult (here, life without parole). In many States, for example, a child convicted in juvenile court must be released from custody by the age of

21...Discretionary sentencing in adult court would provide different options: There, a judge or jury could choose, rather than a life-without-parole sentence, a lifetime prison term *with* the possibility of parole or a lengthy term of years. It is easy to imagine a judge deciding that a minor deserves a (much) harsher sentence than he would receive in juvenile court, while still not thinking life-without-parole appropriate. For that reason, the discretion available to a judge at the transfer stage cannot substitute for discretion at post-trial sentencing in adult court—*and so cannot satisfy the Eighth Amendment* (emphasis added).

Miller v. Alabama, 132 S.Ct. at 2474-2475.

Miller is clear. A juvenile Court's decision to transfer a case to adult court after its consideration of the relevant factors does not negate the need of the trial Court to have the flexibility to also consider the factors related to youth before imposing an appropriate sentence. Moreover, this is emphasized by Missouri case law as well. Specifically, while the transfer Court may be required to consider all the factors in section 211.071(6), including age and maturity, the transfer judge is not required to give equal weight to those factors nor is he required to make a finding on each one. *State v. Thomas*, 70 S.W.3d 496, 504 (Mo. App. E.D. 2002). Further, "the serious nature of the crime is the dominant criterion among the ten factors." *Id.* (citing to *State v. Seidel*, 764 S.W.2d 517, 519 (Mo. App. S.D.1989)). Thus, reliance on the transfer court's consideration of

the factors related to youth for sentencing purposes violates Article I, §21 of the Missouri Constitution as well.

**IV. STATUTES THAT REQUIRE JUVENILES TO BE
INCARCERATED HAVE NO PENOLOGICAL
JUSTIFICATION AND VIOLATE ARTICLE I, §21 OF
MISSOURI'S CONSTITUTION**

In *Graham v. Florida*, 560 U.S. at 67, the United States Supreme Court stated:

In accordance with the constitutional design, “the task of interpreting the Eighth Amendment remains our responsibility.” (citation omitted) The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question. (citation omitted) In this inquiry the Court also considers whether the challenged sentencing practice serves legitimate penological goals. (citation omitted)

The Court later stated that “[i]t does not follow, however, that the purposes and effects of penal sanctions are irrelevant to the determination of Eighth Amendment restrictions.” *Id.* at 71. “A sentence lacking any penological justification is by its nature disproportionate to the offense.” *Id.* The Court went on to say that there are four accepted penological justifications for a sentence – retribution, deterrence, incapacitation, and rehabilitation. *Id.*

This Court holds that with all the factors that a sentencer is required to consider, there are simply too many variables to allow mandatory incarceration of any length. The Court finds that it is inevitable that with consideration of all of the factors mentioned in *Roper*, *Graham*, and *Miller*, it will determine that for some juveniles, prison is not just or appropriate. Upon a finding that prison is not just or appropriate, none of the recognized penological justifications applies and a sentence of incarceration, regardless of its length, “is by its nature disproportionate to the offense.” *Graham v. Florida*, 560 U.S. at 71. The Court finds it necessary to explicitly address all four penological justifications.

If the Court determines that prison for the juvenile is unjust and inappropriate, retribution is not a valid penological justification of a mandatory three year sentence. The Court in *Graham* stated, “[t]he heart of the **retribution** rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.” *Id.* If the judge has already determined that prison is not appropriate and just, however, the judge has decided that the wrong to the victim and society is more appropriately balanced in other ways.

If the Court determines that prison for the juvenile is unjust and inappropriate, incapacitation is not a valid penological justification of a mandatory three year sentence. The judge has determined that the risk of reoffending is not great enough to require imprisonment and three years provides only a minimal period for which the community is “protected.” Thus, spending three years in

prison would result in “nothing more than the purposeless and needless imposition of pain and suffering.” (See *Coker v. Georgia*, 433 U.S. 584, 592 (1977))

If the Court determines that prison for the juvenile is unjust and inappropriate, deterrence is not a valid penological justification of a mandatory three year sentence. *Graham* was clear that juveniles rarely take a possible legal punishment into consideration when acting and the punishment there was LWOP. *Graham v. Florida*, 560 U.S. at 72. Deterrence does not justify a mandatory three year sentence.

