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# Paying the Price: Eliminating Life Without Parole Sentences for Juveniles in Rhode Island

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*"There is nothing more dangerous than a man without hope."* – Craig Price[1]

## INTRODUCTION

On a dark summer night, with the only light coming from a sky of stars, a young man hopped a stockade fence and began the calculated process of peering through windows and turning the knobs on locked doors, searching for any way into a quiet suburban house.[2] Finally, he found an entry point—a wide open kitchen window with a wire mesh screen that was easily slashed open within moments.[3] After climbing through the window and

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1. Mark Arsenault, *'Into Another World' – Craig Price's Story*, PROVIDENCE J., Mar. 7, 2004, at A1. All information from articles written by Mark Arsenault appeared in a three-day series published in the Providence Journal. *See id.*; *see also* Mark Arsenault, *'This Dark Deed' – Craig Price's story*, PROVIDENCE J., Mar. 8, 2004, at A1; Mark Arsenault, *'Flame of hope' – Craig Price's story*, PROVIDENCE J., Mar. 9, 2004, at A1. Arsenault visited with Craig Price in jail two times per month, from mid-2002 to 2004. Arsenault, *'Into Another World'*, *supra*. Arsenault was not permitted to bring a notepad or tape-recorder into the interviews, but Price and he exchanged letters based on their conversations. *Id.*

2. *See* Arsenault, *'This Dark Deed'*, *supra* note 1.

3. *See id.*

onto the kitchen table, he began stealthily moving through the house looking for his intended victim.[4] However, what he came across instead was the hand of an eight-year-old girl touching his stomach while her eyes met his.[5] As he tried to keep the girl from screaming by clasping his hand over her mouth, he tripped, allowing the child to let out a short high-pitched scream.[6] At this point, everything started to deteriorate. As the child's mother appeared, the intruder slammed her against the wall, whereupon she desperately gasped for her children to call 911.[7] Another child, this one slightly older than the first, knelt beside her mother, saying nothing as if she were in shock.[8]

Two days later, the bodies of Melissa, Jennifer, and Joan Heaton were found inside their home.[9] Melissa, eight years old, was stabbed seven times.[10] Jennifer, ten years old, was stabbed sixty-two times.[11] Joan, the mother, was stabbed eleven times.[12] The killer had taken with him evidence of the murder weapons, including the set of steak knives in a kitchen block Joan bought hours earlier.[13] This is not the story of a far removed tragedy that one may only hear recounted late into the night while watching crime show reruns. This is the story of a family from Warwick, Rhode Island, whose gruesome murders on September 1, 1989, left Rhode Islanders perpetually paranoid and fearful.[14] This fear was amplified when investigators linked the Heatons' murderer to the unsolved death of Rebecca Spencer, who had been brutally murdered in her Warwick home two years earlier.[15] As may be

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4. *See id.* Price asserts that he was planning to kill Joan Heaton, but had every intention of letting her two children live. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*
12. *See id.*
13. *See id.* A receipt reflected a purchase of a set of steak knives in a knife block at the Christmas Tree Shop in Warwick, Rhode Island, at 7:24 PM on September 1, 1989, by Joan Heaton, just hours before she and her daughters were murdered. *Id.*
14. *See id.* Before anyone was charged, two Warwick gun dealers reported selling eleven firearms the week after the murders. *See id.*
15. *See id.* On July 27, 1987, thirteen-year-old Craig Price killed twenty-seven-year-old Rebecca Spencer, stabbing her fifty-eight times. *Id.*

expected from a place where one can drive the length of the state in just an hour, the people of Rhode Island have yet to heal from this wound inflicted on them by the "official state demon": fifteen-year-old Craig Price.[16]

At the time of Price's conviction, the maximum sentence that a juvenile offender could receive was detention at the Training School until his or her twenty-first birthday.[17] A swift and reverberant public outcry spurred the Rhode Island General Assembly to amend the state juvenile sentencing scheme to permit juvenile offenders of any age to be waived into adult court and thereupon be subject to adult sentencing, including being sentenced to life without parole (LWOP).[18] However, these post-Price changes predated a series of United States Supreme Court cases recognizing that juveniles are constitutionally different from adults, and thus, are not deserving of the harshest punishment.[19]

In its tripartite ruling on juvenile sentencing in *Roper v. Simmons*,[20] *Graham v. Florida*,[21] and *Miller v. Alabama*,[22] the United States Supreme Court has indicated that it is a rare instance where LWOP is appropriate for even the most egregious offenses committed by a juvenile.[23] The United States Supreme Court has not addressed whether a categorical ban on LWOP for juvenile offenders is constitutionally required, but given all that the Court has said, it follows that the imposition of a LWOP sentence for a juvenile offender violates the Eighth Amendment to the United States Constitution and Article 1, Section 8, of the

16. *See id.*

17. *See* Arsenault, *'Flame of hope,' supra* note 1. The Rhode Island Training School is a detention facility "[f]or youth who have been adjudicated as delinquent and those awaiting trial for serious offenses." *Juvenile Correctional Services*, R.I. DEP'T OF CHILD., YOUTH, AND FAMILIES, http://www.dcyf.ri.gov/juvenile_corrections.php (last modified Apr. 3, 2015).

18. *See* John J. Cloherty, III, *The Serious Juvenile Offender in the Adult Criminal System: The Jurisprudence of Rhode Island's Waiver and Certification Procedures*, 26 SUFFOLK U. L. REV. 407, 407–08 (1992); *see also infra* Part II.B.

19. The "Craig Price Legislation" was passed by the General Assembly in 1990. *See* Cloherty, *supra* note 18, at 407–08 nn.5–6. The United States Supreme Court rendered decisions considering the constitutionality of juvenile sentences between the years of 2005 to 2012. *See infra* Part I.C.

20. 543 U.S. 551 (2005).

21. 560 U.S. 48 (2010).

22. 567 U.S. 460 (2012).

23. *See infra* Part I.C.

Rhode Island Constitution.[24] LWOP for a juvenile offender constitutes cruel and unusual punishment because the sentence is unconstitutionally disproportionate when viewed in the context of the unique characteristics of juvenile offenders. As the Rhode Island Supreme Court has declared, "it is the prerogative of the General Assembly to define criminal offenses and set forth the sentences for those crimes."[25] Accordingly, the General Assembly should pass legislation categorically eliminating LWOP sentences for juvenile offenders and giving all juvenile offenders a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation at a parole board hearing after fifteen years served.[26]

This Comment contains three parts. Following this Introduction, Part I explores the background of LWOP sentences for juvenile offenders, beginning with the distinction between mandatory and discretionary LWOP sentences, then moving to the current state of juvenile sentencing law in Rhode Island. Part I then shifts focus to three decisions of the United States Supreme Court, which have recognized that juveniles are constitutionally different from adults for purposes of sentencing. Part I concludes with a comparison of cruel and unusual punishment under the Rhode Island and United States Constitutions. Part II argues that Rhode Island can, and should, categorically ban LWOP sentences for juvenile offenders because LWOP for juveniles constitutes cruel and unusual punishment, makes limited

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24. *See supra* Part II.A.

