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# Juvenile Life Without Parole

## Unconstitutional in Michigan?

By Kimberly Thomas

Last term, in *Graham v Florida*,<sup>1</sup> the United States Supreme Court found unconstitutional the sentence of life without parole for a juvenile who committed a non-homicide offense. This attention to the sentencing of juvenile offenders is a continuation of the Court's decision in *Roper v Simmons*,<sup>2</sup> in which the Court held that juvenile offenders could not constitutionally receive the death penalty.

This scrutiny should be a signal to Michigan to examine its own jurisprudence on juveniles receiving sentences of life without parole. Michigan has the second-highest number of persons serving sentences of life without parole for offenses committed when they were 17 years old or younger.<sup>3</sup> Michigan's constitution, article 1, §16, provides broader protection than the federal constitution under its analogous ban on "cruel or unusual punishment." Further, the confluence of several, separately passed, statutes means that, in many cases, juveniles sentenced to life without parole in Michigan will never have a judge assess anything about their individual culpability, maturity, or relative role in the offense.

### *Graham v Florida*

In *Graham*, the Court held that the sentence of life without parole for a non-homicide offense committed by a juvenile violated the Eighth Amendment. Graham, the 16-year-old defendant, was convicted of armed burglary with assault or battery—a first-degree life felony—and attempted armed robbery and placed on probation.<sup>4</sup> Then, when he violated his probation by committing an armed robbery, he was given a sentence of life without parole.<sup>5</sup> The Supreme Court determined that "objective indicia of society's standards as expressed in legislative enactments and sentencing practice," as well as the Court's independent judgment about the culpability of these juvenile offenders, the severity of the punishment, and the lack of penological justification, led to the conclusion that, as a categorical matter, persons who committed a non-homicide offense at age 17 or younger could not be con-

stitutionally sentenced to life without parole.<sup>6</sup> The Court's analysis of the culpability of juvenile offenders, in particular, relied heavily on *Roper v Simmons*.

### *Roper v Simmons*

In *Roper*, the Court noted that "evolving standards of decency" showed a growing consensus in the states against imposition of the death penalty for crimes committed by minors.<sup>7</sup> Additionally, the Court concluded that three significant differences between adults and those under 18 mean that juveniles "cannot with reliability be classified among the worst offenders."<sup>8</sup> First, juveniles lack maturity and have an underdeveloped sense of responsibility, which leads them to make hasty and poorly thought-out decisions.<sup>9</sup> Juveniles are also "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure," in part because of their lack of control over their environment.<sup>10</sup> Third, the character of juveniles is less fixed and not as well formed.<sup>11</sup> Considering these differences, the *Roper* Court also concluded that the retributive and deterrent purposes of punishment are not well served by the death penalty for minors and that the sentence is disproportionate. The Court also took note of the isolation of the United States on the world stage as the only country that continued to give "official sanction" to the juvenile death penalty.<sup>12</sup>

### The Michigan Constitution's Prohibition of Cruel or Unusual Punishment

Michigan's constitution prohibits "cruel or unusual" punishment,<sup>13</sup> instead of the "cruel and unusual" punishment ban contained in the Eighth Amendment.<sup>14</sup> The Michigan Constitution provides broader protections against punishment than the Eighth Amendment because of the difference in the text of the provisions, the history of the Michigan Constitution, and the relevant caselaw in our state.<sup>15</sup>

**FAST FACTS**

Nationally, Michigan has the second-highest number of people serving life without parole for crimes committed when they were under age 18.

The United States Supreme Court's opinions in *Graham v Florida*, banning juvenile life without parole for non-homicide crimes, and in *Roper v Simmons*, banning the juvenile death penalty, have increased scrutiny of sentences of life without parole for juveniles.

Michigan's constitutional ban on cruel or unusual punishment is interpreted more broadly than the federal constitution.