Finally, if the Court determines that prison for the juvenile is unjust and inappropriate, rehabilitation is not a valid penological justification of a mandatory three year sentence. People who are incarcerated, however, have been judged by the court to need incarceration in order to be rehabilitated, incapacitated, or to provide retribution for the victim and the community. If a judge has determined that for the juvenile, prison would not be just or appropriate, then the judge has determined that prison is not necessary for rehabilitation.

Despite these findings, however, the Court will be forced to send the juvenile to prison. The Court finds that doing this constitutes cruel and unusual punishment and violates Article I, §21 of Missouri’s Constitution.

The Court does note that the dual jurisdiction program is an option it could use to avoid sending juveniles to prison. As the state itself pointed out, however, there is no guarantee dual jurisdiction would be available. Lack of bed space, cuts in funding, or a simple belief on the part of the program that the juvenile is not

appropriate for it, could place the Court in the position of having to send a juvenile to prison despite its finding that prison is not just or appropriate. Further, once a juvenile's case is in the adult system, it is subject to the same delays as any other case faces. As a result, a juvenile, such as the defendant in this case, may simply be too old for the dual jurisdiction program. The Court notes that defendant's current counsel is her second attorney. Her attorney is a public defender who inherited several other cases besides hers. The Court notes that this delayed her case for at least a number of months and this delay was not the fault of the defendant. The Court holds that the only way to ensure it is not in the position of having to send a juvenile to prison when it finds that prison is not just or appropriate is to eliminate mandatory incarceration for juveniles.

V. OBJECTIVE INDICIA EXIST IN MISSOURI THAT SHOW A STATEWIDE CONSENSUS AGAINST MANDATORY INCARCERATION FOR JUVENILES

States must at least give the same level of protections that the federal constitution provides. Therefore, at the very least, Missouri Courts must consider a juvenile's diminished culpability, immaturity, and other relevant factors when sentencing a certified juvenile in adult court. Additionally, the Missouri Supreme Court has held that that a provision of Missouri's Constitution may be construed to provide more protection than the corresponding federal provision. *State v. Rushing*, 935 S.W.2d 30, 34 (Mo. banc 1996). In other words, while states cannot provide lesser protections, they can provide greater. In addition to defendant's

articles discussing how Missouri is a state that is considered to be a leader in juvenile justice, the Court finds that there are objective indicia within Missouri that demonstrate a statewide consensus against mandatory incarceration for certified juveniles and also demonstrate why juveniles are entitled to more protections under Article I, §21 of Missouri's Constitution than are provided by the 8th and 14th Amendments of the United States Constitution.

A. Legislative Enactments by the Missouri Legislature Demonstrate a Statewide Consensus Against Mandatory Incarceration for Juveniles

In *Atkins v. Virginia*, 536 U.S. 304, 312 (2002), the United States Supreme Court stated that what is considered to be cruel and unusual punishment should be determined by current standards, which are most reliably to be determined by the statutes passed by the legislature. This line of reasoning was applied by the Missouri Supreme Court in *State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 403 (Mo. banc 2003).

1. Section 211.073 RSMo.

In 1995, the Missouri Legislature enacted Section 211.073 RSMo. This statute set up dual jurisdiction, under which if a certified juvenile is convicted of an offense, except for first degree murder, the trial judge has the authority to send the juvenile to the Missouri Division of Youth Services (DYS) for a juvenile disposition, provided the juvenile has not reached his 17th birthday. When the juvenile completed the DYS program, successfully or unsuccessfully, the trial

court had the authority to either send the juvenile to prison or suspend execution of the sentence and place the juvenile on probation.