25. State v. Monteiro, 924 A.2d 784, 793 (R.I. 2007).

26. *See* H. 5183, 2017 Gen. Assemb., Jan. Sess. (R.I. 2017); S. 0237A, 2017 Gen. Assemb., Jan. Sess. (R.I. 2017). During the 2017 legislative session, the Senate passed the bill, twenty-eight in favor and eight against, while the companion House bill was held for further study. Jacqueline Tempera & Patrick Anderson, *R.I. Senate passes bill ending life-without-parole sentences for juveniles*, PROVIDENCE J. (June 15, 2017, 5:59 PM), http://www.providencejournal.com/news/20170615/ri-senate-passes-bill-ending-life-without-parole-sentences-for-juveniles. The legislation was re-introduced during the 2018 session and assigned different bill numbers—Senate Bill 2272 and House Bill 7596. *See* S.B. 2272, 2018 Leg., Jan. Sess. (R.I. 2018); H.B. 7596, 2018 Leg., Jan. Sess. (R.I. 2018); *see also* Katherine Gregg, *R.I. bill would allow earlier parole for those sentenced for crimes committed under age 18*, PROVIDENCE J. (March 27, 2018), http://www.providencejournal.com/news/20180327/ri-bill-would-allow-earlier-parole-for-those-sentenced-for-crimes-committed-under-age-18.

contributions to the goals of punishment, and violates proportionality. Part II then proposes that the appropriate cure for the unconstitutionality of Rhode Island's current sentencing scheme is passage of legislation by the Rhode Island General Assembly that categorically bans LWOP sentences for juvenile offenders and provides for mandatory parole review hearings for juvenile offenders after fifteen years served. Part II concludes by showing that the arguments against passage of legislation advanced by the Rhode Island Attorney General are unsound, unwarranted, and fail to accurately recognize the unique characteristics of youthfulness that render LWOP a cruel and unusual punishment when imposed on a juvenile offender. Finally, Part III concludes by challenging the Rhode Island General Assembly to give every juvenile offender hope to one day demonstrate the maturity and rehabilitation required for release at a parole hearing by enacting passage of appropriate legislation.

## I. BACKGROUND

### *A. Mandatory vs. Discretionary Life Without Parole*

The United States Supreme Court has held that mandatory LWOP sentences for juvenile offenders are unconstitutional.[27] Mandatory LWOP sentencing schemes treat all offenders identically and force the sentencing judge to prescribe this sentence for every offender found guilty of a crime carrying the punishment of LWOP.[28] It is unconstitutional to use a mandatory sentencing scheme when imposing LWOP on a juvenile offender because "mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it."[29]

The constitutionality of a discretionary LWOP sentence for a juvenile homicide offender has never been addressed by the United States Supreme Court, nor by the Rhode Island Supreme Court, leaving it a viable sentence to be imposed on juvenile offenders. A discretionary sentencing scheme allows for the sentencer to use his or her discretion with regard to how to

27. *See Miller*, 567 U.S. at 465; *see infra* Part I.C.3.

28. *See* Robert S. Chang et al., *Evading* Miller, 39 SEATTLE U. L. REV. 85, 90 (2015).

29. *Miller*, 567 U.S. at 476.

sentence the offender, including, for a juvenile offender, taking into account "an offender's age and the wealth of characteristics and circumstances attendant to it."[30] These youth-specific characteristics and circumstances include:

> (1) the offender's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences";
> (2) "the family and home environment that surrounds [the offender]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional";
> (3) "the circumstances of the homicide offense, including the extent of [the offender's] participation in the conduct and the way familial and peer pressures may have affected [them]"; and
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> (4) "that [the offender] might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, [their] inability to deal with police officers or prosecutors (including on a plea agreement) or [their] incapacity to assist [their] own attorneys."[31]

However, as discussed below, a sentencer's discretion to account for these youth-specific characteristics and circumstances is not enough to overcome the unconstitutionality of imposing a LWOP sentence on any juvenile offender.

### *B. Current State of Juvenile Sentencing Law in Rhode Island*

Under Rhode Island's current statutory scheme, a juvenile offender who has been charged with certain statutorily enumerated crimes will be sentenced under one of two divergent sentencing schemes—either lenient punishment as a child in family court or standard sentencing as an adult in adult court pursuant to a waiver from juvenile court to adult court.[32] Absent a waiver to adult court or a certification in Family Court, no sentence or probation imposed upon a juvenile offender can last

30. *Id.*; *see also* Chang et al., *supra* note 28, at 99.
31. *Miller*, 567 U.S. at 477–78.
32. *See id.* at 488; 14 R.I. GEN. LAWS §§ 14-1-1 to -71 (2002).

past his or her nineteenth birthday.[33] As such, in order for the standard adult sentencing scheme—which includes discretionary LWOP[34]—to be imposed upon a juvenile offender, the crime charged must be punishable by life imprisonment or constitute a felony if committed by an adult.[35] To effectuate the waiver process, the Attorney General must move for a waiver hearing in the family court, whereupon the court must find by a preponderance of the evidence that: (1) probable cause exists that the offense charged has been committed and that the child charged has committed it; and (2) that the child's prior offenses, history of treatment, or the heinous or premeditated nature of the offense is such that the court finds that the interests of society or the protection of the public necessitate the waiver of jurisdiction of the court over the child.[36]

Once a juvenile offender has been waived into adult court, the standard adult sentencing scheme applies. In Rhode Island, the penalty for first-degree murder is life and the penalty for first-degree murder plus an aggravating factor is discretionary LWOP.[37] If a defendant is sentenced to life in prison with the

33. 14 R.I. GEN. LAWS § 14-1-6 (2002). In 2007, the age limit in which no sentence or probation imposed upon a juvenile offender could extend beyond was changed from twenty-one to nineteen. *Id.* Certification in Family Court occurs after a showing of certain required elements by the prosecution. Once a defendant is certified, he or she is entitled to a jury trial on the charges; this is the only situation when a defendant is afforded a jury trial in Family Court. After being found guilty at the jury trial (or bench trial if the defendant waived his or her right to a jury), an adult sentence can be imposed upon the defendant. The defendant will serve up until his or her nineteenth birthday at the training school, whereafter the balance of the sentence can be suspended with probation, or the offender can be ordered to serve the remainder of his or her sentence at the Adult Correctional Institution. *See* Cloherty, *supra* note 18, at 428–29.

34. 11 R.I. GEN. LAWS § 11-23-2 (2002).

35. 14 R.I. GEN. LAWS § 14-1-7 (2002).

