A Meaningful Life: The Future of Juvenile Justice in Washington After *Anderson*

*Samuel Coren**

ABSTRACT

Until 2022, Washington's line of juvenile sentencing jurisprudence gave every indication of continuing along the course set by *Miller v. Alabama*, as Washington courts recognized that "children are different" and should not be subjected to the harshest punishments available in the criminal legal system. *State v. Anderson* marked a stark diversion from this course. In upholding the constitutionality of a de facto life sentence for a juvenile, the Washington Supreme Court all but rejected the well-established scientific consensus surrounding juvenile brain development and implicit racial bias. Whether this decision reflects a minor aberration or a broader trend in the court's juvenile sentencing jurisprudence, has yet to be seen.

This Note begins by discussing the constitutionality of life and long sentences for young offenders in the United States and explains how the scientific consensus surrounding juvenile brain development informs this constitutional inquiry. It then examines the range of responses to *Miller*'s ban on mandatory life without the possibility of parole for juveniles across United States jurisdictions, generally, and in Washington State specifically. Next, it turns to the future and analyzes whether *Anderson* will lead to the increased imposition of de facto life sentences on juvenile and young offenders. Finally, it makes policy recommendations arguing for the elimination of life and long sentences for juvenile and young offenders in Washington and explains how doing so recognizes current brain science and reduces the risk of implicit racial bias tainting the sentencing process.

*Samuel Coren, Seattle University School of Law, Class of 2024. I would also like to extend my sincere gratitude to Malayka Mottarella for her infinite patience, wisdom, and loving support throughout the writing of this note, and my law school career.

CONTENTS

INTRODUCTION

Hope is a crushed stalk
Between clenched fingers.
Hope is a bird's wing
Broken by a stone. . . .
Hope is a song in a weary throat.
Give me a song of hope
And a world where I can sing it.

—Pauli Murray[1]

Passionate dissents filled with dismay, sorrow, and even poems of hope, may appear more commonplace today than in years past.[2] Even so, Justice Yu's dissent and the Washington Supreme Court's majority opinion in *State v. Anderson* are remarkable.[3] The majority in *Anderson*, upholding a sixty-one-year sentence for a seventeen-year-old, marks a stark reversal in the court's juvenile sentencing jurisprudence, particularly where the constitutionality of de facto life and long sentences for children are concerned.[4] While the majority maintains that these harsh sentences should be permissible for "rare children whose crimes reflect irreparable corruption,"[5] Justice Yu's emphasis on implicit racial bias, disparate racial outcomes, and neurobiological developmental differences between young people and adults is as forceful as it is well reasoned.[6]

Importantly, Justice Yu's dissent in *Anderson* does not shy away from the racial undertones and implications of the decision.[7] Unlike the defendants in two strikingly similar cases involving de facto life sentences imposed on juveniles, Mr. Anderson is Black.[8] While Justice Yu does "not suggest that the majority is knowingly or intentionally discriminating

1. PAULI MURRAY, *Dark Testament*, verse 8, *in* DARK TESTAMENT AND OTHER POEMS 13, 13 (1970).

2. *See, e.g.*, Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 358–417 (2022) (Breyer, J., Sotomayor, J., & Kagan, J., dissenting) (expressing deep concern over the majority's curtailment of women's rights); State v. Anderson, 516 P.3d 1213, 1237 (Wash. 2022) (Yu, J., dissenting) (quoting MURRAY, *supra* note 1, at 13).

3. *See* 516 P.3d at 1213–27 (majority opinion); *Id.* at 1232–37 (Yu, J., dissenting).

4. *Compare id.* at 1215 (majority opinion) (upholding a sixty-one-year sentence for a juvenile), *with* State v. Haag, 495 P.3d 241 (Wash. 2021) (striking down a forty-six-year sentence for a juvenile as an unconstitutional de facto life sentence).

5. *See Anderson*, 516 P.3d at 1225 (quoting Montgomery v. Louisiana, 577 U.S. 190, 209 (2016)).

6. *Id.* at 1235–37 (Yu, J., dissenting).

7. *See id.*

8. *Id.* at 1236 ("[T]he majority conspicuously fails to mention one additional factor distinguishing *Bassett* and *Haag* from *Anderson*. Bassett and Haag are both white." (citing State v. Basset, Wash. Ct. App. No. 47251-1-II (2015), Clerk's Papers (CP) at 140; State v. Haag, Wash. Ct. App. No. 51409-5-II (2018), CP at 41, 765)).

against Anderson on the basis of his race," the fact of Mr. Anderon's race and the characterization of his actions as more culpable than his white counterparts cannot be merely glossed over or discounted.[9]

Justice Yu expresses concern over the role that unconscious bias, including the "adultification" bias against young men of color, may have impacted the original sentencing record and the resentencing court's characterization of Mr. Anderson's actions.[10] For instance, the court viewed Mr. Anderson living alone at age seventeen as evidence of his maturity and increased culpability, rather than as a mitigating factor indicating the "extraordinarily harsh environment" of Mr. Anderson's unstable upbringing.[11] In relying on this and other problematic characterizations in the original sentencing record, Justice Yu asserts that the majority's decision perpetuates "the shameful legacy" the judiciary inherits "in devaluing [B]lack lives."[12] Given *Anderson*'s narrow margin, it is unclear whether it marks a dark new chapter in the court's youth sentencing jurisprudence or is merely an aberration from a larger national trend against imposing our harshest sentences on children and young offenders.[13]

This Note begins with an examination of the larger context of the constitutionality of harsh sentences applied to juveniles under the Eighth Amendment of the United States Constitution. Next, it addresses the scientific consensus on juvenile brain development underpinning the United States Supreme Court's reasoning in groundbreaking decisions on juvenile sentencing from the Court in the early 2000s. Next, the Note compares Washington's approach to harsh juvenile sentences with the approaches of various jurisdictions throughout the United States, ultimately culminating in *Anderson*. Finally, this Note concludes by recommending that the Washington Supreme Court overturn *Anderson* and categorically ban de facto life sentences for all juveniles and young adults up to age twenty-five, or that the Washington State Legislature enact a law effectuating the same result.

---

9. *Id.*

10. *Id.* (citing WASH. CTS. GENDER & JUST. COMM'N, HOW GENDER AND RACE AFFECT JUSTICE NOW 452–53 (2021) (exploring potential links between juvenile sentencing disparities and implicit bias); *In re Pers. Restraint of* Miller, 505 P.3d 585, 590 (Wash. Ct. App. 2022) ("[A]dultification is real and can lead to harsher sentences for children of color if care is not taken to consciously avoid biased outcomes.")).

11. *Anderson*, 516 P.3d at 1231.

12. *See id.* at 1236, 1232; Letter from Wash. State Sup. Ct. to Members of Judiciary & Legal Cmty. at 1–2 (June 4, 2020).

13. *See* 516 P.3d at 1215 (5–4 decision).

I. BACKGROUND

A. The Constitutionality of Long Sentences for Young Offenders

While *Anderson* stands out among other cases in Washington's juvenile sentencing jurisprudence, it does so primarily due to the consistent national trend against imposing harsh sentences on young offenders.[14] This trend began in 2012 when the United States Supreme Court held in *Miller v. Alabama* that mandatory life without the possibility of parole (LWOP) sentences for juveniles categorically violate the Eighth Amendment's prohibition on cruel and unusual punishments.[15] Less than four years later, the court in *Montgomery v. Louisiana* held that its decision in *Miller* was retroactive, and applied to persons sentenced to mandatory LWOP for crimes committed while the offender was a juvenile.[16] *Miller*, as noted in *Montgomery*, announced a new substantive constitutional standard for juvenile sentencing. Following these landmark Supreme Court cases, states across the country passed remedial statutes implementing this new rule of law.[17] While Washington was among those states, the Washington Supreme Court went further.

In both *State v. Bassett* and *State v. Haag*, the Washington Supreme Court held that LWOP and de facto life sentences are unconstitutional when imposed on juveniles under both the Eighth Amendment to the United States Constitution and the Washington State Constitution's prohibition against cruel punishment.[18] The court, however, left several questions undecided, including what length of sentence is allowed before it violates *Miller*, and what level of cruelty to a child is permissible before it violates the Eighth Amendment.

In the wake of *Miller*, other courts have also reasoned that if it is categorically unconstitutional to sentence a minor to LWOP, then even sentences shorter than "true life" could be unconstitutional as the

14. *See* State v. Bassett, 428 P.3d 343, 352 (Wash. 2018) ("[T]he direction of change in this country is unmistakably and steadily moving toward abandoning the practice of putting child offenders in prison for their entire lives.").