In 2013, the Missouri legislature amended Section 211.073, with two significant changes. First, it extended the time for a juvenile to be eligible for dual jurisdiction from 17 years to 17 years and six months. The purpose of this extension was to prevent juveniles from being disqualified due to their cases moving slowly through the court system. The second major change was that unlike the original law, which stated that judges *may* consider the dual jurisdiction disposition, the law now *requires* judges to consider a dual jurisdiction disposition. Further, if DYS accepts the juvenile and the judge declines to impose a dual jurisdiction sentence, the judge *must* make findings on the record as to why dual jurisdiction was not an appropriate disposition.

The Court has reviewed Section 211.073 RSMo. and finds, based on the plain language in the statute as well as case law interpreting it, that the Court is to consider dual jurisdiction regardless of the offense and that a juvenile sentenced pursuant to this statute is eligible for probation upon successful completion of the DYS program regardless of the offense. The Court also finds that any argument that the Armed Criminal Action charge, or any other charge with mandatory prison time, removes the possibility of a dual jurisdiction disposition ignores the clear intent of the legislature that the decision to impose a dual jurisdiction disposition rests with the *Court*. If an Armed Criminal Action conviction, or a conviction for any crime with mandatory prison time, prevents a dual jurisdiction

disposition, then it gives the *prosecutor*, not the *Court*, the power to remove the option of a dual jurisdiction disposition by making that charge. That clearly is not what the legislature intended.

State ex rel. Sanders v. Kramer, 160 S.W.3d 822 (Mo. App. W.D. 2005) is instructive. In that case, the juvenile pled guilty to second degree murder and armed criminal action. *Id.* at 823. The Court invoked dual jurisdiction pursuant to section 211.073 RSMo. *Id.* Prior to his 17th birthday, DYS petitioned the court for a hearing and the Court ordered, with no objection from the state, that the juvenile stay in DYS until his 21st birthday. *Id.* at 823-824. Prior to his turning 21, DYS asked to be relieved of its supervision of the juvenile and the state asked for a revocation of the juvenile's suspended sentence. *Id.* at 824. The Court held a hearing and heard evidence that the juvenile was very successful at DYS. *Id.* The Court therefore continued to suspend the adult part of the sentence and placed the juvenile on probation. *Id.* "The plea court concluded 'under the circumstances before it, if the provisions of section 211.073 *are to have the meaning intended by the legislature in its enactment*, the time of confinement of the defendant should serve to adequately meet the punishment requirement when measured against the success he has shown in rehabilitating his life.'" *Id.* (emphasis added)

Roper, *Graham*, and *Miller* have shown that there is now a national consensus that juveniles cannot be sentenced the same way as adults. They have differences, which judges *must* consider. The dual jurisdiction program allows, indeed

requires, judges to do just that. This therefore shows a statewide consensus against mandatory incarceration for juveniles.

The Court also notes that even a conviction for first degree murder does not remove the possibility of a juvenile from being placed in the dual jurisdiction program. In addition to the plain language of the statute, which cites no exceptions, the Missouri Supreme Court, in *State v. Hart*, 404 S.W.3d 232, 242 (Mo. Banc 2013) has devised a “stop-gap” measure to apply Section 565.020 RSMo. to certified juveniles, whereby the sentencer considers if life without parole is appropriate after consideration of the factors about the juvenile’s youth. *Id.* at 242. If the sentencer finds it is, then that sentence is imposed. *Id.* If it isn’t, then the first degree murder conviction is vacated and a conviction for second degree murder is entered. *Id.* Once that happens, the juvenile is now eligible for dual jurisdiction.

2. Section 211.071 RSMo.

The Court further finds that Section 211.071 actually helps to show a statewide consensus against mandatory incarceration for juveniles. It demonstrate a statewide consensus against mandatory incarceration for juveniles because it gives the juvenile Court the discretion to keep the juvenile in juvenile Court and not even expose the juvenile to the risk of incarceration. Many states require juveniles to be automatically tried in adult court for certain crimes regardless of the age of the juvenile. In Missouri, by giving the juvenile Court the flexibility to

not certify the juvenile, the legislature has demonstrated that even for very serious crimes, the Court should have the discretion not to send juveniles to prison.

