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“A ROSE BY ANY OTHER NAME WOULD SMELL AS SWEET”: HOW AGGREGATE SENTENCING VIOLATES MILLER V. AL- ABAMA

by Elizabeth C. Kingston

INTRODUCTION

In 2007, sixteen-year-old Rodrigo Caballero, a member of the Lancas gang, opened fire on three teenage boys of the Val Verde Park Gang.¹ One boy was hit in the upper back and the other two were untouched; none of the victims died.² As a result of this event, Caballero was sentenced to consecutive term-of-years sentences totaling 110 years to life.³ Under this sentence, Caballero’s first opportunity for parole will occur in 2117, long after Caballero has died.⁴

The United States Supreme Court held in *Miller v. Alabama* that imposing life without parole upon a juvenile without individualized consideration of his youth as a mitigating factor violates the Eighth Amendment.⁵ Sentences like Caballero’s raise the question of whether the imposition of aggregate term-of-years sentencing—wherein the defendant will likely die in prison before the possibility of parole—similarly violate the Eighth Amendment. The California Supreme Court, ruling on Caballero’s case, held that it does.⁶ While the terminology employed is different, this type of term-of-years sentence holds the same outcome for the juvenile

as was held unconstitutional in *Miller*: life imprisonment without parole following no opportunity for the juvenile to offer his youth as a mitigating circumstance.⁷ Essentially, these lengthy aggregate sentences are a type of *de facto* sentence of life imprisonment without parole.⁸ Following the *Caballero* ruling, California passed § 3051, which mandates that juveniles who were sentenced to a term-of-years sentence over twenty-five years shall become eligible for parole during his twenty-fifth year of the sentence.⁹

While disagreement exists among the states as to whether extensive aggregate term-of-years sentences violate the Eighth Amendment per the decision in *Miller*,¹⁰ states should recognize the high value the Supreme Court has placed on youth in as a sentencing factor and proactively move to resolve any potential constitutional issues with legislation.¹¹ Whether states disagree with California’s *Caballero* analysis of constitutionality, the California code implements a system that reflects a proper balance of the Supreme Court’s emphasis of youth as a mitigating factor with the need for retribution and proper punishment.

1 *People v. Caballero*, 282 P.3d 291, 293 (Cal. 2012).

2 *Id.*

3 *Id.*

4 *See id.* at 295 (stating that defendant’s first opportunity for parole will occur in 110 years).

5 *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455, 2460 (2012).

6 *Caballero*, 282 P.3d at 295.

7 *See id.* at 294-95.

8 As in *Romeo & Juliet*, “that which we call a rose / By any other name would smell as sweet.” William Shakespeare, *Romeo & Juliet* 22 (1839). Though states may give a different terminology to these aggregate term-of-years sentences, the name matters not, as the character of the punishment remains the same.

9 CAL. PENAL CODE § 3051 (West 2015). *See infra* Part III for a more detailed analysis of this statute.

10 *See infra* Part II.

11 *See infra* Part I.



Part I of this Note discusses the development of juvenile sentencing jurisprudence from the ineligibility of juveniles for the death penalty in *Roper v. Simmons*¹² to the recent decision in *Miller v. Alabama*. Part II analyzes how different states have handled the constitutionality question. Part III examines California's § 3051 in greater depth. Finally, Part IV advocates for the adoption of similar legislation across the United States.

I. *ROPER THROUGH MILLER*: "CHILDREN ARE DIFFERENT"

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."¹³ Since the 2005 decision in *Roper v. Simmons*,¹⁴ the United States Supreme Court has applied the Eighth Amendment to juvenile sentencing in the criminal justice system to afford juveniles a special status. The Court has consistently identified the unique characteristics of youth and their relationship to culpability to justify conclusions affording juveniles greater constitutional protections than adults.