15. *See* 567 U.S. 460, 465 (2012).

16. 577 U.S. 190, 208 (2016).

17. *See, e.g.*, WASH. REV. CODE §§ 10.95.030(2)(b), 10.95.035(1) (2023) (requiring Washington courts to consider mitigating factors relating to the diminished culpability of juveniles after *Miller*); S.B. 1008, 80th Leg., Reg. Sess. (Or. 2019) (Oregon's *Miller*-fix statute eliminating juvenile LWOP and requiring consideration of mitigating qualities of youth).

18. *Bassett*, 428 P.3d at 345–46; State v. Haag, 495 P.3d 241, 245–46 (Wash. 2021); *see also* State v. Ramos, 387 P.3d 650, 658 (Wash. 2017) ("[S]tandard range consecutive sentencing [which] may . . . result in a total prison term exceeding the average human life-span [is] . . . a de facto life sentence.").

"practical equivalent of life without parole."[19] Much of the reasoning at the core of *Miller* related to recent developments in the scientific understanding of juvenile brain development.[20] Specifically, the United States Supreme Court highlighted the ever-growing scientific consensus in psychological and medical communities that juveniles categorically possess diminished executive functioning and behavioral control when compared with adults.[21] The brain differences between adolescents and adults lead the Court to conclude that juvenile offenders possess "diminished moral culpability" such that subjecting them to die in prison without a meaningful opportunity for release is unconstitutional regardless of their crime.[22] A further discussion of the impact of the scientific consensus on youth brain development follows later in this Note.

B. Scientific Consensus on Juvenile Brain Development

One need not be a neuroscientist or academic researcher in the field of developmental psychology to understand that children behave differently from mature adults. However, this collective understanding has been further substantiated in the academic literature in recent decades. As neuroimaging methods have grown in prevalence and advanced in their imaging precision, scientists have identified structural and functional differences between the brains of youths and adults.[23] Particularly notable are differences in the prefrontal cortex—the brain region primarily associated with inhibitory control and rational decision-making processes.[24]

Additional studies have consistently found that youths are more immature, malleable, and vulnerable to external influences than adults.[25]

---

19. *See, e.g.*, State v. Zuber, 152 A.3d 197, 212 (N.J. 2017) (holding that youth sentences exceeding fifty-five years triggered *Miller* protections).

20. *See Miller*, 567 U.S. at 471–72 ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. . . ." (quoting Graham v. Florida, 560 U.S. 48, 68 (2010))).

21. Brief for Am. Psych. Assoc. et al. as Amici Curiae in Support of Petitioners at 3–4, *Miller*, 567 U.S. at 472, n.5 (Nos. 10-9646, 10-9647) ("[A]n ever-growing body of research in developmental psychology and neuroscience continues to confirm and strengthen the Court's conclusions. . . . [A]dolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance.").

22. *Miller*, 567 U.S. at 478 (quoting *Graham*, 560 U.S. at 69).

23. *See, e.g.*, Thomas J. Berndt, *Developmental Changes in Conformity to Peers and Parents*, 15 DEV. PSYCH. 608, 612–16 (1979) (measuring differences in peer conformity between children and adolescents).

24. *See* Sarah Durston & B.J. Casey, *What Have We Learned About Cognitive Development from Neuroimaging?*, 44 NEUROPSYCHOLOGIA 2149, 2150–54 (2006) (explaining the relationship between growth in the prefrontal cortex and development of cognitive functions in adolescents).

25. *See, e.g.*, Linda Patia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCI. & BIOBEHAV. REVS. 417, 423 (2000) (suggesting that adolescent performance is unusually influenced by responses to reward contingencies); Lawrence Steinberg, Dustin Albert,

Studies examining the neural circuitry of youth and adult brains have shown that developing brains are fundamentally less able to control their behavior than mature adult brains.[26] This reduction in inhibitory control further illustrates that youths have a lesser capacity for mature and reasoned judgment.[27] Behavioral research also supports these studies' conclusions, showing that "adolescents are overrepresented statistically in virtually every category of reckless behavior."[28]

Youths are also more susceptible to environmental influences, particularly the influence of their peer groups.[29] Similarly, youths' malleable identities during the developmental stages up to age twenty-five substantially increase their capacity for rehabilitation.[30] For example, youth intervention and juvenile diversion programs have been shown to have a greater effect on reducing recidivism for young people when compared to

---

Elizabeth Cauffman, Marie Banich, Sandra Graham & Jennifer Woolard, *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence of a Dual Systems Model*, 44 DEV. PSYCH. 1774, 1776 (2008) (finding a correlation between adolescent development and impulse control); B.J. Casey, Rebecca Jones & Todd Hare, *The Adolescent Brain*, 28 DEV. REV. 62, 63–71 (2008) (reviewing literature on adolescent brain development).

26. *See* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCH. 459, 469 (2009); *see also* Sarah Durston, Hilleke E. Hulshoff Pol, B.J. Casey, Jay N. Giedd, Jan K. Buitelaar & Herman van Engeland, *Anatomical MRI of the Developing Human Brain: What Have We Learned?*, 40 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1012, 1012 (2001) (reviewing results of MRI studies of brain development in childhood and adolescence); MICHAEL GAZZANIGA, RICHARD IVRY & GEORGE MANGUN, COGNITIVE NEUROSCIENCE: THE BIOLOGY OF THE MIND 20–21, 138 (2d ed. 2002); *See* Eveline A. Crone, Carter Wendelken, Linda van Leijenhorst, Ryan D. Honomichl, Kalina Christoff & Silvia A. Bunge, *Neurocognitive Development of Relational Reasoning*, 12 DEV. SCI. 55, 56 (2009) ("Neuropsychological and neuroimaging studies have shown that prefrontal cortex (PFC) is strongly implicated in relational reasoning.").

27. *See* Crone, Wendelken, van Leijenhorst, Honomichl, Christoff & Bunge, *supra* note 26, at 57 (finding that "developmental changes in relational reasoning are associated with immature functioning of the PFC and parietal cortex").

28. Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEV. REV. 339, 339 (1992).

29. *See* Berndt, *supra* note 23, at 612; Laurence Steinberg & Susan B. Silverberg, *The Vicissitudes of Autonomy in Early Adolescence*, 57 CHILD DEV. 841, 848 (1986); ELIZABETH S. SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 38 (2008); *see also* Kristan Glasgow Erickson, Robert Crosnoe & Sanford M. Dornbusch, *A Social Process Model of Adolescent Deviance: Combining Social Control and Differential Association Perspectives*, 29 J. YOUTH & ADOLESCENCE 395, 420–21 (2000) (discussing peer influence on delinquency).

30. *See, e.g.*, Alan S. Waterman, *Identity Development from Adolescence to Adulthood*, 18 DEV. PSYCHOL. 341, 355 (1982) ("The most extensive advances in identity formation occur during the time spent in college."); *see also* Jay N. Giedd, Jonathan Blumenthal, Neal O. Jeffries, F. X. Castellanos, Hong Liu, Alex Zijdenbos, Tomáš Paus, Alan C. Evans & Judith L. Rapoport, *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 NATURE NEUROSCI. 861, 861 (1999) (describing a study of 145 children and adolescents scanned up to five times over approximately ten years).

traditional correctional settings in large part due to the developmental qualities shared by youths.[31]

Courts throughout the United States have been criticized for their delayed recognition of scientific consensus in a variety of fields, and even Chief Justice Roberts famously called gerrymandering data "sociological gobbledygook."[32] It is therefore unsurprising that the United States Supreme Court only began recognizing the impact of juvenile brain development research on the constitutionality of harsh criminal sentences in the early 2000s.[33] The well-established body of juvenile brain development research underpinning these rulings[34] and research indicating racial disparities in sentencing in Washington[35] may strengthen arguments for overturning *Anderson* and even for extending resentencing hearings to offenders convicted of crimes before age twenty-five.

C. Application of Youth Brain Development Research in Assessing the Constitutionality of Harsh Sentences

The Court first recognized the importance of juvenile brain development in criminal sentencing in 2005 in *Roper v. Simmons*, when it held that sentencing juvenile offenders to death was unconstitutional.[36] The Court in *Roper* based its decision on the Eighth Amendment's prohibition against cruel and unusual punishments, holding that the amendment "guarantees individuals the right not to be subjected to excessive sanctions."[37] Further, that prohibition against disproportionate punishments "flows from the basic 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.'"[38]

---

31. *See* Holly A. Wilson & Robert D. Hoge, *The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review*, 40 CRIM. JUST. & BEHAV. 497, 514 (2012).