Further, The Missouri Supreme Court has held that the juvenile Court often will not have all of the relevant factors at the certification hearing. *Miller v. Alabama*, 132 S.Ct. at 2474-2475. Thus, the Court finds that due process requires that the sentencing judge, who does have all of the relevant factors, have that flexibility to keep juveniles out of prison. Moreover, if the juvenile Court, without all the relevant information, can keep the juvenile from being at risk for going to prison, it simply makes no sense that the sentencing Court, which will have all of the information, would not have the discretion not to send the juvenile to prison. Additionally, the Court notes that the *Miller* Court specifically mentioned that when a juvenile is being certified for an offense, the juvenile judge is put in a situation of having to choose between extremes of either keeping the juvenile in juvenile Court where he will receive a light punishment or put him in adult court where he will receive an adult sentence. *Miller v. Alabama*, 132 S.Ct. at 2474.

The Court concurs in the *Miller* Court's point and finds that a juvenile Court will often choose what it considers the lesser of two evils and certify the juvenile to stand trial in adult court. This Court, however, also holds that the fact a juvenile Court certifies a juvenile does *not* mean that the juvenile Court believes prison to be appropriate.

3. SCR 29

The Missouri legislature has also passed SCR 29. This is a concurrent resolution to set up a “Juvenile Justice Task Force.” This task force is required to make recommendations by the end of 2014 on juvenile justice issues, including raising the age of juvenile court jurisdiction to 18; removing juveniles from adult jails pre-trial, and revising the certification age. These proposed changes are simply not consistent with mandatory incarceration. Thus, the Court finds that SCR 29 also helps to demonstrate a statewide consensus against mandatory incarceration.

The Court finds that all of these acts of the legislature show that there is a statewide consensus against mandatory prison time for juveniles. The Court notes that the case law shows that in determining the issue of a consensus by evaluating the evolving standards of decency, it is not necessary that the legislature address *everything*. For example, in *State ex rel. Simmons v. Roper*, the Court found there was a national consensus against executing juveniles even though 22 states still had laws allowing the execution of juveniles. *Id.* at 408. What the Court focused on was that since the *Stanford v. Kentucky*, 492 U.S. 361 (1989) decision in 1989, which stated there was not a national consensus against executing juveniles, five states had banned executing juveniles. *Id.* Further, it noted that no state had lowered its minimum age for execution since *Stanford* and that other states were considering raising the age to 17 or 18. *Id.* at 409. Thus, what the Court was focusing on was not absolutes, but *trends*, or *the direction of the change and the*

consistency of the direction. See *State ex rel. Simmons v. Roper*, 112 S.W.3d at 408-409; and, *Roper v. Simmons*, 543 U.S. 551 (2005).

Applying the same standard here, the Court finds that the actions of the Missouri legislature clearly show a statewide consensus against mandatory prison time for juveniles. When it enacted the certification statute, it gave the juvenile Court the discretion to keep the juvenile in the juvenile system, even for very serious crimes. Then, in 1995, the legislature started allowing the Court to consider dual jurisdiction and has ended up in 2013 *requiring* judges to consider dual jurisdiction. Further, the establishment of the juvenile justice task force shows the legislature is considering reforms inconsistent with mandatory incarceration. The *consistent direction* of the enactments of the legislature then is *away* from mandatory incarceration.

Further, these enactments show that objective indicia of Missouri's standards to be that Missourians want alternatives to prison for juveniles and want judges to have discretion to not have to send juveniles to prisons even when the juvenile has been convicted of a statute that requires prison time.