36. *Id.* §§ 14-1-7, -7.1. If the juvenile is charged with a crime that constitutes a felony if committed by an adult and the juvenile is under sixteen-years-old, the court must make minor additional findings to effectuate the certification or waiver process. *Id.* § 14-1-7.2.

37. These aggravating factors are:

> (1) committed intentionally while engaged in the commission of another capital offense or other felony for which life imprisonment may be imposed; (2) committed in a manner creating a great risk of death to more than one person by means of a weapon or device or substance which would normally be hazardous to the life of more

possibility of parole, a parole permit may be issued after a minimum of fifteen to twenty-five years served, depending on the year and the crime that was committed.[38]

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> than one person; (3) committed at the direction of another person in return for money or any other thing of monetary value from that person; (4) committed in a manner involving torture or an aggravated battery to the victim; (5) committed against any member of the judiciary, law enforcement officer, corrections employee, assistant attorney general or special assistant attorney general, or firefighter arising from the lawful performance of his or her official duties; (6) committed by a person who at the time of the murder was committed to confinement in the adult correctional institutions or the state reformatory for women upon conviction of a felony; or (7) committed during the course of the perpetration or attempted perpetration of felony manufacture, sale, delivery or other distribution of a controlled substance otherwise prohibited by the provisions of chapter 28 of title 21; shall be imprisoned for life and if ordered by the court pursuant to chapter 19.2 of title 12 that person shall not be eligible for parole from imprisonment.

11 R.I. GEN. LAWS § 11-23-2 (2002). Additionally, LWOP can be sentenced if any person under the age of eighteen is kidnapped "by a person other than his or her natural or adopted parent dies as a direct result of the kidnapping." 11 R.I. GEN. LAWS § 11-23-2.1 (2002). If the prosecution, within the proper time frame, recommends that LWOP be imposed,

> the court shall, upon return of a verdict of guilty of murder in the first degree by the jury, instruct the jury to determine whether it has been proven beyond a reasonable doubt that the murder committed by the defendant involved one of the circumstances enumerated in § 11-23-2 or 11-23-2.1 as the basis for imposition of a sentence of life imprisonment without parole. If after deliberation the jury finds that one or more of the enumerated circumstances was present, it shall state in writing, signed by the foreperson of the jury, which circumstance or circumstances it found beyond a reasonable doubt. Upon return of an affirmative verdict, the court shall conduct a presentence hearing. At the hearing, the court shall permit the attorney general and the defense to present additional evidence relevant to a determination of the sentence to be imposed . . . . After hearing evidence and argument relating to the presence or absence of aggravating and mitigating factors, the court shall, in its discretion, sentence the defendant to either life imprisonment without parole or life imprisonment.

12 R.I. GEN. LAWS § 12-19.2-1 (2002).

38. *See* 13 R.I. GEN. LAWS § 13-8-13 (2002). For example, a prisoner sentenced to life imprisonment for first or second-degree murder committed after July 10, 1989, but before June 30, 1995, must serve fifteen years before the parole permit may be issued. A prisoner sentenced to life imprisonment for the same crime committed after June 30, 1995, but before July 1, 2015, must serve twenty years before the parole permit may be issued. In contrast, a prisoner sentenced to life imprisonment for first or second-degree murder

Since there are no separate penalty provisions for juvenile offenders who have been waived into adult court and there is no minimum age for those who may be transferred to adult court for a crime punishable by life imprisonment, a child of *any* age can be subjected to the standard adult sentencing scheme, including life in prison or LWOP.[39]

### *C. The United States Supreme Court Recognizes That Juveniles are Constitutionally Different from Adults*

In a series of cases from 2005 to 2012, the United States Supreme Court developed a body of case law recognizing that juveniles are constitutionally different from adults and, because of these differences, certain punishments that are constitutional when applied to adults are rendered unconstitutional when applied to juveniles.[40]

#### *1. Death Penalty for Juvenile Offenders Under Eighteen Years Old is Unconstitutional*

The death penalty for all juvenile offenders under the age of eighteen violates the Eighth Amendment prohibition against cruel and unusual punishment.[41] In *Roper v. Simmons*, the United States Supreme Court relied upon three significant differences between juveniles and adults that indicate juveniles cannot be

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committed after July 1, 2015, must serve twenty-five years before the parole permit may be issued. *See id.*

39. 11 R.I. GEN. LAWS § 11-23-2 (2002); 13 R.I. GEN. LAWS § 13-8-13 (2002). While there are no categorical age limits imposed on when a juvenile can be transferred to adult court, the juvenile must be competent to stand trial. A person is considered to be "competent to stand trial if he or she is able to understand the character and consequences of the proceedings against him or her and is able properly to assist in his or her defense." 40.1 R.I. GEN. LAWS § 40.1-5.3-3 (2006).

40. *See* Miller v. Alabama, 567 U.S. 460 (2012); Graham v. Florida, 560 U.S. 48 (2010); Roper v. Simmons, 543 U.S. 551 (2005).

41. *See Roper*, 543 U.S. at 568. Decades earlier, in 1979, the Rhode Island Supreme Court declared that the death penalty statute as written in Rhode Island General Laws section 11-23-2 violated the Eighth Amendment to the United States Constitution because it amounted to cruel and unusual punishment. *See* State v. Cline, 397 A.2d 1309, 1311 (R.I. 1979); *see also* U.S. CONST. amend VIII. In 1984, the Rhode Island General Assembly removed the death penalty proviso from the statute, instead replacing it with life imprisonment. *See* 11 R.I. GEN. LAWS § 11-23-2(2002).

considered among the worst offenders, and these differences have continued to be affirmed as crucial distinctions between juveniles and adults in subsequent decisions.[42]

First, children have "[a] lack of maturity and an underdeveloped sense of responsibility," which "often result in impetuous and ill-considered actions and decisions."[43] This leads to "recklessness, impulsivity, and heedless risk-taking" by juveniles.[44] Second, children "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure" and they have "less control, or less experience with control, over their own environment" resulting in an inability for juveniles "to extricate themselves from a criminogenic setting."[45] Lastly, a juvenile offender's character and personality traits are not fully formed, making them less fixed, and less likely to be "evidence of irretrievably depraved character."[46] In support of a juvenile's flexible character, the *Roper* Court relied on studies that evidenced that most juveniles who engage in illegal activities do not develop into chronic offenders with deep-rooted criminogenic behaviors in adulthood.[47]

Taken together, these three differences between juvenile and adult offenders highlight that juveniles have diminished culpability when compared to adults and, as such, it is unconstitutional to sentence a juvenile offender to the death penalty.[48]

### *2. Life Without Parole for Juvenile Nonhomicide Offenders is Unconstitutional*

A LWOP sentence for juvenile nonhomicide offenders violates the Eighth Amendment.[49] In *Graham*, the Court described LWOP

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42. *Roper*, 543 U.S. at 569; *see Miller*, 567 U.S. at 471; *Graham*, 560 U.S. at 68.