32. *See* Adam Liptak, *A Case for Math, Not 'Gobbledygook,' in Judging Partisan Voting Maps*, N.Y. TIMES (Jan. 15, 2018), https://www.nytimes.com/2018/01/15/us/politics/gerrymandering-math.html [https://perma.cc/UG3L-ZKZ3] (criticizing Chief Justice Roberts for his comment that statistical evidence in a gerrymandering case was "sociological gobbledygook").

33. *See, e.g.*, Roper v. Simmons, 543 U.S. 551, 569–70 (2005) (relying on scientific and sociological research in finding that the death penalty is unconstitutionally cruel to juveniles.

34. *See* Graham v. Florida, 560 U.S. 48, 68 (2010) (affirming *Roper*'s reliance on juvenile brain development research).

35. *See* KATE BERRY, BRENNAN CTR. FOR JUST., HOW JUDICIAL ELECTIONS IMPACT CRIMINAL CASES 2 (2015), https://www.brennancenter.org/our-work/research-reports/how-judicial-elections-impact-criminal-cases [https://perma.cc/64K6-MKQ6]; KATHERINE BECKETT & HEATHER EVANS, THE ROLE OF RACE IN WASHINGTON STATE CAPITAL SENTENCING, 1981–2014, at 11 (2014), https://fbaum.unc.edu/teaching/POLI490_Sp21/readings/WashRaceStudy2014.pdf [https://perma.cc/3THJ-989W] (establishing that racial bias influences outcomes in capital sentencing).

36. 543 U.S. at 568.

37. *Id.* at 560.

38. *Id.* (quoting Atkins v. Virginia, 536 U.S. 304, 311 (2002)).

Just five years later, in *Graham v. Florida*, the court held that imposing a sentence of LWOP was unconstitutional when applied to a juvenile convicted of a nonhomicide offense.[39] The Court in *Graham* recognized the strong and uniform scientific, neuropsychological and medical consensus showing fundamental differences in behavior control between adolescent and adult minds.[40]

In 2012's *Miller v. Alabama*, the Court extended *Graham*'s rule, holding that life imprisonment without the possibility of parole is unconstitutional when applied to juveniles.[41] The Supreme Court listed a number of factors—now known as the *Miller* factors—respecting the attendant characteristics of youth that courts must now consider when sentencing juveniles who commit serious crimes.[42] These factors include immaturity, impetuosity, and failure to appreciate risks. As well as the family and home environment of the offender, the circumstances of the offense, including the influence of familial and peer pressures on the offender, the possibility that incompetence associated with youth may have influenced the conviction, and the offender's possibility of rehabilitation.[43] In Washington, trial courts involved in "*Miller*-fix" resentencing hearings for offenders sentenced to LWOP as juveniles may not disregard these mitigating factors stemming from the offender's youth in favor of applying retributive factors.[44]

The Court in *Montgomery*, *Miller*, *Graham*, and *Roper* held our harshest criminal punishments unconstitutional under the Eighth Amendment's prohibition against cruel and unusual punishments.[45] The reasoning in these decisions reflects and embraces the scientific consensus that "children are constitutionally different from adults for purposes of sentencing."[46] The Court in *Miller* synthesized principles from *Roper* and *Graham* and again recognized the scientific consensus on juvenile brain development.[47] In its reasoning, the Court identified three arenas in which children differ from adults.[48] First, juveniles "'lack . . . maturity and [possess] an underdeveloped sense of responsibility,' leading to recklessness,

39. 560 U.S. 48, 82 (2010).

40. *Id.* at 68.

41. 567 U.S. 460, 470–78 (2012).

42. *See* Mary Marshall, Miller v. Alabama *and the Problem of Prediction*, 119 COLUM. L. REV. 1633, 1643–46 (2019) (discussing the *Miller* factors and the issues with attempting to predict which juvenile offenders are irreparably corrupt).

43. *Miller*, 567 U.S. at 477–78.

44. State v. Haag, 495 P.3d 241, 245 (Wash. 2021).

45. *See* U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.").

46. *Miller*, 567 U.S. at 471.

47. *Id.* at 471–81.

48. *Id.* at 471.

impulsivity, and heedless risk-taking."[49] Second, juveniles "are more vulnerable . . . to negative influences and outside pressures," have limited "contro[l] over their own environment," and are unable to leave environments that breed violence and crime.[50] Finally, the *Miller* court notes that juveniles' characters are not fully formed, and the character traits seemingly exemplified by a juvenile's actions are less likely to be "evidence of irretrievabl[e] deprav[ity]."[51] These differences illustrate that no action by a juvenile, even a heinous one, can be as morally reprehensible as if the same act was committed by a fully developed adult.[52]

The court's reasoning is not only based on respected, rigorous, peer-reviewed scientific research on the brain development of youths but also on common sense.[53] As it stated, "[a]ny parent knows" that children, even seventeen-year-old children, are fundamentally different from fully mature adults.[54] *Miller*, in referencing *Graham*, identified that LWOP sentences "share some characteristics with death sentences that are shared by no other sentences."[55]

Miller, as extended retroactively in *Montgomery*, required that states provide offenders sentenced to LWOP as juveniles "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[56] It also held that trial courts sentencing juvenile offenders must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."[57] These requirements became the *Miller*-fix resentencing hearings at issue in cases like *Anderson*.

Yet simultaneously, and perhaps contradictorily, the *Miller* Court held that the harshest sentences may be appropriate for the "rare juvenile offender whose crime reflects irreparable corruption."[58] The *Miller* Court grants sentencing courts discretion in determining what constitutes "irreparable corruption," so long as sentencing courts account—at least ostensibly—for the mitigating factors of the offender's youth.[59] Additionally, the *Miller* Court notes that such occasions should be uncommon because of

49. *Id.* (quoting Roper v. Simmons, 543 U.S. 551, 569 (2005)).

50. *Id.* (quoting *Roper*, 543 U.S. at 569) (alterations in original).

51. *Id.* (quoting *Roper*, 543 U.S at 570) (alterations in original).

52. *See id.* at 480.

53. *Id.* at 471.

54. *Id.*

55. *Id.* at 474 (quoting Graham v. Florida, 560 U.S. 48, 69 (2010)).

56. *Id.* at 479 (citing *Graham*, 560 U.S. at 75); *see also* Montgomery v. Louisiana, 577 U.S. 190, 206 (2016) (extending *Miller*'s application retroactively).

57. *Miller*, 567 U.S. at 480.

58. *Id.* at 479–80 (quoting Roper v. Simmons, 543 U.S. 551, 573 (2005); *Graham*, 560 U.S. at 68).

59. *See* Marshall, *supra* note 42, at 1648–49.

the practical challenges in distinguishing between the juvenile offender whose crime reflects transient immaturity and the offender who is incorrigible and cannot be rehabilitated.[60]

This difficulty calls into question the very reasoning for including an exception for supposedly irredeemable juvenile offenders. For if, after several decades of incarceration, an offender shows evidence of reform, remorse, and rehabilitation, then the juvenile offender could not have been irredeemable, regardless of what the sentencing judge thought at the time that the offender was sentenced. Thus, even in the United States Supreme Court's jurisprudence, tension persists relating to the very concept of an irredeemable youth offender. This tension is exacerbated by the fact that evidence of actual rehabilitation, if or when it occurs, contradicts the very premise justifying the exception in the first place.

Some have argued that term-of-years sentences prevent states "from making the judgment at the outset that those offenders never will be fit to reenter society," which is consistent with the Eighth Amendment.[61] But a term-of-years sentence that grants a juvenile offender the opportunity to reenter society at eighty years old—as in *Anderson*—shares a similar problem as true LWOP sentences, where juvenile offenders are irrevocably judged at the outset. In these de facto life sentences, no matter the work the juvenile offender does in prison, they are denied a meaningful opportunity for release.