B. The Decrease in Certifications Demonstrate a Statewide Consensus Against Mandatory Prison Time for Juveniles

“There are measures of consensus other than legislation.” *Graham v. Florida*, 560 U.S. at 62. Defendant has provided the Court statistics for certifications in Missouri since 2001. These statistics show that the number of certifications, with the exception of 2004-2007, has either stayed the same or has

dropped considerably. This is especially true if the 21st and 22nd circuits (St. Louis area), where a disproportionate number of juveniles are certified, are not considered. Even the number of certifications in St. Louis has held fairly steady in the past four years. The Court finds that this decrease in certifications also helps to demonstrate a statewide consensus against mandatory prison time for juveniles. The direction has consistently been one away from placing juveniles into the adult court system and away from placing them in the position where they will be sent to prison.

C. An Independent Review of Criminal Statutes Demonstrates That the Legislature Does Not Consider Juveniles When Writing Criminal Statutes

As the Court noted earlier, both *Graham* and *Miller* held that the fact that a legislature allows juveniles to be tried as adults, does not mean that it has endorsed juveniles to be sentenced as adults. *Graham v. Florida*, 560 U.S at 66; *Miller v. Alabama*, 132 S.Ct. at 2472-2473. This Court has considered the language of the criminal statutes and finds that the legislature does not account for juveniles when it has drafted its criminal laws.

First, the Court has only found Section 565.020 RSMo., First Degree Murder, to have any language concerning a juvenile offender. That statute, however, has not been amended since 1990. *State v. Hart*, 404 S.W.3d 232, 245 (Mo. banc 2013). It has language that both *Roper* and *Miller* have invalidated. As a result, the Missouri Supreme Court has devised a “stop-gap” measure to apply

Section 565.020 RSMo. to certified juveniles, whereby the sentencer considers if life without parole is appropriate after consideration of the factors about the juvenile's youth. *Id.* at 242. If the sentencer finds it is, then that sentence is imposed. *Id.* If it isn't, then the first degree murder conviction is vacated and a conviction for second degree murder is entered. *Id.* The Court notes that Second Degree Murder, both its current version, and its version to take effect on January 1, 2017, does not require incarceration, even for adults. See Section 565.021 RSMo.

Second, the Court notes that only three statutes with mandatory incarceration provisions apply to certified juveniles: 1) Section 566.030 RSMo., First Degree Rape, Section 566.060, First Degree Sodomy, and Section 571.015 RSMo., Armed Criminal Action. The Court notes that the rape and sodomy statutes, both their current versions, and the versions that will take effect on January 1, 2017, however, have provisions that require a defendant to spend at least thirty years behind bars if the victim is under 12 years old. Even if one does not agree with this Court's findings regarding mandatory incarceration for juveniles, these sections' constitutionality for juveniles are highly questionable in light of *Miller*. Further, both versions of these statutes have a provision in which the required sentence is life without parole if the victim is under 12 and the crime was especially heinous. These provisions are patently unconstitutional as applied to juveniles in light of *Graham*.

Thus, despite the cases of *Roper*, *Graham*, and *Miller*, the legislature has not amended Section 565.020 language regarding the statute's application to juveniles and has written statutes that are unconstitutional as applied to juveniles.

This Court concludes from this that the legislature does not consider juveniles when it enacts criminal legislation. Further, this Court concludes that the fact the legislature has allowed juveniles to be certified as adults does *not* mean it has endorsed them to be sentenced as adults. Moreover, the Court finds that the legislature's amendment of 211.073 RSMo. to now require judges to consider an alternative to incarceration (dual jurisdiction) and justify its decision on the record if it chooses incarceration, confirms this Court's holding.

CONCLUSION

An independent review shows that the factors related to youth discussed in *Thompson*, *Roper*, *Graham*, and *Miller* are applicable to all crimes and all sentences a certified juvenile faces. An independent review also leads the Court to conclude that mandatory incarceration of juveniles, regardless of its length, does not serve any penological goal and that prohibiting mandatory incarceration is a logical extension of the United States Supreme Court's analysis in *Miller v. Alabama*. Children are not just constitutionally different for purposes of sentencing when the possible sentence is life without parole. They are constitutionally different for purposes of sentencing regardless of what the possible sentence is.