43. *Roper*, 543 U.S. at 569 (alteration in original) (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).

44. *Miller*, 576 U.S. at 461.

45. *Roper*, 543 U.S. at 569.

46. *Id.* at 570.

47. *See id.* (citing Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003)).

48. *Id.* at 573.

49. Graham v. Florida, 560 U.S. 48, 74 (2010).

as a forfeiture of the juvenile offender's life that is irrevocable, and to a juvenile it is tantamount to the death penalty itself.[50] A juvenile offender who is sentenced to LWOP will serve "more years and a greater percentage of his life in prison than an adult offender."[51] In reaching this decision, the Court affirmed that "[a]n offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."[52]

Arguing in favor of the constitutionality of LWOP sentences for juvenile nonhomicide offenders, the State of Florida attempted to advance an argument that "[a]ge, as a characteristic of the offender, is already deeply woven into the fabric of state criminal justice systems."[53] However, the Court, while noting that Florida had made efforts to create comprehensive rules governing a juvenile offender's treatment in the criminal justice system, maintained that those rules remained insufficient on their own to adequately address the constitutional rights of juvenile nonhomicide offenders who were sentenced to LWOP.[54]

### *3. Mandatory Life Without Parole for Juvenile Homicide Offenders is Unconstitutional*

Following the Court's decision in *Graham*, only juvenile homicide offenders remained subject to LWOP sentences; however, the spectrum of sentences that can be imposed on a juvenile has subsequently been further reduced, while remaining consistent with the offender's Eighth Amendment right to be free from cruel and unusual punishment.[55] The Court eliminated mandatory LWOP sentences for juvenile offenders, stating there must be some discretion to consider mitigating circumstances

50. *See id.* at 69–70.
51. *Id.* at 70.
52. *Id.* at 76.
53. Brief of Respondent at 50, *Graham*, 560 U.S. 48 (No. 08-7412).
54. *Graham*, 560 U.S. at 76. Florida's efforts included prosecutors being required to charge sixteen/seventeen-year-old offenders as adults only for certain serious felonies; prosecutors having discretion to charge those offenders as adults for other felonies; and prosecutors not being permitted to charge non-recidivist sixteen/seventeen-year-old offenders as adults for misdemeanors. *Id.* at 75.
55. *See* Miller v. Alabama, 567 U.S. 460, 465 (2012).

when sentencing youthful offenders.[56] These mitigating factors include: (1) chronological age; (2) family and home environment; (3) peer pressures; (4) inability to deal with police, prosecutors, and assist defense attorneys; and (5) the greater potential for rehabilitation.[57] Taken together, a sentencing scheme that does not account for these mitigating factors when imposing mandatory LWOP renders such sentences disproportionate.[58]

*Miller* affirmed the bedrock principles that the Supreme Court had been building on for years: that children are different and that this difference indicates "a sentencing rule permissible for adults may not be so for children."[59] In turn, the "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[60] While the Court explicitly declined to address whether the Eighth Amendment requires a categorical ban on LWOP for juvenile offenders,[61] the Court opined that "given all [it has] said in *Roper*, *Graham*, and [*Miller*] . . . about children's diminished culpability and heightened capacity for change, . . . appropriate occasions for sentencing juveniles to th[e] harshest possible penalty will be uncommon."[62]

### *D. Cruel and Unusual Punishment Analysis Under the United States and Rhode Island Constitutions is Identical*

The United States Supreme Court has concluded that the imposition of the death penalty, LWOP for nonhomicide offenders, and mandatory LWOP sentences for homicide offenders violates a juvenile offender's constitutional right under the Eighth Amendment to be free from cruel and unusual punishment.[63] Therefore, an offender's right to be free from cruel and unusual punishment under the Rhode Island Constitution must meet at

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56. *See id.* at 476.
57. *See id.* at 477–78.
58. *See id.* at 473.
59. *See id.* at 481.
60. *Id.* at 474.
*61.* *See id.* at 479. The Court determined that the mandatory LWOP for juvenile homicide offenders was sufficient to decide the case. *Id.*
*62.* *Id.*
63. *See id.* at 465; Graham v. Florida, 560 U.S. 48, 82 (2010); Roper v. Simmons, 543 U.S. 551, 578 (2005).

least this minimum standard.[64]

The Rhode Island Supreme Court has affirmed that the Eighth Amendment of the United States Constitution and Article 1, Section 8, of the Rhode Island Constitution are interpreted identically.[65] Despite the fact that the Rhode Island Constitution has the additional clause that "all punishments ought to be proportionated to the offense,"[66] the Rhode Island Supreme Court has explicitly rejected the argument that this difference in phrasing results in a divergent test from that set out by the United States Supreme Court in accordance with the United States Constitution.[67] In determining that the additional language of the Rhode Island constitutional provision is already inherently part of the Eighth Amendment, the Rhode Island Supreme Court has held that the two constitutional provisions are identical.[68]

The Rhode Island Supreme Court determined that cruel and unusual "punishment is 'excessive' and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime."[69] Further, the Rhode Island Supreme Court found that the application of this second factor hinges on a narrow proportionality principle, and as such, proportionality is determined by whether the sentence is "grossly disproportionate" to the crime.[70] Thus, "a constitutional violation will be found only in extreme circumstances in which the sentence is grossly disproportionate to the offenses for which defendant stands convicted."[71]

Factors to consider when determining whether a sentence is unjustifiably harsh when compared with the crime charged are the nature of the crime, the offender's criminal history, the

64. R.I. CONST. art. 1, § 8.

65. U.S. CONST. amend. VIII; R.I. CONST. art. 1, § 8; State v. Monteiro, 924 A.2d 784, 795 (R.I. 2007).

66. R.I. CONST. art. 1, § 8.

67. *See* McKinney v. State, 843 A.2d 463, 469 (R.I. 2004).

68. *Monteiro*, 924 A.2d at 795; *McKinney*, 843 A.2d at 466.

69. *McKinney*, 843 A.2d at 467 (quoting Coker v. Georgia, 433 U.S. 584, 592 (1977)).

70. *Id.* at 469.