D. Multi-State Responses to Long Juvenile Sentences After Miller

As discussed earlier in this Note, *Montgomery* clarified that *Miller* did not merely announce a standard for new juvenile sentences; it retroactively applied it to offenders already serving LWOP sentences for crimes committed as children. This development forced states to consider how to apply *Montgomery* to juvenile offenders already incarcerated. While each state developed standards for approaching these *Miller*-fix resentencing hearings, responses have varied across the United States. For instance, in 2015, the Supreme Court of Connecticut, for similar reasons as those articulated in *Haag*, held that a fifty-year term-of-years sentence for a juvenile was an unconstitutional de facto life sentence under *Miller*.[62] New Jersey came to the same conclusion regarding a fifty-five-year sentence,[63]

60. *See id*.

61. Graham v. Florida, 560 U.S. 48, 75 (2010).

62. *See* Casiano v. Comm'r of Corr., 115 A.3d 1031, 1033 (Conn. 2015); *see also* State v. Haag, 495 P.3d 241, 243 (Wash. 2021) (holding that a forty-six-year sentence for a juvenile was a de facto life sentence).

63. State v. Zuber, 152 A.3d 197, 212–13 (N.J. 2017).

as did Iowa with a fifty-two-year sentence,[64] and Wyoming with a forty-five-year sentence.[65] By upholding a sixty-one-year sentence in *Anderson*, Washington has become an outlier.[66]

1. Juvenile Sentencing Measures in Various States

California grappled with the *Miller* requirements in *People v. Contreras*.[67] In that case, the California Supreme Court remanded both a fifty and fifty-eight-year sentence for resentencing consistent with *Miller*.[68] In doing so, the court clarified that harsh sentences applied to juvenile offenders do not need to exceed an offender's life expectancy to unconstitutionally deprive the offender of a meaningful opportunity for release based on demonstrated rehabilitation and maturity.[69] The California legislature later eliminated LWOP sentences for juveniles and now permits parole eligibility or sentence modification after twenty-five years.[70] Additionally, in 2017, the California legislature extended parole eligibility to incarcerated persons who committed offenses before age twenty-five such that this class of offenders would be eligible for parole after serving fifteen years.[71]

Similarly, the Oregon State Legislature eliminated juvenile LWOP in 2019, providing for parole eligibility after serving fifteen years for offenders who committed crimes before age eighteen.[72] During the required parole hearing, the presiding parole board must consider the *Miller* factors, and give substantial weight "to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult and the diminished culpability of minors as compared to that of adults."[73] The board at this hearing must also consider the offender's family and community circumstances at the time of the offense; any potential history of abuse or trauma; potential involvement in the juvenile dependency system; and the offender's demonstrated emotional growth, maturity, and participation in rehabilitative and educational programs while in custody.[74]

While California, Oregon, and other western jurisdictions may be particularly noteworthy to policymakers in Washington, across the United States, other states have varied greatly in their approaches to juvenile life

64. State v. Null, 836 N.W.2d 41, 71 (Iowa 2013).
65. Bear Cloud v. State, 2014 WY 113, ¶ 34, 334 P.3d 132 (Wyo. 2014).
66. *See* State v. Anderson, 516 P.3d 1213, 1215–16 (Wash. 2022).
67. 411 P.3d 445, 447–56 (Cal. 2018).
68. *Id.* at 447–48.
69. *Id.* at 456–57.
70. CAL. PENAL CODE § 3051(b)(4) (West 2023).
71. *See id.* at § 3051(b)(1).
72. *See* ORE. REV. STAT. § 144.397(3), (5) (2021).
73. *Id.* at § 144.397(5).
74. *Id*.

sentences. Interestingly, many nonwestern and even historically conservative states provide young offenders with the opportunity for parole after serving fifteen to twenty-five years, even if the sentence is for the most serious categories of crime.

After *Miller*, some states moved to provide parole eligibility for juveniles after serving fifteen to twenty-five years. For instance, West Virginia not only eliminated LWOP but also passed new sentencing guidelines providing parole eligibility for persons convicted of offenses as juveniles after serving fifteen years.[75] Washington D.C. amended its sentencing guidelines to provide juveniles serving harsh sentences with a mechanism for achieving sentence modification after serving fifteen years.[76] North Dakota adopted a similar mechanism for sentence modification after serving twenty years.[77] Nevada's maximum sentence for juveniles is currently a sentence of life with parole, and the statute's retroactive provision provides that juveniles are eligible for parole after fifteen years for nonhomicide offenses or twenty years for homicide offenses involving one victim.[78] Finally, Wyoming's penalty for first-degree murder committed by a juvenile is life with parole after serving twenty-five years.[79]

Other states, like Arkansas, adopted maximum sentences for juveniles guilty of capital murder with parole eligibility after serving thirty years, and after twenty-five or twenty years for first-degree murder and non-homicide offenses respectively.[80] Delaware took a similar approach allowing offenders incarcerated for offenses committed as juveniles to petition for sentence modification after serving thirty years in first-degree murder cases and after serving twenty years in all other cases.[81] Connecticut took a more specific approach and adjusted its statutes to provide that those sentenced to more than fifty years are eligible for parole after serving thirty years.[82] Massachusetts' penalty for first-degree murder committed by a juvenile is life with the possibility of parole between twenty and thirty years depending on the nature of the offense.[83] A New Jersey statute provides that juveniles convicted of murder may receive either a sentence of thirty years without the possibility of parole or a term-of-years sentence

75. W. VA. CODE §§ 61-11-23, 62-12-13b (2024).

76. D. C. CODE § 24-403.03 (2021).

77. N.D. CENT. CODE §§ 12.1-32-13.1 (2023).

78. NEV. REV. STAT. §§ 176.025, 213.12135 (2023).

79. WYO. STAT. ANN. §§ 6-2-101(b), 6-10-201(b)(ii), 6-10-301(c), 7-13-402(a) (2022).

80. ARK. CODE ANN. §§ 5-4-104(b), 5-4-602(3), 5-10-101(c), 5-10-102(c), 16-93-612(e), 16-93-613, 16-93-614, 16-93-618, 16-93-621 (2020).

81. DEL. CODE ANN. tit. 11, §§ 636(b), 4209, 4204(a) (2023).

82. CONN. GEN. STAT. §§ 54-125a(f)(1), 46b-133c, 46b-133d, 53a-46a, 53a-54b, 53a-54d, 53a-54a (2023).

83. MASS. GEN. LAWS ch. 27, § 4; ch. 119, § 72B; ch. 127, §§ 133A, 133C; ch. 265, § 2(b); ch. 279, § 24 (2022).

between thirty years and life, with eligibility for parole after serving thirty years.[84]

Yet other states have adopted harsh laws that provide for parole eligibility only after serving between thirty-five and fifty years. In Vermont, the maximum sentence for a juvenile convicted of first-degree murder is a sentence of thirty-five years-to-life, with parole eligibility after thirty-five years.[85] Colorado state law allows juveniles convicted of Class 1 felonies parole eligibility after serving forty years, minus earned time, which may add up to 25% of the sentence.[86] Texas is also on the high end of states, where juveniles convicted of capital and first-degree felonies may receive life with the possibility of parole after serving forty years.[87]

2. Juvenile LWOP Resentencing in Washington

Before *Bassett*, Washington provided parole eligibility after serving a sentence of twenty years to most juvenile offenders,[88] and after twenty-five years to youth under age sixteen convicted of aggravated first-degree murder.[89] Washington's Constitution prohibits cruel punishments, leading to challenges based on state as well as federal constitutional grounds.[90] In Washington, punishments may be unconstitutionally cruel when they are "disproportionate to the seriousness of [the] crimes."[91] Advocates for youth sentencing reform typically echo arguments made on the national level in cases like *Roper*, *Graham*, and *Miller*: due to the immaturity of the prefrontal cortex of the brain, young offenders are less culpable than their adult counterparts, and as a corollary, the harshest punishments can never be proportionate to the crime the young offender may have committed.[92]

---

84. N.J. STAT. ANN. § 2C:11-3b (West 2023).

85. VT. STAT. ANN. tit. 13, § 7045 (2023).

86. *See* COLO. REV. STAT. §§ 16-13-1001; 17-22.5-405; 18-1.3-401(4); 24-4.1-302(2)(h); 24-4.1-302.5(1)(d)(IV); 24-4.1-303(12)(c) (2022).

87. TEX. PENAL CODE ANN. § 12.31 (West 2023); TEX. CODE CRIM. PROC. ANN. art. 37.071 (West 2023); *see also* Tex. Juv. Just. Dept. *Sentencing*, https://www.tjjd.texas.gov/index.php/juvenile-system#subsequent-revisions [https://perma.cc/ST9A-V739].

88. *See* WASH. REV. CODE § 9.94A.730(1) (2018).