In *Roper v. Simmons*, the Court declared that the Eighth Amendment prohibited the imposition of the death penalty upon offenders who committed murder as a juvenile.¹⁵ According to the Court's interpretation of the Eighth Amendment, the death penalty must be reserved for only the worst crimes and offenders.¹⁶ Three main differences set juveniles apart from this category of worst offenders.¹⁷ First, juveniles have an "underdeveloped sense of responsibility" which leads to rash decision-making with minimal consideration of consequences.¹⁸ States have reacted to this irresponsibility

by enacting categorical activity restrictions on those under eighteen, including military service, voting, and jury service.¹⁹ Second, juveniles are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."²⁰ Finally, juveniles have not yet had the opportunity to develop their character, meaning that "personality traits of juveniles are more transitory, less fixed."²¹ These differences cause juveniles to have diminished culpability; this diminished culpability in turn means that capital punishment, when applied to juveniles, does not serve its traditional purposes of retribution and deterrence.²² Therefore, capital punishment is unconstitutional as applied to juveniles.²³

Five years later, in *Graham v. Florida*, the Court assessed the applicability of the Eighth Amendment and the special circumstances of minors to sentences of life imprisonment without parole.²⁴ Recognizing that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," the Court accepted the continuing relevance of the factors discussed in *Roper*.²⁵ The Court acknowledged that life imprisonment without parole is the "second most severe penalty permitted by law"²⁶ and affects juveniles more disproportionately than

U.S. 350, 367 (1993)) (internal quotation marks omitted).

19 *Id.*

20 *Id.*

21 *Id.* at 570.

22 *Id.* at 571. Specifically, lesser culpability means that less retribution is deserving. Additionally, considering the immaturity and irresponsibility of juveniles, it is likely that juveniles are also less susceptible to systematic deterrence.

23 *Id.* at 575.

24 *Graham v. Florida*, 560 U.S. 48, 52-55 (2010). Seventeen-year-old Graham, while on probation from a previous armed robbery charge, committed a second armed robbery. Another armed robbery was attempted the same night, but a co-conspirator was shot during the attempt; Graham was detained after dropping the co-conspirator at a hospital. The police officer also discovered three handguns in Graham's vehicle, a violation of his probation.

25 *Id.* at 68.

26 *Id.* at 69 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 960 (1991)) (internal quotation marks omitted).

12 *Roper v. Simmons*, 543 U.S. 551 (2005).

13 U.S. Const. amend. VIII.

14 *Roper*, 543 U.S. 551 (2005).

15 *Id.* at 556-75. The juvenile in question, Simmons, broke into a family home and kidnapped a woman. Then, with the help of a co-conspirator, he bound her hands and feet, wrapped her face in duct tape, and pushed her off of a bridge into the water, where she subsequently drowned. Simmons had proposed this plan and following its completion, he bragged to his friends about it.

16 *Id.* at 568.

17 *Id.* at 568-69.

18 *Id.* at 569 (quoting *Johnson v. Texas*, 509



adults because juveniles will end up serving a greater amount of years and a greater proportion of their lives in prison than adult offenders sentenced to life without parole.²⁷

The *Graham* decision also adopted *Roper's* same reasoning in regards to the pedagogical justifications of retribution and deterrence as applied to juveniles.²⁸ The Court also concluded that incapacitation did not justify the imposition of life without parole because that argument assumes that juveniles are "incorrigible."²⁹ Because juveniles can mature and develop, assumption of incorrigibility "improperly denies the juvenile offender a chance to demonstrate growth and maturity."³⁰ Finally, the pedagogical goal of rehabilitation clearly supports the elimination of life imprisonment without parole be-

characteristics of juveniles established in *Roper*, demonstrating "that children are constitutionally different from adults for purposes of sentencing."³⁵ While *Graham's* decision was explicitly limited to the non-homicide facts of the case, in *Miller*, the Court acknowledged that "none of what [*Graham*] said about children . . . is crime-specific."³⁶ With that in mind, the Court held that mandatory life imprisonment without parole to juveniles accused of homicide crimes also violates the Constitution where individualized consideration is not given to youth.³⁷ Though the Court did not create a blanket prohibition on all juvenile life imprisonment without parole, it opined that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon."³⁸

THE JUVENILE OFFENDER IS CONSTITUTIONALLY REQUIRED TO HAVE AN OPPORTUNITY TO "DEMONSTRATE GROWTH AND MATURITY" IN SUPPORT OF HIS RELEASE FROM PRISON.