71. *Monteiro*, 924 A.2d at 795.

legislature's intent when it classified the crime, and the public safety interest in incapacitating recidivists.[72] If the sentence is found incommensurate with the gravity of the crime, it is rendered disproportionate and unconstitutional under both the United States and Rhode Island Constitutions.[73]

This, however, should not be misunderstood as a determination that Rhode Island is precluded from interpreting cruel and unusual punishment differently from the federal government.[74] Rhode Island, without violating the Supremacy Clause, "may grant its citizens *broader* protection than the Federal Constitution requires by enacting appropriate legislation or by judicial interpretation of its own Constitution."[75] Therefore, a punishment that has been deemed constitutional, or whose constitutionality under the Eighth Amendment has not been addressed, can be deemed cruel and unusual punishment under Article 1, Section 8, of the Rhode Island Constitution.[76]

## II. ANALYSIS

### *A. Life Without Parole for Any Juvenile Offender is Cruel and Unusual Punishment Under the Eighth Amendment of the United States Constitution and Article 1, Section 8 of the Rhode Island Constitution*

In Rhode Island, juvenile homicide offenders remain subject to discretionary LWOP, but it remains an open question whether this is permissible because the constitutionality of the sentence has not been addressed by the United States Supreme Court, nor by the Rhode Island Supreme Court. However, in *Miller*, the United States Supreme Court acknowledged its decision to leave open the question of whether the Eighth Amendment requires a categorical ban on LWOP for juvenile offenders, but "took pains to make clear that all such [juvenile LWOP] sentences are now suspect."[77]

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72. *McKinney*, 843 A.2d at 470.

*73. Id.*

74. *See* Diatchenko v. Dist. Att'y for Suffolk Dist., 1 N.E.3d 270, 283 (Mass. 2013).

75. Danforth v. Minnesota*,* 552 U.S. 264, 288 (2008) (emphasis added).

76. *See infra* Part II.B.

77. Perry L. Moriearty, Miller v. Alabama *and the Retroactivity of Proportionality Rules*, 17 U. PA. J. CONST. L. 929, 956 (2015).

### *B. Life Without Parole for Juvenile Offenders Makes Limited Contribution to the Goals of Punishment*

One of the factors used to determine whether a punishment is cruel and unusual is if it "makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering."[78] The acceptable goals of punishment traditionally include retribution, deterrence, incapacitation, and rehabilitation.[79] When considering the goals of punishment in connection with a juvenile offender, special attention must be paid to the fact that, regardless of the severity of a crime committed by a juvenile offender, the particular attributes of youthfulness diminish the acceptable penological justification for imposing harsh sentences.[80]

First, juvenile offenders have diminished culpability when compared with adults, and retribution purposes are furthered only when the sentence is "directly related to the personal culpability of the criminal offender."[81] As such, the blameworthiness of the offender is related to determining whether the sentence is warranted.[82]

Second, juvenile offenders are marked by characteristics of "immaturity, recklessness, and impetuosity,"[83] and punishment will only have a deterrent effect when the existence and severity of the punishment creates a disincentive to breaking the law.[84] The impulsivity of juveniles, combined with their irresponsibility and recklessness, "make them less likely to consider potential punishment" when committing a crime.[85]

Third, juvenile offenders being incorrigible is inherently inconsistent with the characteristics of youth, and LWOP

78. McKinney v. State, 843 A.2d 463, 467 (R.I. 2004).

79. Sarah A. Kellogg, *Just Grow Up Already: The Diminished Culpability of Juvenile Gang Members After* Miller v. Alabama, 55 B.C. L. REV. 265, 276 (2014).

80. Miller v. Alabama, 576 U.S. 460, 472 (2012).

81. Tison v. Arizona, 481 U.S. 137, 149 (1987).

82. *See Miller*, 567 U.S. at 472 (internal citations omitted).

83. *Id.* (citing Graham v. Florida, 560 U.S. 48, 73 (2010)).

84. Kellogg, *supra* note 79, at 293.

85. *Miller*, 567 U.S. at 472 (citing *Graham,* 560 U.S. at 72). These characteristics render juvenile LWOP sentences to make limited contribution to both specific and general deterrence goals. *See id.* at 472–73.

punishment will only be justified by incapacitation if there is a judgment that the offender is incorrigible—a habitual offender who will always be a danger to society and who can only be stopped through perpetual imprisonment.[86] With juvenile offenders, this determination is difficult—if not impossible—to make since expert psychologists have problems "differentiat[ing] between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."[87]

Lastly, juvenile offenders have a greater capacity for change and limited moral culpability, making them amenable to rehabilitation, while LWOP "forswears altogether the rehabilitative ideal."[88] The rejection of the goal of rehabilitation reflects "'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change."[89]

*1. Life Without Parole for Juvenile Offenders Violates Proportionality*

Central to the Eighth Amendment of the United States Constitution, and by proxy the identical provision of Article 1, Section 8, of the Rhode Island Constitution, is the concept of proportionality—that a punishment must be proportional to the offense in order to escape the constitutional prohibitions against cruel and unusual punishment.[90] The Rhode Island Supreme Court has interpreted the proportionality requirement of the Rhode Island Constitution the same as that of the United States Constitution.[91] The Rhode Island Supreme Court has explicitly recognized "that the Eighth Amendment contains a narrow proportionality principle such that a criminal sentence is excessive and unconstitutional if . . . it 'is grossly out of proportion to the

86. *See Graham*, 560 U.S. at 72–73.
87. *Id.* at 73.
88. *Id.* at 74.
89. *Miller*, 567 U.S. at 473 (quoting *Graham*, 560 U.S. at 74).
90. *Graham*, 560 U.S. at 59; s*ee* State v. Ouimette, 479 A.2d 702, 706 (R.I. 1984).
*91.* McKinney v. State, 843 A.2d 463, 470 (R.I. 2004). As the decisions of the United States Supreme Court have altered the proportionality doctrine, the Rhode Island Supreme Court has rejected the old tests and adopted the new ones. *Id.*

severity of the crime.'"[92]

The United States Supreme Court, through its rulings on juvenile sentencing, has created a line of reasoning where juvenile offenders are not as culpable or deserving of the harshest punishments as adult offenders. The *Graham* Court found that LWOP for nonhomicide juvenile offenders violated proportionality,[93] and "it support[ed] this reasoning by stating that juveniles are less culpable than adults. The Court's reasoning [did] not distinguish between the *non-homicide* and *homicide* juvenile offender; thus, the abolishment of life without parole should apply to both groups."[94] As such, LWOP for juvenile homicide offenders violates proportionality because "a sentence lacking any legitimate penological justification is by its nature disproportionate to the offense."[95]

### *C. The Rhode Island Supreme Court Can Eliminate LWOP for Juvenile Offenders through Interpretation of Article 1, Section 8, of the Rhode Island Constitution*

Assuming, *arguendo*, that LWOP for juvenile offenders does not violate the proportionality requirement of the Eighth Amendment to the United States Constitution, the Rhode Island Supreme Court has the authority to more strictly interpret Rhode Island's constitutional prohibition against cruel and unusual punishment than the United State Supreme Court has interpreted the Eighth Amendment, providing more protections for juvenile offenders than mandated by the Constitution.[96] Both the United States Supreme Court and scholars have recognized that proportionality cases "exhibit a lack of clarity regarding what factors may indicate gross disproportionality,"[97] and that "[o]ne

92. State v. Monteiro, 924 A.2d 784, 794 (R.I. 2007) (quoting *McKinney*, 843 A.2d at 467).

93. *See Graham*, 560 U.S. at 82.