89. *See id.* at § 10.95.030.

90. *See* WASH. CONST. art. I, § 14; *see also, e.g.*, State v. Moretti, 446 P.3d 609, 618 (Wash. 2019) ("A sentence may also be cruel under article I, section 14 if it is grossly disproportionate to the offense.").

91. State v. Fain, 617 P.2d 720, 728 (Wash. 1980) (establishing a factor test for assessing proportionality).

92. *See, e.g.*, M. Lorena González, *Modernizing Sentencing for People Incarcerated as Young Adults*, ACLU OF WASH. (Jan. 17, 2023), https://www.aclu-wa.org/docs/emerging-adults-legislative-backgrounder-2023 [https://perma.cc/XZH6-RDWK] (arguing that current law doesn't adequately consider modern brain science).

Until 2022, the Washington Supreme Court largely agreed.[93] In *State v. Ramos*, the Washington Supreme Court applied *Miller* to an eighty-year aggregate term-of-years sentence, explaining that *Miller* applies anytime a juvenile offender might be sentenced to die in prison without a meaningful opportunity for early release based on rehabilitation, whether the sentence is for a single crime or an aggregate sentence for multiple crimes.[94] Specifically, "standard range consecutive sentencing may, and in this case did, result in a total prison term exceeding the average human life-span—that is, a de facto life sentence."[95] One year later, in *Bassett*, the court held that the United States Supreme Court's reasoning in *Miller* applies not only to LWOP sentences, but also to de facto juvenile life sentences, striking down part of Washington's *Miller*-fix statute that permitted such sentences.[96]

Today, juveniles sentenced to more than twenty years in prison generally have the opportunity to petition Washington's Indeterminate Sentence Review Board (ISRB) for early release after having served at least twenty years.[97] If the incarcerated individual's petition for early release is denied, that individual may file a new petition for release five years from the date of the denial or at an earlier date set by the ISRB.[98] Early release is presumed unless the ISRB determines by a preponderance of the evidence that it is more likely than not that the individual will reoffend.[99]

The Washington Supreme Court has also held that laws preventing courts from adequately weighing the mitigating qualities of a defendant's youth are unconstitutional.[100] Courts must consider the mitigating circumstances of youth even when sentencing juveniles adjudicated as adults because "children are different."[101] The Washington Supreme Court later affirmed its requirement that sentencing courts consider a juvenile defendant's youthfulness when it announced a new constitutional rule that applies retroactively.[102] However, Washington courts continue to grapple with

93. *See* State v. Anderson, 516 P.3d 1213, 1215 (Wash. 2022).

94. 387 P.3d 650, 660 (Wash. 2017).

95. *Id.* at 658 (holding that an eighty-five-year sentence for a juvenile is an unconstitutional de facto life sentence).

96. 428 P.3d 343, 349–50 (Wash. 2018).

97. WASH. REV. CODE § 9.94A.730 (2023). Note that individuals petitioning the ISRB must not have had a serious infraction within the last twelve months, and that the ISRB process differs between juveniles convicted of aggravated first-degree murder and juveniles sentenced to other crimes with long term of years sentences. *See id.* at §§ 9.95.425–9.95.440.

98. *Id.* at § 9.94A.730.

99. *See id.* at §§ 9.94A.730, 10.95.030(f).

100. *See* State v. Houston-Sconiers, 391 P.3d 409, 420 (Wash. 2017).

101. *In re Pers. Restraint of* Domingo-Cornelio, 474 P.3d 524, 526–27 (Wash. 2020) (quoting *Houston-Sconiers*, 391 P.3d at 413).

102. *In re Pers. Restraint of* Ali, 474 P.3d 507, 515 (Wash. 2020); *but cf. In re Pers. Restraint of* Carrasco, 525 P.3d 196, 200 (Wash. 2023) ("*Houston-Sconiers*' procedural 'dual mandates' are not

when a long-term-of-years sentence constitutes an unconstitutional de facto juvenile life sentence under *Bassett* and *Ramos*. For example, in *State v. Delbosque*, the Washington Supreme Court declined to address whether a forty-eight year sentence imposed at a *Miller*-fix resentencing was a de facto life sentence because the issue was not properly raised, it nevertheless remanded the case for resentencing, noting that the sentencing court believed it to be a life sentence.[103]

The following year in *Monschke*, the Washington Supreme Court held that the state constitution prohibited mandatory LWOP sentences for offenders convicted of aggravated murder who were nineteen and twenty-years old at the time of the offense.[104] The court stated that the "neurobiological maturity of an individual adolescent" impacts the constitutionality of imposing mandatory LWOP sentences for offenders over age eighteen, and recognized that the mitigating qualities of youth are relevant for young adults as well.[105] While the court emphasized the importance of individualized sentencing, it relied on cognitive differences between young people and fully developed adults, stating, "just as courts must exercise discretion before sentencing a 17-year-old to die in prison, so must they exercise the same discretion when sentencing an 18-, 19-, or 20-year-old."[106] So just because individuals gain legal rights at the ripe age of eighteen and later on at twenty-one, it does not necessarily follow that they should be subjected to harsh LWOP sentences.

Later in 2021, the court decided *Haag*, holding that a forty-six-year sentence was an unconstitutional de facto life sentence and that in *Miller*-fix resentencing proceedings, trial courts must place greater emphasis on mitigation rather than retribution.[107] In deciding *Haag*, the court found persuasive the approaches taken by sister states, holding that term-of-years sentences in the forty-five to fifty-five year range constituted the "functional equivalent of life without parole" and that the promise of *Miller* is

---

retroactive and therefore do not apply on collateral review to a sentence that is long final."); *In re Pers. Restraint of* Hinton, 525 P.3d 156, 158–59 (Wash. 2023) (holding that only the substantive but not procedural rule announced by *Houston-Sconiers* applies retroactively, and that actual and substantial prejudice resulting from the court's failure to account for youthfulness must be established to prevail on a collateral attack).

103. State v. Delbosque, 456 P.3d 806, 815 (Wash. 2020) ("[E]very judge conducting a *Miller* sentencing in Washington must set a minimum term that is less than life. . . . Although the trial court clearly intended to impose a life sentence when setting Delbosque's 48-year minimum term, the question of whether this amounts to a de facto life sentence is not squarely presented here, either. We therefore decline to address the issue.").

104. *In re Pers. Restraint of* Monschke, 482 P.3d 276, 286 (Wash. 2021) ("[W]e will not hesitate to strike [age limits] down where they violate the constitution, especially where better, more scientific age limits are available.").

105. *Id.* at 286–87.

106. *Id.* at 288.

107. State v. Haag, 495 P.3d 241, 250 (Wash. 2021).

that juvenile offenders have "a meaningful opportunity to rejoin society after leaving prison."[108] The court further discussed the higher mortality rate and shorter life expectancy for incarcerated persons.[109] With these considerations in mind, the court noted releasing Mr. Haag from confinement at age sixty-three deprives him of a meaningful life.[110] Yet, even *Haag* left unaddressed the question of the "rare juvenile offender[s] whose crime reflects irreparable corruption."[111]

The summer of 2022 resulted in a marked shift from the court's consistent trend of greater leniency toward young offenders. In *Kennedy*, the court upheld a thirty-one-year sentence (an extraordinary upward sentence from the high end of the standard range of twenty-six years) imposed on a nineteen-year-old because brain-development research illustrating the mitigating qualities of youth was not novel and may have been considered at the time of the defendant's original sentencing.[112] Relying on similar reasoning, the court rejected a challenge to a sixty-four-year sentence imposed on a twenty-one-year-old, refusing to extend its holding in *Monschke* beyond age twenty.[113] The 2022 term culminated in *Anderson*, which, as this Note has already discussed, upheld a de facto life sentence of sixty-one years for a seventeen-year-old.[114]

II. THE FUTURE OF DE FACTO LIFE SENTENCES FOR JUVENILES AND YOUNG ADULTS IN WASHINGTON

Anderson may have reopened the door to de facto life sentences for juveniles whose crimes do not reflect the mitigating qualities of youth, but these harsh sentences remain ripe for future challenges either through the courts or the legislature. While ever fewer *Miller*-fix resentencing hearings will be brought in coming years, *Anderson* leaves the future of harsh sentences for juvenile offenders unclear, at least for those found guilty of serious crimes.