cause prisoners with such a sentence are rarely, if ever, awarded education or other rehabilitative training.³¹ Considering the unique characteristics of juveniles and how they apply to justifications of capital punishment, the Court ruled that mandatory life imprisonment without parole to juveniles accused of non-homicide crimes violates the Constitution when individualized consideration is not given to youth.³² The state must give these persons "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."³³

Finally, in *Miller v. Alabama*, the Court extended the rule that mandatory juvenile life imprisonment without the possibility of parole is unlawful to homicide crimes as well.³⁴ The Court again emphasized the

This line of Eighth Amendment cases displays a trend of continued and increasing protections of juveniles in the sentencing process. Because "children are different," the imposition of harsh punishments upon juveniles is more

A friend carried in a sawed-off shotgun and, after an exchange between the store clerk and Jackson wherein the store clerk threatened to call the police, the friend shot and killed the store clerk. In the second case, defendant Miller, also fourteen, visited the victim's trailer with a co-conspirator. There, the three smoked marijuana until the victim fell asleep. Miller attempted to steal the victim's wallet, but when the victim awoke during the act, Miller then hit the victim repeatedly with a baseball bat.. Eventually, the boys decided to burn the trailer, causing the victim to die from smoke inhalation.

27 *Id.* at 70.

28 *Id.* at 71-72. *See also supra* note 22.

29 *Id.* at 72.

30 *Id.* at 73.

31 *Id.* at 74. Additionally, juveniles are uniquely receptive to rehabilitative training.

32 *Id.*

33 *Id.* at 75.

34 *See Miller*, 132 S. Ct. at 2460-62. In the first of two cases at bar, defendant Jackson, fourteen, decided to rob a video store with two friends.

35 *Id.* at 2464.

36 *Id.* at 2465.

37 *Id.* at 2469.

38 *Id.* With this distinction in mind, for simplicity's sake, throughout the rest of this Note juvenile life imprisonment without parole without individualized consideration of youth as a mitigating factor may be referred to as mandatory life without parole.



likely to violate the Constitution's ban on cruel and unusual punishment.³⁹ Specifically, juveniles may no longer be subjected to the death penalty or to a sentence of life imprisonment without parole unless individualized consideration is given to their youth.

II. CONTRASTING APPLICATIONS OF *GRAHAM* AND *MILLER*

Miller left unanswered the issue raised in *People v. Caballero*: does the ban on life imprisonment without parole for juveniles also apply to aggregate term-of-years sentences that place parole eligibility outside the natural life expectancy of the juvenile?⁴⁰ State and circuit courts remain divided on the answer to this question.

Those that have held lengthy aggregate term-of-years sentences to be unconstitutional have viewed them as essentially *de facto* life imprisonment without parole sentences.⁴¹ Per *Graham*, the juvenile offender is constitutionally required to have an opportunity to "demonstrate growth and maturity" in support of his release from prison.⁴² Because of the way that aggregate sentences can be imposed consecutively, in cases like *Caballero* the defendant would not be eligible for parole until long after his natural life has expired.⁴³ Having a sentence imposed wherein eligibility for parole starts after death is a sentence that is "materially indistinguishable from a life sentence without parole."⁴⁴ This type of sentence, like that of life imprisonment without parole, "essentially means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of the [juvenile] convict, he will remain in prison for the rest of his days."⁴⁵ While each of the term-of-years sentences making up the juvenile offender's sentence may be constitutional on its own, the aggregate sentence—the reality of the situation—

violates the mandates of *Graham* and *Miller*.⁴⁶

Those courts that have held lengthy aggregate term-of-years sentences to be constitutional have emphasized the particular, specific language of *Graham* and *Miller* and displayed an overall reluctance to render a class of punishments unconstitutional without explicit guidance from the Supreme Court. In a situation of aggregate sentences, each singular sentence is constitutional on its own.⁴⁷ In order to render aggregate sentences unconstitutional, courts would have to make a substantial step to consider the sentences as a whole, not individually.⁴⁸ Some courts have refused to do so because *Graham* and *Miller* explicitly limit their holdings to sentences of life without parole.⁴⁹ "Nothing in *Graham* even applies to sentences for multiple convictions, as *Graham* conducted no analysis of sentences for multiple convictions and provides no guidance on how to handle such sentences."⁵⁰ As Justice Alito claimed in his dissent from *Graham*, "[n]othing in the Court's opinion affects the imposition of a sentence to a term of years without the possibility of parole."⁵¹ Without express indication from a majority of the Supreme Court, lower courts defer to their legislatures which have established the potential for these lengthy aggregate sentences.⁵²