94. Leslie Patrice Wallace, *"And I Don't Know Why It Is That You Threw Your Life Away": Abolishing Life Without Parole, the Supreme Court in* Graham v. Florida *Now Requires States to Give Juveniles Hope for A Second Chance*, 20 B.U. PUB. INT. L.J. 35, 59 (2010).

95. *Graham*, 560 U.S. at 71; *see supra* Part II.A.1.

96. *See* Samuel Weiss, Note, *Into the Breach: The Case for Robust Noncapital Proportionality Review Under State Constitutions*, 49 HARV. C.R.-C.L. L. REV. 569, 569 (2014).

97. Lockyer v. Andrade, 538 U.S. 63, 72 (2003).

would be hard pressed to identify any other area of constitutional law plagued by such confusion at its very roots."[98] In light of this, it seems unthinkable that the rights of juveniles to be free from LWOP is left subject to a body of law that is unclear, confusing, and lacks intelligible criteria. Accordingly, there is a compelling reason for the Rhode Island Supreme Court to interpret Rhode Island's proportionality requirement more strictly from that of the United States Supreme Court.[99]

*1. The Rhode Island Supreme Court Has Previously Afforded Greater Protections under the Rhode Island Constitution*

As envisioned by Justice Brennan, a state court is permitted to find greater protections of rights and liberties within the state constitution, and by doing so, is in no way conflicting with federal law, so long as the "case [is] plainly decided on independent and adequate state grounds."[100] The Rhode Island Supreme Court affirmed this when it found greater protections against unreasonable searches and seizures under Article 1, Section 6, of the Rhode Island Constitution than the Fourth Amendment to the United States Constituiton.[101] In *Pimental*, the Rhode Island Supreme Court was called upon to address the constitutionality of sobriety checkpoints, of which "neither [it] nor the United States Supreme Court ha[d] considered the constitutionality."[102] Recognizing an ability to hold sobriety checkpoints unconstitutional despite an assumption "that the Fourth Amendment would allow the . . . roadblock stops conducted," the Rhode Island Supreme Court noted that "greater protection may be afforded to citizens under a state constitution even if the federal and state language is similar. The Federal Constitution

98. Tom Stacy, *Cleaning Up the Eighth Amendment Mess*, 14 WM. & MARY BILL RTS. J. 475, 477 (2005).

*99.* *See id.* at 493. Because Rhode Island has a self-proclaimed parallel proportionality requirement to that of the United States Constitution, interpreting it differently than that of the United States Supreme Court would seemingly lack legitimacy in the absence of compelling reasons. *See id.*

100. William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions As Guardians of Individual Rights*, 61 N.Y.U. L. Rev. 535, 551 (1986).

101. *See* Pimental v. Dep't of Transp., 561 A.2d 1348, 1352 (R.I. 1989).

102. *Id.* at 1351.

only establishes a minimum level of protection."[103]

### *2. Massachusetts's High Court Has Afforded Greater Protections than the Eighth Amendment by Categorically Banning Life Without Parole Sentences for Juvenile Offenders*

In 2013, the Supreme Judicial Court of Massachusetts (SJC) held "that the discretionary imposition of a sentence of life in prison without the possibility of parole on juveniles who are under the age of eighteen when they commit murder in the first degree violates the prohibition against 'cruel or unusual punishment[]' in art. 26" of the Massachusetts Declaration of Rights.[104] The SJC examined "the unique characteristics of juvenile offenders that render them 'constitutionally different from adults for purposes of sentencing,'" and concluded that all juveniles offenders "should be afforded a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'"[105] Effectively, this decision "declar[ed] *all* LWOP sentences [for juvenile offenders] unconstitutional under Massachusetts's Article 26."[106]

In line with the reasoning and decision of the SJC, the Rhode Island Supreme Court is free to declare all LWOP sentences for juvenile offenders unconstitutional under Article 1, Section 8, of the Rhode Island Constitution. While the preferable route of the elimination of juvenile LWOP sentences is enactment of legislation by the Rhode Island General Assembly, if the legislature refuses to codify what should be constitutionally required, the Rhode Island Supreme Court can still protect the rights and liberties of juveniles.[107]

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103. *Id*. at 1350, 1351 (citations omitted).

104. MASS. CONST. pt. 1, art. XXVI; Diatchenko v. Dist. Attorney for Suffolk Dist., 1 N.E.3d 270, 284–85 (Mass. 2013) (alteration in original).

105. *Diatchenko*, 1 N.E.3d at 286–87 (first quoting Miller v. Alabama, 567 U.S. 460, 471 (2012); and then quoting Graham v. Florida, 560 U.S. 48, 75 (2010)).

106. Erin D. Knight, Note, *Brought Back to Life: Massachusetts Supreme Judicial Court Resuscitates Parole Eligibility for Juveniles Convicted of First-Degree Murder*, 49 SUFFOLK U. L. REV. 139, 155 (2016).

107. *See id*. at 159–60 (arguing that the SJC's decision in *Diatchenko* warrants the need for legislative action to remedy inconsistencies in the sentencing scheme created by that decision, including, that "juveniles convicted of second-degree murder, a lesser crime, may receive longer periods for establishing parole eligibility than those convicted of first-degree murder.").

### *D. Enactment of Legislation by the General Assembly is a Codification of What Should Be Constitutionally Required to Protect the Rights and Liberties of Juvenile Offenders*

Through appropriate legislation, the General Assembly can amend Title 13, Section 8-13, of the Rhode Island General Laws to add additional language providing that "a prisoner sentenced as an adult for any offense committed prior to the prisoner's eighteenth birthday, is eligible for a parole permit after the prisoner has served fifteen (15) years of [his or her] sentence."[108] In short, anyone who is convicted of a crime prior to his or her eighteenth birthday will be eligible for parole after fifteen years served. This amendment has two important ramifications—the elimination of LWOP sentences for juvenile offenders, and mandatory parole hearings after fifteen years served for juvenile offenders who are sentenced as adults and face substantial sentences, including multiple life sentences.

Scientific evidence confirms that juveniles are physically different from adults, and these differences directly contribute to the decreased blameworthiness of juvenile offenders.[109] Because juvenile offenders' frontal lobes are not fully developed, they often make decisions based on a "gut response," rather than reasoning through their actions and thinking ahead to the consequences.[110] Juveniles are also plagued by hormonal and emotional changes, including testosterone, which is closely associated with aggression.[111] Because a juvenile offender is still in the early stages of the development process, which is reflected by the particular characteristics of youth, fifteen years is an appropriate length of time to guarantee a parole hearing. Fifteen years allows juvenile offenders to mature past the deficiencies associated with adolescence and demonstrate rehabilitation, while still requiring the offenders to spend a substantial percentage of their lives incarcerated. Additionally, juveniles "can generally be expected to change more rapidly in the immediate post-offense years, and to a

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108. H. 5183, 2017 Gen. Assemb., Jan. Sess. (R.I. 2017); S. 0237A, 2017 Gen. Assemb., Jan. Sess. (R.I. 2017).