By narrowing the holding in *Haag*, permitting the imposition of de facto life sentences only on juvenile offenders whose crimes do not reflect

---

108. *Id.* at 250–51 (citing State v. Zuber, 152 A.3d 197, 212 (N.J. 2017); Bear Cloud v. State, 2014 WY 113, ¶¶ 11, 33, 334 P.3d 132, 136, 141–42 (Wyo. 2014); State v. Null, 836 N.W.2d 41, 70–71 (Iowa 2013); Graham v. Florida, 560 U.S. 48, 75 (2010)).

109. *Id.* at 251.

110. *Id.*; *see also* Evelyn J. Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989–2003*, 103 AM. J. PUB. HEALTH 523, 524 (Mar. 2013) (analyzing the mortality of New York State parolees over a ten-year period).

111. *Haag*, 495 P.3d at 250 (alteration in original) (quoting Miller v. Alabama, 567 U.S. 460, 479–80 (2012)).

112. *In re Pers. Restraint of* Kennedy, 513 P.3d 769, 775–75 (Wash. 2022).

113. *See In re Pers. Restraint* of Davis, 514 P.3d 653, 654–55 (Wash. 2022).

114. *See* State v. Anderson, 516 P.3d 1213, 1216–17 (Wash. 2022).

the mitigating qualities of youth, the Washington Supreme Court widens an exception for "incorrigible" youth, which even *Miller*, *Graham*, and *Roper* note should rarely be applied.[115] The *Anderson* majority argues that it distinguishes *Haag* and true LWOP cases because term-of-year sentences "are not inherently harsher" for young offenders.[116] Honing in on its precedent, the majority also distinguishes *Bassett*—arguing that not all juvenile offenders, at least those "whose crimes reflect irreparable corruption," deserve an opportunity for release.[117] In distinguishing *Haag* to such a degree, the *Anderson* majority makes clear that sentences far longer than Mr. Haag's forty-six-year sentence may properly be imposed on juvenile offenders, but only if the sentencing court determines that the mitigating qualities of youth (the *Miller* factors) do not apply to the offender in question.[118]

A. Increased Imposition of De Facto Life Sentences on Juveniles

Anderson may lead to the imposition of more de facto life sentences for juvenile offenders. If a sentencing court explains why it believes that the circumstances of a juvenile offender's crime do not adequately reflect youthful immaturity, impetuosity, or failure to appreciate risks and consequences, then that court appears free to sentence that juvenile to die in prison. The level of consideration the sentencing court must give these factors remains unclear, and mere lip service may be insufficient, but the *Anderson* majority makes clear that sentencing courts "must also consider the facts of the particular case, including those that counsel in favor of punishment."[119] Under the abuse of discretion standard or misapplication of the law standard for reversing sentencing court decisions,[120] juvenile offenders may face barriers in challenging de facto life sentences in the future.

Additionally, the very concept of an irredeemable juvenile offender may rely on the flawed premise that some juveniles are irredeemable "super-predators."[121] Even if one accepts the premise that some juvenile

115. *See id.* at 1222–23 (applying *Haag*); *see also* Miller v. Alabama, 567 U.S. 460, 480 (2012); Roper v. Simmons, 543 U.S. 551, 573 (2005); Graham v. Florida, 560 U.S. 48, 68 (2010) (referring to the "the rare juvenile offender whose crime reflects irreparable corruption").

116. *Anderson*, 516 P.3d at 1222.

117. *Id.*

118. *Id.*

119. *Id.* at 1223.

120. *Id.*

121. *See* Jane Rutherford, *Juvenile Justice Caught Between The Exorcist and A Clockwork Orange*, 51 DEPAUL L. REV. 715, 721 (2002); Elizabeth R. Jackson-Cruz, Social Constructionism and Cultivation Theory in Development of the Juvenile "Super-Predator" 6 (Mar. 5, 2019) (M.A. thesis, University of South Florida),

offenders cannot be rehabilitated, surely evidence of actual rehabilitation and reform while in prison would prove that a sentencing court was incorrect in its assessment of a juvenile offender's redeemability.[122] After all, even the United States Supreme Court has recognized that "incorrigibility is inconsistent with youth."[123]

B. Other Potential Directions in De Facto Life Sentence Jurisprudence for Young Offenders after Anderson

Alternatively, the imposition of de facto life sentences on juveniles could remain an infrequent occurrence, and sentencing courts may only rarely rely on *Anderson* to impose such harsh sentences on young offenders. As Justice Yu points out in her dissent in *Anderson*, a sentencing judge's characterization of facts relating to the circumstances of the crime, in particular the relevant offender's youthfulness, is highly subjective and is likely to be impacted by unconscious biases.[124] But this inherent subjectivity could cut in the other direction. Sentencing courts may become more aware of the developmental neuroscience research and follow Washington's earlier trend against imposing excessively harsh sentences on juvenile and young offenders, even those convicted of serious crimes.[125]

Several other future directions are also possible. First, the Washington Supreme Court could simply overturn *Anderson*, a case decided by a narrow margin of 5–4,[126] and hold that a categorical ban on de facto life sentences applies to juveniles and adolescents up to age twenty-five to be consistent with brain development research.[127] The United States Supreme Court could also issue that same ruling, extending *Miller* nationwide.

---

https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=9011&context=etd [https://perma.cc/UFN8-64EU]; *see also* State v. Belcher, 268 A.3d 616, 625–26 (Conn. 2022) (discussing the numerous studies repudiating the myth of the irredeemable juvenile super-predator); U.S. DEP'T OF HEALTH & HUM. SERVS., YOUTH VIOLENCE: A REPORT OF THE SURGEON GENERAL 16 (2001), https://www.ncbi.nlm.nih.gov/books/NBK44297/?report=reader [https://perma.cc/PT3N-PFGC] ("There is no evidence that young people involved in violence during the peak years of the early 1990s were more frequent or more vicious offenders than youths in earlier years.").

122. *See* Graham v. Florida, 560 U.S. 48, 75 (2001).

123. *Id.* at 73 (quoting Workman v. Commonwealth, 429 S.W.2d 374, 378 (Ky. 1968)).

124. *Anderson*, 516 P.3d at 1236–37 (Yu, J., dissenting).

125. *See, e.g.*, State v. Haag, 495 P.3d 241, 243 (Wash. 2021); *In re Pers. Restraint of* Monschke, 482 P.3d 276, 277–78 (Wash. 2021).

126. *Anderson*, 516 P.3d at 1215.

127. *See, e.g.*, Waterman, *supra* note 30, at 355 (studying adolescents' changes in identity development as they progress into adulthood).

Though, this is perhaps unlikely given the ideological composition of the United States Supreme Court as of early 2023.[128]

Alternatively, the Washington State Legislature could pass sentencing legislation to eliminate de facto life sentences for juvenile and young adult offenders. While no current legislation before the Washington State Legislature responds directly to harsh juvenile sentences like those at issue in *Anderson*, several bills modernizing sentencing for juveniles and emerging adults have been proposed. For instance, Washington H.B. 1325 aims to modernize sentencing for persons incarcerated as young adults by increasing the age for sentence review consideration from eighteen to twenty-five, in recognition of developmental brain science and racial justice.[129] While H.B. 1325 and its companion bill, S.B. 5451, did not progress during the 2023 spring legislative session, similar bills may pass in the future.[130]

If Washington ultimately shifts from its position on juvenile sentencing in *Anderson*, the persuasive use of scientific data will likely be central to this change. The Washington Supreme Court has found scientific data about racially disparate impact persuasive in its criminal punishment jurisprudence in the past, notably in *State v. Gregory*, the 2018 case that ended the death penalty in Washington.[131] Central to the court's decision in *Gregory* was the "Beckett Report" which found, along with significant variations by county, that "[B]lack defendants were four and a half times more likely to be sentenced to death than similarly situated white defendants."[132] Perhaps similar scientific research into the racially disparate application of de facto life sentences on youths of color, if available, could persuade the court in the future.

III. POLICY RECOMMENDATIONS

A. Washington Should Eliminate De Facto Life Sentences for Offenders Under Twenty-Five Years Old

As a policy matter, the Washington State Legislature or the Washington Supreme Court should consider prohibiting de facto life sentences

128. *See generally*, Nina Totenberg, *The Supreme Court is the Most Conservative in 90 Years*, NPR, https://www.npr.org/2022/07/05/1109444617/the-supreme-court-conservative [https://perma.cc/Z7PZ-ABB4] (July 5, 2022) (describing the modern Court's erosion of unenumerated constitutional rights).

129. *See* H.B. 1325, 68th Leg. Reg. Sess. (Wash. 2023).