Logic and common sense, as well as the rationale of these decisions, can lead this Court to no other conclusion. Further, consideration of these factors has no meaning if the Court is not allowed to go where they lead. In other words, if consideration of these “juvenile factors” results in the Court determining that prison is not appropriate or just, then no penological justification is met by sending the certified juvenile to prison and the judge must have the discretion to suspend the sentence in its entirety. This conclusion is further supported by the clear evidence of a statewide consensus in Missouri against mandatory incarceration for juveniles for any offense, but particularly non-homicide offenses.

The analysis of the statewide consensus parallels the analysis of a national consensus. A national consensus was shown by legislative enactments showing a movement away from the death penalty and life without parole. The Court finds that there is a statewide consensus with legislative enactments showing a movement away from mandatory incarceration and towards flexibility with juvenile cases. A national consensus was also shown by the infrequency of the death penalty and life without parole for non-homicide offenses. In addition, it was shown with evidence that the juvenile death penalty in the modern era was imposed largely in a few states. The Court also finds the evidence that certifications have dropped over the past years and are disproportionately in certain areas of the state also helps to show a statewide consensus against mandatory incarceration for juveniles.

Finally, at a national level, an independent review showed how there was no penological justification for executing juveniles, imposing a life without parole sentence for non-homicide offenses, and mandatory life without parole for homicides. The Court finds with an independent review that mandatory incarceration, regardless of its length, does not serve any penological goals and that prohibiting mandatory incarceration is a logical extension of the United States Supreme Court's analysis in *Miller v. Alabama*.

Whether or not there is a national consensus against mandatory incarceration for certified juveniles, the Court finds that there is a statewide consensus against it. Therefore, the Court finds that mandatory incarceration for certified juveniles violates Article I, §21 of the Missouri Constitution, and the juvenile's right to due process under Article I, §10 of the Missouri Constitution.

Finally, the Court finds that the legislature does not consider juveniles when it enacts criminal legislation. The absence of any discussion regarding juveniles in all but one statute, which has been invalidated by *Roper* and *Miller*, as well as the enactment of statutes, which applied to juveniles have unconstitutional provisions, demonstrates this. This, as well as the amendments to Section 211.073 RSMo., leads the Court to conclude that the legislature's decision to allow juveniles to be tried as adults does not mean they have endorsed the idea of juveniles being sentenced as adults.

This Court holds that Section 571.015 RSMo., because it requires incarceration for juveniles, is unconstitutional as applied to juveniles by violating

Article I, §21 of the Missouri Constitution and Article I, §10 of the Missouri Constitution.

The Court finds the appropriate remedy is not a dismissal of Count II. The Missouri Supreme Court has held that, “[u]nconstitutional provisions of a statute should be severed, if possible, saving the remainder of the statute.” *State v. Vaughn*, 366 S.W.3d 513, 520 (Mo. banc 2012). Only the first subsection of Section 571.015 applies to certified juveniles. Severing the last sentence of the first subsection sufficiently addresses the issue of mandatory incarceration. The Court does note the phrase, “shall be punished by imprisonment” but a sentence of imprisonment can be suspended. The offense of 1st degree Statutory Sodomy contains the phrase, “authorized term of imprisonment is life imprisonment or a term of years not less than five years.” 1st degree Statutory Sodomy, however, does not contain a phrase prohibiting the suspension of the sentence and defendants convicted of this offense can be placed on probation.

JUDGMENT

The Court therefore severs the last sentence of subsection 1 of Section 571.015 RSMo. for juveniles who are certified to stand trial as adults pursuant to Section 211.071 RSMo.

IT IS SO ORDERED.

DONE AND ORDERED THIS 6th DAY OF January, 2015.

1/6/2015

A handwritten signature in cursive script that reads "Calvin R. Holden". The signature is written in black ink and is positioned above a horizontal line.

Calvin R. Holden, Circuit Court Judge
Division V

cc: James Egan, Attorney for Defendant
Stephanie Wan, Attorney for State