109. *See* Brooke Wheelwright, Note, *Instilling Hope: Suggested Legislative Reform for Missouri Regarding Juvenile Sentencing Pursuant to Supreme Court Decisions in* Miller *and* Montgomery, 82 MO. L. REV. 267, 288 (2017).

110. *Id.*

111. *Id.*

greater and absolute degree."[112] Thus, the amendment gives a juvenile offender the opportunity to demonstrate those changes to a parole board more immediately than the traditional sentencing scheme would allow for.

### *E. The Rhode Island Attorney General's Argument Against Categorically Banning LWOP for Juvenile Offenders is Insufficient to Protect the Rights of Juveniles and to Support an Unconstitutional Sentencing Scheme*

The current Rhode Island Attorney General (RIAG) is a staunch opponent of enacting legislation that eliminates LWOP for juveniles because it "will preclude the use of the LWOP sentencing statute for the as-yet unknown juvenile criminal who commits an unimaginably horrific crime."[113] The opposition by the RIAG relies on the gruesome nature of a crime to support the continued possibility of LWOP for a juvenile offender, which is parallel to the argument advanced by the State of Alabama in *Miller*.[114] However, the United States Supreme Court invalidated such an argument by pointing out that "none of what it said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific."[115] In turn, the distinctive traits and vulnerabilities of juveniles, which render the imposition of LWOP a cruel and unusual punishment, are just as relevant when an unimaginably horrific crime has been committed.

The RIAG further opposes the legislation on the grounds that there are already enough checks in place in the juvenile criminal

112. MODEL PENAL CODE: SENTENCING § 6.11A cmt. h. (AM. LAW INST., Tentative Draft No. 2, 2011).

113. Letter from Peter F. Kilmartin, R.I. Attorney Gen., to Dominick J. Ruggerio, President, R.I. Senate (June 5, 2017) (on file with author). This letter of opposition was written by the current RIAG, Peter Kilmartin, who will be term limited in January 2019. Therefore, depending on the stance of the newly elected RIAG, the opposition to reforming juvenile sentencing legislation by categorically banning LWOP for juvenile offenders may or may not be met with the same opposition from the newly elected Attorney General's office.

114. Brief of Respondent in Opposition to Petition at 19–20, Miller v. Alabama, 567 U.S. 460 (2012) (No. 10-9646), 2011 WL 5322572, at *19–20.

115. *Miller*, 567 U.S. at 473.

justice system.[116] The RIAG posits that "Rhode Island has a juvenile criminal justice system based on judicial discretion and deference to the sensitive nature of juvenile punishment and rehabilitation."[117] However, the judicial deference and sensitivity he speaks of does not cure the unconstitutionality of imposing a cruel and unusual punishment on juveniles because:

> a case-by-case approach requiring that the particular offender's age be weighed against the seriousness of the crime as part of a gross disproportionality inquiry would not allow courts to distinguish with sufficient accuracy the few juvenile offenders having sufficient psychological maturity and depravity to merit a life without parole sentence from the many that have the capacity for change.[118]

Additional checks the RIAG cites are: (1) "a waiver hearing at the Family Court as the result of which the Family Court deemed it appropriate to have that juvenile offender tried as an adult"; (2) in adult court "the juvenile would be tried and afforded the protections of due process just like any other criminal offender"; and (3) when sentencing the "Court would use all appropriate factors, including the offender's age and prospects for rehabilitation, to determine the suitable sentence for the crimes involved."[119] However, as will be further explained, all fall short of curing the unconstitutionality of LWOP sentences for any juvenile offender.

*1. A Waiver Hearing in Family Court Has Limited Utility*

The first check the RIAG cites is "a waiver hearing at the Family Court as the result of which the Family Court deemed it appropriate to have that juvenile offender tried as an adult."[120] While this certainly does allow discretion for whether a transfer to adult court is warranted, it has limited utility because, at such an early pre-trial stage, the judge will have only partial information

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116. Letter from Peter F. Kilmartin to Dominick J. Ruggerio, *supra* note 113.
*117.* *Id.*
118. Graham v. Florida, 560 U.S. 48, 50–51 (2010).
119. Letter from Peter F. Kilmartin to Dominick J. Ruggerio, *supra* note 113.
*120.* *Id.*

about the offender or the offense. Therefore, "[t]he key moment for the exercise of discretion is the transfer—and . . . the judge often does not know then what she will learn, about the offender or the offense, over the course of the proceedings."[121] In turn, with such limited information, if the waiver hearing judge does transfer the juvenile to adult court, he or she is making the decision to subject the juvenile offender to a sentencing scheme that allows for the possibility of LWOP.[122] While the United States Supreme Court did note that discretionary, rather than mandatory, sentencing in adult courts would provide the option for a "judge or jury [to] choose, rather than a life-without-parole sentence, a lifetime prison term with the possibility of parole or a lengthy term of years,"[123] the Court clearly did not consider this an absolute cure to satisfy the Eighth Amendment problem of LWOP for juvenile offenders, as it left open the question of whether the Eighth Amendment requires a categorical ban on LWOP for juvenile offenders.[124]

### *2. A Juvenile's Inability to Assist in His or Her Defense Hinders Due Process in Adult Court*

The second check the RIAG cites is that, once a juvenile offender has been waived into adult court, "the juvenile would be tried and afforded the protections of due process just like any other criminal offender."[125] Here, the RIAG's argument is simply ignoring the main tenet of the cases the United States Supreme Court has decided regarding juvenile sentencing—that juveniles are not like every other adult criminal offender, and just because juveniles may be afforded the same protections does not mean that

121. Miller v. Alabama, 576 U.S. 460, 488 (2012). In juvenile court, Miller was denied a request for his own mental health expert at the transfer hearing, which was affirmed on appeal because, at that time, Miller was not entitled to the services he would receive at trial. *Id.* However, the point the Court was making was that since Alabama had a mandatory LWOP sentencing scheme, even if an expert's testimony would mitigate Miller's culpability, it would not matter because the mandatory LWOP sentence would inevitably apply. *Id.*

122. 11 R.I. GEN. LAWS § 11-23-2 (2002).

123. *See Miller*, 567 U.S. at 489.

124. *Id.* at 479.