130. *Id.*; S.B. 5451, 68th Leg. Reg. Sess. (Wash. 2023).

131. *See* 427 P.3d 621, 630 (Wash. 2018) (finding that the death penalty was 3.5 to 4.6 times more likely to be imposed on a Black man than a white man in Washington State).

132. *Id.*; *see also* BECKETT & EVANS, *supra* note 35, at 33.

for juveniles and young offenders up to age twenty-five. Crimes committed by young offenders inherently and inescapably reflect the mitigating qualities of youth *because they were committed by young people*. Decades of robust and reliable brain development research indicates that offenders younger than age twenty-five lack full structural development in brain areas involved in decision-making and impulse control. This research supports the conclusion that young offenders are categorically less culpable than older offenders,[133] supporting the conclusion that harsh sentences applied to youth cannot be proportional as required by the Washington and United States Constitution's respective prohibitions against cruel and unusual punishment.

Even well-intentioned sentencing judges lack the capacity and diagnostic expertise to consistently predict which young offenders will be capable of reform and rehabilitation,[134] so the better course is to limit excessively long sentences and reevaluate future risk and rehabilitation after a reasonable time. Such an assessment could occur at fixed intervals, such as every five years, or could be tied to the completion of rehabilitation-focused programming within a correctional setting. Additionally, clinical professionals, while perhaps better situated than judges are for assessing psychological and neurological development, are also unable to perfectly predict the paths that a person's life will take. The Washington Supreme Court has previously stated that "no clear line exists between childhood and adulthood,"[135] holding that *Miller*'s constitutional guarantee of an

133. *See* Nico U. F. Dosenbach, Binyam Nardos, Alexander L. Cohen, Damien A. Fair, Jonathan D. Power, Jessica A. Church, Steven M. Nelson, Gagan S. Wig, Alecia C. Vogel, Christina N. Lessov-Schlaggar, Kelly Anne Barnes, Joseph W. Dubis, Eric Feczko, Rebecca S. Coalson, John R. Pruett, Jr., Deanna M. Barch, Steven E. Petersen & Bradley L. Schlaggar, *Prediction of Individual Brain Maturity Using fMRI*, 329 SCI. 1358, 1361 (2011); Christian Beaulieu & Catherine Lebel, *Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood*, 31 J. NEUROSCI. 10937, 10946, (2011); Anna M. Hedman, Neeltje E.M. van Haren, Hugo G. Schnack, René S. Kahn & Hilleke E. Hulshoff Pol, *Human Brain Changes Across the Life Span: A Review of 56 Longitudinal Magnetic Resonance Imaging Studies*, 33 HUM. BRAIN MAPPING 1987, 1988, (2012); Adolf Pfefferbaum, Torsten Rohlfing, Margaret J. Rosenbloom, Weiwei Chu, Ian M. Colrain & Edith V. Sullivan, *Variation in Longitudinal Trajectories of Regional Brain Volumes of Healthy Men and Women (Ages 0 to 85 Years) Measured with Atlas-Based Parcellation of MRI*, 65 NEUROIMAGE 176, 189 (2013); *see also* Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 FORDHAM L. REV. 641, 642 (2016) ("Over the past decade, developmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority.").

134. *See* BERRY, *supra* note 35, at 2 (2015) (concluding that trial judges, including those in Washington State, are more likely to impose harsher sentences in election years); *see also* State v. Bassett, 428 P.3d 343, 353–54 (Wash. 2018) (addressing the "imprecise and subjective judgments a sentencing court could make regarding transient immaturity and irreparable corruption" and criticizing a sentencing judge for concluding that Mr. Bassett's homelessness was evidence of maturity as compared to teens living in permanent homes).

135. *In re Pers. Restraint of* Monschke, 482 P.3d 276, 277 (Wash. 2021).

individualized sentence that considers the mitigating qualities of youth must apply to defendants at least under age twenty-one. In another opinion, it recognized the "fundamental differences between adolescent and mature brains" as support for finding diminished culpability for young offenders older than eighteen. [136]

Of course, some may state that age twenty-five is just as arbitrary a number as eighteen and that individual differences in human brain development are irregular and uncertain, justifying a more individualized approach to assessing culpability. Indeed, even the United States Supreme Court in *Roper* recognized that eighteen is an arbitrary number when holding that juvenile offenders may not be subjected to the death penalty.[137]

> Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.[138]

If we must subject any member of our society to spend their lives and ultimately die in prison, those persons should only be those most clearly culpable for the actions that put them there. While our society recognizes age eighteen as the age of adulthood, brain development research is clear that young brains continue to experience immaturity into their early twenties,[139] and Washington courts have recognized this reality in the context of criminal sentencing in the past.[140] The court's reasoning in *Anderson* goes in the precise opposite direction.

Beyond developmental neuroscience research, robust sociological and psychological research also indicates that people tend to "age out" of

---

136. State v. O'Dell, 358 P.3d 359, 364 (Wash. 2015).

137. *See* Roper v. Simmons, 543 U.S. 551, 574 (2005).

138. *Id.*

139. Laurence Steinberg, Grace Icenogle, Elizabeth P. Shulman, Kaitlyn Breiner, Jason Chein, Dario Bacchini, Lei Chang, Nandita Chaudhary, Laura Di Giunta, Kenneth A. Dodge, Kostas A. Fanti, Jennifer E. Lansford, Patrick S. Malone, Paul Oburu, Concetta Pastorelli, Ann T. Skinner, Emma Sorbring, Sombat Tapanya, Liliana Maria Uribe Tirado, Liane Peña Alampay, Suha M. Al-Hassan & Hanan M. S. Takash, *Around the World, Adolescence Is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, 21 DEV. SCI. 1, 10–13 (2017); Laurence Steinberg, Sandra Graham, Lia O'Brien, Jennifer Woolard, Elizabeth Cauffman & Marie Banich, *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 39–41 (2009).

140. *See In re Pers. Restraint of* Monschke, 482 P.3d 276 (Wash. 2021).

crime.[141] Most violent crimes are committed by persons in their teen years and their early twenties.[142] Youths' increased impulsivity and difficulty rationally weighing the consequences of actions may contribute to these trends.[143] This data pairs with neuroscience research about the development of the prefrontal cortex supporting the conclusion that disproportionately long sentences are particularly inappropriate when applied to persons who commit offenses before age twenty-five.

1. Eliminating De Facto Life Sentences for Young Offenders Decreases the Risk of Racially Disparate Impacts

Racial bias and discrimination in the criminal justice system are unfortunately nothing new.[144] As discussed earlier in this Note, Justice Yu's dissent in *Anderson* discussed the adultification bias that is commonly applied against youths of color.[145] Due to this societal tendency to view children of color as older than white children of the same age, racially disparate applications of these harsh sentences on youths of color are likely to perpetuate.[146] Racially disparate application of the death penalty led to the abolition of the practice in Washington and ending de facto life sentences for juveniles and young adults should similarly advance racial equity and justice.[147] One of the core aspects of the Beckett Report that led to the end of the death penalty in Washington was the finding that offenders of color received less mercy than similarly situated white offenders.[148] One can reasonably presume that the same, arbitrary phenomenon may occur in the application of harsh sentences across our state.

Young offenders are also uniquely capable of transformation and rehabilitation.[149] Well-established research shows that recidivism rates are

---

141. *See* Caitlin V. M. Cornelius, Christopher J. Lynch, & Ross Gore, *Aging Out of Crime: Exploring the Relationship Between Age and Crime with Agent Based Modeling*, SPRING SIMULATION MULTICONF. Apr. 23, 2017, at 27; *see also* Robert J. Sampson & John H. Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 CRIMINOLOGY 301, 312 (2003) (providing data of nonviolent crimes for different age groups).

142. *See Estimated Number of Arrests by Offense and Age Group*, U.S. DEPT. OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION (July 8, 2022), https://ojjdp.ojp.gov/statistical-briefing-book/crime/faqs/ucr [https://perma.cc/3QFD-56YG].

143. *See* Steinberg, *supra* note 25, at 1776 (discussing the intersection between brain development and juvenile justice).

144. *See* Letter from Wash. State Sup. Ct. to Members of Judiciary & Legal Cmty., *supra* note 12, at 1–2.

145. State v. Anderson, 516 P.3d 1213, 1236 (Wash. 2022) (Yu, J., dissenting).

146. *See In re Pers. Restraint of* Miller, 505 P.3d 585, 589 (Wash. Ct. App. 2022); WASH. CTS. GENDER & JUST. COMM'N, *supra* note 10, at 452–53.