When examining whether a sentence is cruel or unusual, a court must weigh the gravity of the offense against the severity of the penalty, taking into account relevant facts about the offender's culpability.<sup>16</sup> The court must also compare sentences imposed on other offenders in the same jurisdiction and sentences imposed for the same crime in other jurisdictions.<sup>17</sup> Finally, the court must examine whether the punishment achieves its goal, with a particular focus on rehabilitation, a goal of punishment that is "rooted in Michigan's legal traditions."<sup>18</sup>

**Life Without Parole for Juveniles**

Given the United States Supreme Court's cases, the survival of sentences of life without parole (LWOP sentences) for juveniles in Michigan looks much less certain. First, examination of the gravity of the offense, including the offender's culpability, must now take into account *Graham's* and *Roper's* clear statements about the lesser culpability of juveniles, as compared to adults who commit similar offenses.<sup>19</sup> Other facts about offender culpability, either individually or as a group, may also shift this calculation.

Consideration of LWOP sentences within Michigan shows that juveniles who receive the sentence are being treated disproportionately. Life without parole is the most serious sentence that a Michigan offender can receive.<sup>20</sup> Less culpable adolescents are therefore being sentenced on par with adult criminals who behaved in a manner that should be treated more severely.<sup>21</sup> Additionally, in Michigan, a large percentage of juveniles sentenced to life without parole committed felony-murder or were convicted under an aiding-and-abetting theory,<sup>22</sup> further widening the disparity. A comparison with other jurisdictions also shows that LWOP sentences are imposed at a higher rate on Michigan's juveniles.<sup>23</sup>

Finally, life without the possibility of parole for a juvenile completely eliminates any opportunity for rehabilitation.<sup>24</sup> This goal of punishment—rehabilitation—is crucially important when examining an extreme sentence given to children because "the character of a juvenile is not as well formed as that of an adult."<sup>25</sup> A sentence of life without parole ignores the reality that most youth "age out" of criminal behavior.<sup>26</sup> Moreover, a total ban on parole

does not advance other purposes of punishment more significantly than a lengthy, but parolable, sentence.<sup>27</sup>

**Direct-File Cases: A "Perfect Storm" of Unconstitutional Dimensions**

Particularly subject to attack are LWOP sentences that are automatically imposed on juveniles without the ability of a judge to ever consider the child's maturity or age, potential for rehabilitation, role in the offense, or other factors. Three separate statutes interact to create this (now possibly unconstitutional)<sup>28</sup> sentence. First, juveniles as young as 14 years old charged with first-degree murder and a number of other crimes can be automatically tried as adults in circuit court rather than adjudicated in the family division of circuit court.<sup>29</sup> Second, in 1996, the legislature required that juveniles tried as adults in circuit court be sentenced the same as an adult for the most serious crimes, instead of allowing the judge to determine whether to sentence as an adult or a juvenile, as under prior law.<sup>30</sup> Finally, the sentence for first-degree murder (including felony-murder) is mandatory life without parole.<sup>31</sup> This "perfect storm" of statutes results in many juveniles accused of serious crimes being tried as adults in circuit court and those charged with first-degree murder automatically receiving sentences of life without the possibility of parole. Therefore, the most sympathetic 15-year-old accomplice to a felony-murder and the most sociopathic adult serial killer will receive the same sentence, without any judicial ability to take stock of the difference between the two for sentencing purposes. This complete inability of a court to *consider* the gravity of the offense, including the culpability of the offender, results in disproportionately cruel LWOP sentences.