Lower courts' reactions to *Graham* and *Miller* differ according to whether they assign a micro or macro view to the holdings expressed therein. For courts like California's Supreme Court in *Caballero* and the Ninth Circuit Court in *Moore*, lengthy aggregate term-of-years sentences are "materially indistinguishable" from life imprisonment without parole.⁵³ As such, the holdings of *Miller* and *Graham* should apply to these sentences. For courts like Louisiana's Supreme Court in *Brown*, the Supreme Court was explicit in its terminology limiting

39 *Id.* at 2470.

40 *Caballero*, 282 P.3d 291, 293 (Cal. 2012).

41 *See, e.g., id.* at 294-95.

42 *Graham*, 560 U.S. at 72-73.

43 *See Caballero*, 282 P.3d at 295.

44 *Moore v. Biter*, 725 F.3d 1184, 1191 (9th Cir. 2013).

45 *Brown v. State*, 10 N.E.3d 1, 8 (Ind. 2014) (quoting *Graham*, 560 U.S. at 70) (internal quotation marks omitted).

46 *See id.*

47 *State v. Brown*, 118 So.3d 332, 341-42 (La. 2013).

48 *See, e.g., Moore*, 725 F.3d at 1191.

49 *See Bunch v. Smith*, 685 F.3d 546, 551-52 (6th Cir. 2012).

50 *Brown*, 118 So.3d at 341.

51 *Graham*, 560 U.S. at 124 (Alito, J., dissenting).

52 *See, e.g., id.* at 341-42 ("[A]bsent any further guidance from the United States Supreme Court, we defer to the legislature which has the constitutional authority to authorize such sentences.")

53 *See supra* notes 41-46 and accompanying text.



its holdings to only life imprisonment without parole, and without any indication to the contrary, lower courts should not extend the holding past this limitation.⁵⁴

III. CALIFORNIA'S SOLUTION: § 3051

In *People v. Caballero*, California held that lengthy aggregate sentencing violates the Eighth Amendment.⁵⁵ As a result of this holding, the California legislature sought to remedy this unconstitutional practice within its criminal justice system to give juvenile offenders their constitutionally required "meaningful opportunity for release."⁵⁶ Ultimately, the legislature passed § 3051 into law, offering juveniles incarcerated for lengthy aggregate sentences the opportunity to have individualized consideration for parole after twenty-five years.⁵⁷

In the passage of § 3051, as proposed by Senate Bill No. 260, the legislature recognized that fundamental differences exist between juvenile and adult offenders and that these differences diminish the moral culpability of the juvenile offender.⁵⁸ The legislature intended for § 3051 to "create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established."⁵⁹ In other words, § 3051 was explicitly intended to ensure that the demands of *Miller* were met in the context of aggregate term-of-years sentences.⁶⁰

Under § 3051, any person who was under the age of eighteen when he committed an offense is eli-

gible for parole per the following classification:⁶¹

Punishment	Year of Incarceration Eligible for Parole
Determinate Sentence	15th Year ⁶²
Less than 25 Years to Life	20th Year ⁶³
25 Years to Life	25th Year ⁶⁴

Unlike the 110-year waiting period for parole that Caballero originally faced, here, the juvenile offender—given a typical life span—will live to have parole considered. At the parole hearing, the offender will receive a meaningful opportunity for release that considers the age at which the offender committed his crime.⁶⁵