147. State v. Gregor*y*, 427 P.3d 621, 632–33 (Wash. 2018).

148. *Id.* at 630.

149. *See* Miller v. Alabama, 567 U.S. 460, 479 (2012); Giedd, Blumenthal, Jeffries, Castellanos, Liu, Zijdenbos, Tomáš, Evans & Rapoport, *supra* note 30, at 861.

strongly correlated with age, such that most persons will simply "age out" of crime.[150] By eliminating de facto life sentences for young offenders, Washington would provide this segment of the population with the opportunity to transform their lives and be released after a reasonable sentence. Additionally, this reform would combat mass incarceration by reducing the expenditure of state resources and taxpayer dollars on offenders who pose minimal risk of re-offending and begin to combat racial inequities experienced by communities of color in our state.[151]

2. Individual Differences in Cognitive Development Cannot Justify the Imposition of De Facto Life Sentences on Youth Offenders

Some may argue that individual differences in brain development mean that certain offenders under age eighteen will have more developed prefrontal cortices than certain offenders up to age twenty-five. Using this reasoning, advocates for harsher sentences for juveniles could argue that the application of harsh sentences in "uncommon" or "rare" circumstances should be permitted, or even that such sentences are more tailored to the nature of the crime in question. This argument is largely based on retributive justifications for punishment, the idea that serious crimes should always be punished harshly irrespective of the individual's comparative culpability, rather than based on an assessment of the offender's capacity for culpability, future risk of recidivism, or the offender's capacity for rehabilitation.[152]

Some young offenders may never be rehabilitated and, even after decades of imprisonment, may not be safe to reenter society. But de facto life sentences deprive offenders of the incentive and the opportunity to prove sentencing judges wrong.[153] If an offender sentenced as a juvenile can show demonstrated remorse, maturity, and rehabilitation to the satisfaction of a parole board after serving a reasonable sentence, that offender has, by definition, disproven the assertion that that youth offender is "incorrigible" and incapable of change.

The very idea that certain young offenders are irredeemable or are super-predators echoes racist ideas from the early 1990s, and has no basis

---

150. *See* Sampson & Laub, *supra* note 141 at 312.

151. The Washington Department of Corrections' budget for the 2021–23 biennium exceeds $2.5 billion. *See Department of Corrections Budget 2021–23*, OFF. OF FIN. MGMT., https://ofm.wa.gov/budget/state-budgets/gov-inslees-proposed-2022-supplemental-budgets/agency-recommendation-summaries/310 [https://perma.cc/F7XV-FCAS] (last visited Apr. 3, 2024).

152. *See* Graham v. Florida, 560 U.S. 48, 71 (2010) ("The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender." (quoting Tison v. Arizona, 481 U.S. 137, 149 (1987)).

153. *See Miller*, 567 U.S. at 473 ("Life without parole 'forswears altogether the rehabilitative ideal.'" (quoting *Graham*, 560 U.S. at 74)).

in data or science.[154] Justice Yu's dissent in *Anderson* discusses the adultification bias against youth of color at some length and highlights the role that the justice system has played in devaluing Black lives.[155] This bias means that even a well-intentioned sentencing judge may implicitly feel that a young offender of color is more mature, and therefore less capable of reform and rehabilitation than a similarly situated white offender of the same age.[156] Harsh sentences deprive young offenders of the opportunity and incentive to refute these biases and arbitrarily subject offenders who can demonstrate their transformation to a lifetime of incarceration.

B. Implement Tangible Guidelines to Assist Sentencing Judges in Recognizing the Mitigating Qualities of Youth

Regardless of whether the Washington State Legislature or Washington Supreme Court overhauls the juvenile sentencing process to address the problems with de facto life sentences for young offenders, the courts in charge of sentencing offenders need clarity in determining when a sentence is unconstitutionally long for a juvenile offender. The *Anderson* majority insists that *Haag*, *Bassett*, and its prior juvenile sentencing jurisprudence remain good law and that its holding is consistent with the court's precedent.[157] However, distinguishing between an unconstitutional de facto life sentence for a juvenile, or merely a permissible harsh term-of-years sentence, will likely prove challenging in practice.

The standard articulated in *Anderson* is that de facto life sentences for juveniles are not prohibited for crimes that do not reflect the mitigating qualities of youth.[158] But most, if not all, serious crimes are acts that our society typically does not associate with youthful behavior. Murder certainly is not, and yet the Court in *Haag* overturned a forty-six-year sentence for a murder that it deemed impulsive while upholding a sixty-one-year sentence in *Anderson* that it deemed calculated.[159] This judgment call is inherently subjective and requires that judges attempt to assess the developmental maturity of the offender in question. This is a difficult task, and one that judges are ill-equipped to perform, likely leading to arbitrary and racially discriminatory results. Therefore, the Washington Supreme Court or Washington State Legislature should, at minimum, adopt clearer guidelines to assist sentencing judges in making this determination.

---

154. *See* Rutherford, *supra* note 121, at 720–21.

155. State v. Anderson, 516 P.3d 1213, 1236–37 (Wash. 2022) (Yu, J., dissenting).

156. *See* WASH. CTS. GENDER & JUST. COMM'N, *supra* note 10, at 452–53.

157. *Anderson*, 516 P.3d at 1220–21.

158. *Id.*

159. *Id.* at 1224; State v. Bassett, 428 P.3d 343, 353–54 (Wash. 2018).

Of course, a better solution is to abolish de facto life sentences for juveniles altogether by providing a meaningful opportunity for release after serving a reasonable sentence. This solution would provide a uniform response to dealing with juveniles and young offenders who are found guilty of serious crimes.

CONCLUSION

The majority opinion in *Anderson* marks a stark departure from the Washington Supreme Court's earlier juvenile sentencing jurisprudence by upholding de facto life sentences for juveniles whose crimes—as assessed by the sentencing court—do not reflect the mitigating qualities of youth. This decision poses troubling public policy and constitutional questions. It also calls into question the continued efficacy and persuasiveness of scientific research before the Washington Supreme Court. What is uncertain is whether this aberration in the court's juvenile sentencing is here to stay.

On the one hand, the Washington Supreme Court may rely on *Anderson* as a seminal case for juvenile sentencing cases of the future. The constitutionality of Mr. Anderson's sixty-one-year sentence may open the door to greater and even longer term-of-years sentences for juvenile offenders in Washington—as long as the *Miller* factors were ostensibly considered at sentencing. This could lead to a new era of super-predator rhetoric about youth of color and re-entrench the role of the criminal justice system in devaluing the lives of Black and brown members of our community. On the other hand, the Washington Supreme Court may overturn *Anderson* in the years to come. The Washington State Legislature may also enact juvenile sentencing reforms that would make *Anderson* moot.

One fundamental problem at the core of the *Anderson* majority reasoning is that crimes committed by young people inherently reflect the mitigating qualities of youth. De facto life sentences are LWOP in all but name. Yet, *Anderson* permits a sentencing court to disregard the fact that an offender is a child and sentence them to die in prison, without ever having to review the decision and determine whether the child truly was irredeemable. A person's capacity for redemption and transformation is virtually unknowable at the time of sentencing, particularly where children and young people are concerned. Young offenders should be guaranteed the opportunity for a meaningful life after they are released from prison.

The *Anderson* decision is also troubling for its potential for racially disparate applications in sentencing due to the heightened risk of unconscious bias against persons of color. Washington courts have stated a willingness to reconcile with their role in devaluing the lives of citizens of

color. *Anderson* illustrates that the Washington legal community has a long way to go before it lives up to this commitment.

While *Anderson* is a setback for juvenile and racial justice, the decision was a close one. Justice Yu's powerful dissent may be the source of some hope,[160] even if that hope feels like a crushed stalk at the moment. Perhaps dedicated scientists and lawyers will work to create another "Beckett Report" or similar study evaluating the disparate juvenile sentences based on race, and this will persuade the court where decades of developmental neuroscience data has failed. Perhaps a member of the court will shift their perspective on the issue and recognize the flaws in the majority's reasoning. In any case, there is reason to hope for an end to harsh juvenile sentences in Washington State. Either through the legislature or the courts, we must give our communities a song of hope, and create a world where we can sing it.

160. *Anderson*, 516 P.3d at 1232 (Yu, J., dissenting) (quoting MURRAY, *supra* note 1, at 13).