The lack of court discretion available in juvenile sentencing also renders the sentences imposed in Michigan truly unusual. A handful of states ban juvenile LWOP sentences, and the vast ma-

**The most sympathetic 15-year-old accomplice to a felony-murder and the most sociopathic adult serial killer will receive the same sentence, without any judicial ability to take stock of the difference between the two for sentencing purposes.**

majority of states give judicial discretion with respect to transferring teens to adult court or in sentencing them in first-degree murder cases. Michigan is among a shrinking minority of states that allow LWOP sentences but have no judicial discretion in transfers to adult court or sentencing.<sup>32</sup> Further, two states' courts have recognized problems with juvenile LWOP sentences: in California and Illinois, courts have held that, in specific cases, it would violate their respective state constitutions to impose juvenile LWOP sentences.<sup>33</sup> The Illinois Supreme Court specifically highlighted the fact that the *mandatory* transfer and sentencing scheme would be responsible for imposing an unconstitutional punishment given the mitigating factors that should be considered in the case.<sup>34</sup> Meanwhile, Colorado, which previously established prosecutorial

discretion in charging juveniles in adult court and severe limits on the exercise of sentencing discretion in the same way that Michigan does, banned the use of juvenile LWOP sentences altogether.<sup>35</sup> Michigan's complete denial of any individualized consideration of the youth by the court in either trying adolescents as adults or mandatorily imposing life sentences without the possibility of parole makes it an outlier among the states.

### Prior Michigan Cases on Juvenile LWOP Sentences

The Michigan Supreme Court has never addressed the constitutionality of juvenile LWOP sentences. The one published Michigan Court of Appeals opinion was issued before the United States Supreme Court's decisions in *Graham* and *Roper* and was based on the prior juvenile transfer system, in which a judicial determination was made about whether the child should be sentenced as an adult.<sup>36</sup> In fact, the Court of Appeals concluded that this determination was integral to its analysis of the required factors and its finding of constitutionality. The Court stated: "The fourth factor, the need for rehabilitation, is taken into consideration by Michigan courts when they determine whether juvenile defendants should be sentenced as adults rather than as juveniles."<sup>37</sup> No appellate court case has considered the shifting landscape brought about by the change in Michigan's juvenile waiver statutes and the United States Supreme Court's *Graham* and *Roper* opinions.

### Conclusion

The United States Supreme Court's decision in *Roper* set off a wave of scrutiny of sentences of life without parole imposed for crimes committed by minors. Last term in *Graham*, the Court increased the pressure by finding an LWOP sentence unconstitutional for any juvenile who committed a non-homicide offense. In Michigan, this scrutiny, combined with the history and language of the Michigan Constitution and the unusual elimination of any discretion by the trial court, may result in a finding that a life sentence without parole for a juvenile is, at least in some cases, unconstitutional. ■



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### FOOTNOTES

1. *Graham v Florida*, 560 US \_\_\_; 130 S Ct 2011; 176 L Ed 2d 825 (2010).
2. *Roper v Simmons*, 543 US 551; 125 S Ct 1183; 161 L Ed 2d 1 (2005).
3. PBS, Frontline, Map, *When Kids Get Life: Juveniles Serving Life Without Parole in the U.S.* <<http://www.pbs.org/wgbh/pages/frontline/whenkidsgetlife/etc/map.html>>. All websites cited in this article were accessed January 16, 2011.
4. *Graham*, 560 US at \_\_\_; 130 S Ct at 2018.
5. *Id.* at \_\_\_; 130 S Ct at 2018–2020.
6. *Id.* at \_\_\_; 130 S Ct at 2023–2030.