125. Letter from Peter F. Kilmartin to Dominick J. Ruggerio, *supra* note 113.

those protections work with the same effectiveness.[126] In fact, "the features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings," including "[d]ifficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel, seen as part of the adult world a rebellious youth rejects."[127] Juveniles have a limited understanding of the criminal justice system, are not well equipped to deal effectively with police or prosecutors, and cannot effectively assist in their own defense.[128] The same logic that led the United States Supreme Court in *Graham* to conclude that a categorical ban on LWOP for nonhomicide juvenile offenders avoided "the risk that, as a result of these difficulties, a court or jury will erroneously conclude that a particular juvenile is sufficiently culpable to deserve life without parole,"[129] applies with equal force for a categorical ban on LWOP for any juvenile offender because the distinctive traits of juveniles are not crime-specific.[130]

*3. Using Factors to Determine a Suitable Sentence Can Never Account for all the Unique Characteristics of Juveniles*

The third check the RIAG cites is that once the juvenile offender is found guilty in adult court, the "Court would use all appropriate factors, including the offender's age and prospects for rehabilitation, to determine a suitable sentence for the crimes involved."[131] There are numerous factors the United States Supreme Court has recognized that are relevant when analyzing the culpability of a juvenile defendant, including chronological age, family background, peer pressure, mental development, and emotional development.[132] In theory, if, after analyzing all of these factors, the sentencing judge conclusively determines that the juvenile offender shows an irretrievably depraved character, it

126. *See, e.g.*, Graham v. Florida, 560 U.S. 48, 58 (2010).
127. *Id.* at 78.
128. *See Miller*, 567 U.S. at 477; *Graham*, 560 U.S. at 78.
129. *Graham*, 560 U.S. at 78–79.
130. *See Miller*, 567 U.S. at 473.
131. Letter from Peter F. Kilmartin to Dominick J. Ruggerio, *supra* note 113. The "jury must also make specific findings beyond a reasonable doubt before the court can even consider imposing an [sic] LWOP sentence." *Id.*
132. *See Miller*, 567 U.S. at 476 (quoting Eddings v. Oklahoma, 455 U.S. 104, 116 (1982)).

would then be appropriate to sentence the juvenile to LWOP.[133] However, it is impossible for a sentencing judge to ever make such a finding with reliability because "the brain of a juvenile is not fully developed either structurally or functionally, by the age of eighteen, [so] a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved."[134] The one characteristic of youthful offenders that should conclusively determine that LWOP sentences are never appropriate is a juvenile's great propensity for change, which makes rehabilitation the appropriate sentence, not life incarceration.[135]

*4. A Categorical Ban on LWOP for Juvenile Offenders Does Not Undermine the Sentencing Process Because It Does Not Guarantee Eventual Freedom*

The final argument the RIAG advances against abolishing LWOP sentences for juvenile offenders is that it will "undermine the sentencing process for victims and their families."[136] However, as the SJC pointed out in its decision to categorically ban LWOP for juvenile offenders in Massachusetts, a categorical ban on LWOP for juvenile offenders "should not be construed to suggest that individuals who are under the age of eighteen when they commit murder in the first degree necessarily should be placed on parole once they have served a statutorily designated portion of their sentences."[137] Rather, once the juvenile offender has served fifteen years, it will be in the purview of the state parole board:

> to evaluate the circumstances surrounding the commission of the crime, including the age of the offender, together will all relevant information pertaining to the offender's character and actions during the intervening years since conviction. By this process, a juvenile homicide offender will be afforded a meaningful

133. *See* Diatchenko v. Dist. Attorney for Suffolk Dist., 1 N.E.3d 270, 284 (Mass. 2013).
*134. Id.*
135. *See* Graham v. Florida, 560 U.S. 48, 68 (2010).
136. Letter from Peter F. Kilmartin to Dominick J. Ruggerio, *supra* note 113.
137. *Diatchenko*, 1 N.E.3d at 286.

opportunity to be considered for parole suitability.[138]

As advocated by the Senator who sponsored the bill in the Rhode Island Senate, "[w]e are not opening the jailhouse doors. It does not guarantee the release of any youth. It is possible that some children will spend the rest of their lives in prison."[139] Victims and their families will have the same opportunity to testify at the mandated fifteen-year parole hearing, and the juvenile offender will still have to demonstrate to the parole board all of the qualities that would make any other prisoner eligible for parole. This legislation is simply mandating that the parole opportunity be available after fifteen years served.

## CONCLUSION

To this day, Craig Price remains behind bars at a prison in Florida—not for the murders he committed as a juvenile, since at the time of his sentencing Rhode Island Law required him to be released at twenty-one[140]—but rather due to a string of charges levied against him while in prison, including contempt of court and contraband in prison.[141] Despite being one-thousand miles away and locked up in Florida, Rhode Island continues to live in the shadow of fear created by its "state demon." As a result, seven juvenile offenders are currently imprisoned in Rhode Island and face lengthy sentences.[142] Moreover, the constitutionally

138. *Id.* at 287.

139. Tempera, *supra* note 26. Senator Harold Metts represents District 6 of Providence, and introduced the legislation in the Rhode Island Senate.

140. *See supra* Introduction.

141. Tim White, *Craig Price charged with attempted murder in Florida prison stabbing*, WPRI NEWS (May 31, 2017, 9:48 PM), http://wpri.com/2017/05/31/craig-price-charged-with-attempted-murder-in-florida-prison-stabbing/.

142. If this legislation took effect by the end of 2017, it would affect the sentences of seven juvenile offenders: Russell Burrell, who is serving four consecutive life sentences; Robert Winston, who is serving twenty-six years; Jose Lopez, who is serving consecutive life sentences; Somesack Phonepraseuth, who is serving forty years; Phearan Rot, who is serving life; John Price, who is serving fifty years; and Edwin McGill, who is serving thirty years. Letter from Peter F. Kilmartin to Dominick J. Ruggerio, *supra* note 113. Quandell Husband was also mentioned in Attorney General Kilmartin's letter of opposition, but Husband's sentence was vacated and he recently pled to twenty years to serve. *See* Katie Mulvaney, *Life sentences overturned, Providence man to serve 20 years for role in triple killing*, PROVIDENCE J. (Dec. 29, 2017, 8:45 PM), http://www.providencejournal.com/

protected right of juvenile offenders to be free from cruel and unusual punishment has been circumvented for fear of having to face another gruesome juvenile killer and the desire to have the option to keep that juvenile in prison for life.

In light of what is scientifically known about juveniles, which the United States Supreme Court has recognized makes juveniles constitutionally different from adults for purposes of sentencing, a sentencing scheme that allows for LWOP for juveniles cannot be constitutionally supported. Rhode Island must get out from under the shadow of fear created decades ago and enact legislation that will safeguard the rights and liberties of juvenile offenders. Ensuring that juvenile offenders have a meaningful opportunity to obtain release after a minimum of fifteen years served not only preserves their constitutional rights, but also embodies the motto that Rhode Island so proudly calls its own: "Hope." Eliminating LWOP sentencing for juveniles will give every juvenile offender hope—hope that one day they will be given the opportunity to demonstrate the maturity and rehabilitation required to obtain parole release.

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news/20171229/life-sentences-overturned-providence-man-to-serve-20-years-for-role-in-triple-killing.