IV. CONSTITUTIONALITY ANALYSIS AND NATIONWIDE APPLICATION OF § 3051

Though some jurisdictions have attempted to limit the application of *Graham* and *Miller* by looking only to the specific text of these opinions and refusing to look at current sentences in the aggregate, other jurisdictions have seen that lengthy term-of-years sentences in the aggregate violate the standards set by these cases.⁶⁶ Because parole eligibility does not occur within the natural life span of the juvenile offender, no constitutionally required "meaningful opportunity for release" is given to him.⁶⁷ Considering the unconstitutionality of these lengthy aggregate term-of-years sentences, state legislatures should take the initiative to pass legislation similar to that of California, which ensures that offenders receive their "meaningful opportunity for release."⁶⁸

A. Constitutionality Question: *Caballero* has it Correct

Jurisdictions arguing for the constitutionality of lengthy aggregate term-of-years sentences argue that the language in *Graham* and *Miller* focus solely on life imprisonment without parole.⁶⁹ While this language in

54 See *supra* notes 47-52 and accompanying text.

55 *Caballero*, 282 P.3d 291, 295 (Cal. 2012).

56 See *Graham*, 560 U.S. 48, 75 (2010).

57 CAL. PENAL CODE § 3051 (West 2015).

58 S. 260, 2013-2014 Leg., 2013 Reg. Sess. (Cal. 2013) ("The Legislature recognizes that youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society.").

59 *Id.*

60 See *id.*

61 § 3051(a)(1).

62 § 3051(b)(1).

63 § 3051(b)(2).

64 § 3051(b)(3).

65 § 3051(e).

66 See *supra* Part II.

67 *Graham*, 560 U.S. at 75.

68 See *infra* Section IV.B.

69 See *Graham*, 560 U.S. at 63 ("The instant



Graham is often cited in arguments in support of aggregate sentences,⁷⁰ the context of the opinion is discussing the distinction between juveniles convicted of homicide offenses and non-homicide offenses, not life imprisonment without parole and other sentences.⁷¹ Still, *Graham* and *Miller* can be narrowly limited to their facts, which involve only life imprisonment without parole.⁷²

The Supreme Court has not yet extended *Graham* and *Miller* outside of the life imprisonment without parole context, but, as *Caballero* and other cases point out, lengthy aggregate term-of-years sentences are *de facto* life imprisonment without parole sentences and the reasoning of *Graham* and *Miller* is therefore certainly applicable.⁷³ The *Graham* and *Miller* decisions were

der of his life in prison, knowing that he is guaranteed to die in prison regardless of his remorse, reflection, or growth.”⁷⁶ Life imprisonment without parole imposed upon a juvenile violates the Eighth Amendment because it offers no opportunity for release; likewise, lengthy aggregate term-of-years sentences offer the juvenile offender no opportunity for release.⁷⁷

The only practical difference between these two types of sentences is their titles.⁷⁸ In practice, the two sentences operate to mandate the same type of punishment upon the juvenile offender, a punishment that has been ruled unconstitutional by the Court. States should recognize that the reasoning of *Graham* and *Miller* applies to aggregate term-of-years sentences, rendering

EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.

explicitly predicated on the fact that juveniles receiving life imprisonment without parole sentences will have no hope for release.⁷⁴ The bans on life imprisonment without parole imposed by these opinions were an attempt to “avoid[] the perverse consequence in which the lack of maturity that led to an offender’s crime is reinforced” by the impossibility of release.⁷⁵ Just as a juvenile offender sentenced to life imprisonment without parole, a juvenile offender sentenced to a lengthy aggregate term-of-years sentence “must live the remain-

them unconstitutional, and move to remedy their penal systems accordingly.⁷⁹

76 *Moore*, 725 F.3d at 1192.

77 *See id.* at 1191-92 (“[S]entence of 254 years is materially indistinguishable from a life sentence without parole because [the defendant] will not be eligible for parole within his lifetime. . . . His sentence results in the same consequences as *Graham*’s sentence.”).

78 *See Caballero*, 282 P.3d at 295 (referencing the defendant’s 110-year sentence as a “term-of-years sentence that amounts to the functional equivalent of a life without parole sentence”).