7. *Roper*, 543 US at 562.
8. *Id.* at 569.
9. *Id.*
10. *Id.*
11. *Id.* at 570.
12. *Id.* at 575–578.
13. Const 1963, art 1, §16.
14. US Const, Am VIII.
15. *People v Bullock*, 440 Mich 15, 30–35; 485 NW2d 866 (1992).
16. See, e.g., *People v Lorentzen*, 387 Mich 167, 176; 194 NW2d 827 (1972) (noting the severity of the sentence and its application to a marijuana sale by "a first offender high school student"); *People v DiPiazza*, 286 Mich App 137, 154; 778 NW2d 264 (2009).
17. *Bullock*, 440 Mich at 33–34; *Lorentzen*, 387 Mich at 176–181.
18. *Bullock*, 440 Mich at 34; see also *Lorentzen*, 387 Mich at 176–181.
19. *Roper*, 543 US at 569–570; *Graham*, 560 US at \_\_\_; 130 S Ct at 2026–2027. See generally Scott & Steinberg, *Rethinking Juvenile Justice* (Harvard 2008) pp 28–60 (describing the science of adolescent development and the differences between adults and adolescents, which have significance for the criminal-justice system).
20. Const 1963, art 4, §46 (banning the death penalty).
21. See, e.g., ACLU of Michigan, *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons*, 5, 7, 13, 17 (2004) (describing Michigan cases in which children received LWOP sentences for crimes in which they had far less serious involvement than other, often older, individuals and often received harsher punishment), available at <<http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf>>.
22. *Id.* at 4 (stating that in a survey of those sentenced to life without parole for offenses committed at age 16 or under, nearly half were convicted of felony-murder or under an aiding-and-abetting theory).
23. See *id.* at 8 (showing statistics related to juvenile sentencing for some of the most populated states that allow juvenile LWOP sentences); Frontline, n 3 *supra*; see also nn 32–35 and accompanying text.
24. *Bullock*, 440 Mich at 34.
25. *Roper*, 543 US at 570; see also *Graham*, 560 US at \_\_\_; 130 S Ct at 2026–2027.
26. Moffitt, *Adolescence-limited and life-course persistent antisocial behavior: A developmental taxonomy*, 100 *Psychol Rev* 674, 675 (1993) ("[T]he rates for both the prevalence and incidence of offending appear highest during adolescence; they peak sharply at about age 17 and drop precipitously in young adulthood.... [B]y the early 20s, the number of active offenders decreases by over 50%, and by age 28, almost 85% of former delinquents desist from offending.").
27. *Roper*, 543 US at 571 (stating that "the case for retribution is not as strong with a minor as with an adult" because of their lesser culpability and maturity and that "the same characteristics that render juveniles less culpable than adults suggest... that juveniles will be less susceptible to deterrence"); *Graham*, 560 US at \_\_\_; 130 S Ct at 2028–2030.
28. Cf. *People v Miller*, 202 Ill 2d 328, 340; 781 NE2d 300, 308 (2002) (holding an LWOP sentence unconstitutional for a juvenile accomplice when the operation of separate statutes meant that "a court never consider[ed] the actual facts of the crime, including the defendant's age at the time of the crime or his or her individual level of culpability").
29. MCL 712A.2; MCL 600.606. These statutes allow the prosecuting attorney to file charges against a juvenile as a juvenile in the family division of circuit court or directly as an adult in the circuit court.
30. MCL 769.1(1).
31. MCL 750.316.
32. See, e.g., the brief of the Edwin F. Mandel Legal Aid Clinic and others as amici curiae in support of the appellee in *People v Miller*, n 28 *supra*, available at 2001 WL 34387680 (stating that, as of 2001, courts in 42 states had discretion with respect to transferring 15-year-olds for trial in court or sentencing them in first-degree murder cases).
33. *In re Nuñez*, 173 Cal App 4th 709; 93 Cal Rptr 3d 242 (2009); *Miller*, 202 Ill 2d at 343.
34. *Miller*, 202 Ill 2d at 342.
35. Colo Rev Stat 17-22.5-104(IV) (2007).
36. *People v Launsbury*, 217 Mich App 358; 551 NW2d 460 (1996). A few unpublished Court of Appeals opinions, issued before *Roper*, have also addressed juvenile LWOP sentences, finding no constitutional violation. See, e.g., *People v Jarrett*, unpublished opinion per curiam of the Court of Appeals, issued August 9, 1996 (Docket No. 173921) (rejecting a *per se* challenge to LWOP sentences for juveniles, again, in part, based on the ability of minors to have a "thorough disposition hearing," in which the court considers mitigating factors and potential for rehabilitation); *People v Espie*, unpublished opinion per curiam of the Court of Appeals, issued January 22, 2002 (Docket No. 222303).
37. *Launsbury*, 217 Mich App at 364.