79 *See infra* Section IV.B. While states could wait until the Supreme Court hears a case on this matter, some assert that the Court’s usage of capital punishment jurisprudence to reach the holdings in *Graham* and *Miller* means that the Court will be reluctant to tackle these issues head-on or with cost-effective categorical rules. *See* Sean Craig, *Juvenile Life Without Parole Post-Miller: The Long, Treacherous Road Towards a Categorical Rule*, 91 WASH. U. L. REV. 379, 403-06 (2013). In the meantime, conservative circuits may continue to deny habeas petitions of juveniles advocating that their lengthy aggregate term-of-years sentence violated clearly established federal law of *Graham*, because the Court has not yet explicitly spoken on the mat-

case concerns only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense.”).

70 *E.g.*, *Bunch*, 685 F.3d at 551.

71 *See Graham*, 560 U.S. at 63 (“The State contends that this study’s tally is inaccurate because it does not count juvenile offenders who were convicted of both a homicide and a nonhomicide offense . . .”).

72 *See id.* at 52; *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012).

73 *See, e.g.*, *Caballero*, 282 P.3d 291, 294-95 (Cal. 2012).

74 *See, e.g.*, *Graham*, 560 U.S. at 79 (“Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope.”).

75 *Id.*



B. Why § 3051 is an Adequate Answer

The imposition of lengthy aggregate term-of-years sentences imposed upon juveniles is an unconstitutional practice because it places parole eligibility outside of the juvenile's lifespan.⁸⁰ Implementing a solution to remove the unconstitutionality from juvenile sentencing, however, raises many practical questions. First, at what point is the Eighth Amendment implicated?⁸¹ Clearly, a 110-year sentence as in *Caballero*⁸² or a 254-year sentence as in *Moore*⁸³ do so because the juvenile offender will die prior to parole eligibility. But what about a 60-year sentence? A 40-year sentence? In order to be a *meaningful* opportunity for release, at what phase of the offender's life must parole eligibility begin? Second, can an offender's life be quantified in that manner? While estimates exist as to life expectancy, variations exist based on gender and age, and life expectancy is also significantly shorter in prison.⁸⁴ Finally, should

ter. *See Bunch*, 685 F.3d at 552 (holding that denying the defendant's petition was "further supported by the fact that courts across the country are split over whether *Graham* bars a court from sentencing a juvenile nonhomicide offender to consecutive, fixed terms resulting in an aggregate sentence that exceeds the defendant's life expectancy"). Until the Court has spoken, defendants like the defendant in *Bunch* will receive no relief where it should be mandated.

80 *See supra* Section IV.A.

81 *See Caballero*, 282 P.3d at 295 (requiring that a "state must provide a juvenile offender 'with some *realistic opportunity* to obtain release' from prison during his or her expected lifetime") (emphasis added).

82 *Id.* at 293.

83 *Moore*, 725 F.3d at 1191.

84 Mortality tables exist and are currently utilized by government agencies including the Internal Revenue Service and the Social Security Administration and could be utilized. However, their usage in sentencing may create an avenue for challenge by an offender with health issues. Additionally, it is unclear whether the courts should use estimated mortality based on a person outside of prison, or estimated mortality based on an imprisoned individual.

there be a bright-line rule or a case-by-case basis for reviewing the offenders' eligibility for parole?

Thus far, § 3051, implemented by the California legislature in response to the *Caballero* ruling, is the most effective solution to these issues.⁸⁵ Rather than complex calculations as to the life expectancy of each juvenile offender, § 3051 sets up a tiered system whereby the offender will be eligible for parole in a set amount of years depending on his initial sentence.⁸⁶ This system ensures that those offenders who committed the worst crimes—those receiving an original sentence of twenty-five years to life—will also serve the greatest amount of time in prison before becoming parole-eligible.⁸⁷ Additionally, the statute only mandates that juvenile offenders will become parole-eligible at the designated time and meet with the parole board.⁸⁸ It does not mandate any type of release for the offender, only the possibility of release.⁸⁹ Therefore, in order to be released, the offender must still satisfy the requirements of that state for being awarded parole.⁹⁰ The statute does not functionally affect how the state makes the decision to grant parole, except to ensure that the diminished culpability of youth is taken into account as a factor.⁹¹

Section 3051 provides a solution to *Graham's* mandate of providing juvenile offenders with "meaningful opportunity for release" while furthering the pedagogical justifications for punishment. While opponents may argue that offering parole to juvenile offenders sentenced to lengthy term-of-years sentences violates the principles of retribution and incapacitation, those offenders with the worst crimes are, at minimum, still subjected to twenty-five years in prison without parole—the entire period of the juvenile's young adulthood.⁹² Additionally, offenders only receive the opportunity for parole: should the circumstances of the crime and the development—or lack thereof—of the offender indicate that the offender should remain in prison, parole will be denied. Just as *Graham* and *Miller* do not require eventual release of a juvenile offender, neither does §

in their calculations.

85 *See supra* Part III for more information on § 3051.

86 § 3051(b).

87 § 3051(b)(3).

88 § 3051(c).

89 *Id.*

90 § 3051(c)-(f).

91 § 3051(f)(1).

92 § 3051(b)(3).



3051.⁹³ As to deterrence, doubt exists as to whether juveniles are truly susceptible to systematic deterrence.⁹⁴ If juveniles can be deterred, however, the prospect of being imprisoned without parole for a greater amount of years than the offender has been alive must certainly be considered a deterring factor. Finally, § 3051 clearly supports the goal of rehabilitation.⁹⁵ The unique characteristics of juveniles demonstrate that they are receptive to rehabilitation and, considering their stage in character and brain development, more deserving of rehabilitation than adult offenders.⁹⁶

Importantly, § 3051 also does not call for a major alteration of the state's existing penal system. By only providing a system for parole eligibility, the legislation can be implemented more easily than a system calling for the reform of the penal code. Lengthy aggregate term-of-years sentencing occurs where the prosecution proves beyond a reasonable doubt each crime committed and the offender receives for each crime the constitutional, proportionate sentence for that crime. Section 3051 reflects the fact that these individual sentences are legitimate and only pose constitutional issues in the aggregate in that they offer no opportunity for release to the offender. Alternative arrangements wherein the penal code is modified to prevent these sentences from occurring in the first place may place too much discretion in the hands of judges or prosecutors; be costly in that they require a new, original system; or indicate a weakening of the state's dedication to the principles of retribution and incapacitation.

Ultimately, even if the Supreme Court chooses to avoid a decision on the constitutionality of lengthy aggregate term-of-years sentencing upon juveniles, the system proposed by § 3051 simply allows for consideration of parole after a set amount of years, which serves the rehabilitative goal of allowing the release of sufficiently matured and reformed offenders, while not sacrificing retribution and incapacitation. The system is an effective way of implementing the "meaningful

opportunity for release" required by *Graham* and *Miller* within the structure of an existing penal system. States legislatures should follow California's lead and implement legislation parallel to § 3051 in their own states, ensuring that juveniles will always be afforded their constitutional right to an opportunity for release.

CONCLUSION

The imposition of lengthy aggregate term-of-years sentences for juveniles without parole and without individualized consideration of their youth in sentencing violates the Eighth Amendment.⁹⁷ California's implementation of a tiered parole eligibility statute, § 3051, represents a workable solution to this issue that takes into consideration the special status that the Supreme Court has consistently afforded juvenile offenders.⁹⁸ As such, other states should take the initiative in passing similar legislation in their own jurisdictions.⁹⁹

93 See *Graham*, 560 U.S. at 75. ("A State is not required to guarantee eventual freedom to a juvenile offender . . .").

94 See *id.* at 72.

95 See S. 260, 2013-2014 Leg., 2013 Reg. Sess. (Cal. 2013) ("[A]s a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society.").

96 See *Graham*, 560 U.S. at 73-74.

97 See *supra* Section IV.A.

98 See *supra* Section IV.B.

99 See *supra* Section IV.B.



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About the AUTHOR
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Elizabeth C. Kingston received her Bachelor's degree from Grand Valley State University and will receive her Juris Doctor from Michigan State University this spring. Prior to law school, she worked as a paralegal, handling various breach-of-contract, debt collection, and receivership matters. At MSU Law, Ms. Kingston serves as a Notes Editor of the Michigan State Law Review and as President of the Women's Law Caucus. She currently works for a criminal defense firm and, following graduation, will be a Research Attorney with the Michigan Court of Appeals.