

To: *Miller* Working Group, Connecticut Sentencing Commission
From: Sarah Russell, Linda Meyer, and David Norman
Date: October 17 2012
Re: Implementing *Miller*'s "Individualized" Sentencing Requirement in Connecticut

Below, we set forth a proposal for how Connecticut might respond to the U.S. Supreme Court's requirement in *Miller v. Alabama*¹ that sentencing judges provide "individualized" sentencing to juvenile offenders and consider factors relevant to youth. We do not intend this proposal to offer a full response to *Miller*, but we believe that it addresses certain aspects of the decision.

I. *Miller v. Alabama* Decision

A discussion of the Supreme Court's 2012 decision in *Miller v. Alabama* is contained in our memo to the Sentencing Commission dated July 12, 2012. We summarize the decision only briefly here. *Miller* held that a sentencing scheme that requires a judge to impose a sentence of life without the possibility of release for an offense committed when the offender was under the age of 18 violates the Eighth Amendment. *Miller* emphasized the importance of "individualized" sentencing of juvenile offenders. In particular, *Miller* highlighted a number of mitigating factors relevant to sentencing decisions that are often present in cases involving youth. The Court emphasized:

- By virtue of their age and brain development, "children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking."
- Children often show a "failure to appreciate risks and consequences."
- Children "have limited 'control over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings" and "brutal or dysfunctional" family circumstances.
- "[C]hildren 'are more vulnerable . . . to negative influences and outside pressures,' including from their family and peers."
- A child may play a minor role in an offense but be subject to the same penalties as more culpable parties.
- Children tend to be unsophisticated in dealing with a criminal justice system designed for adults and have difficulty assisting in their own defense.
- "[A] child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievable depravity.'"
- A child has a greater capacity than an adult to rehabilitate and reform.

¹ 132 S. Ct. 2455 (2012).

II. Proposed Legislative Action in Connecticut

In light of *Miller*, we propose an amendment to Connecticut's statutes to ensure that the factors highlighted in *Miller* are sufficiently considered when courts sentence juvenile offenders in adult court. Existing law in Connecticut requires that children age 14 and above who are charged with felonies and transferred to adult court must "stand trial and be sentenced, if convicted, as if such child were eighteen years of age."² Such language could be read to discourage consideration at sentencing of evidence of the child's youth, immaturity, or dependence, since judges are instructed to sentence juvenile offenders "as if" they were adults.

The following language would address this concern, and could be added as the last subsection of the existing transfer statute, Conn. Gen. Stat. § 46b-127:

(g) (1) In determining a sentence for an individual who was under eighteen years of age at the time of the offense, the court shall consider mitigating factors including, but not limited to, the following:

- (A) age at the time of the offense;
- (B) impetuosity;
- (C) family and community environment;
- (D) ability to appreciate the risks and consequences of the conduct;
- (E) intellectual capacity;
- (F) the outcomes of a comprehensive mental health evaluation conducted by an adolescent mental health professional licensed in the state of Connecticut;
- (G) peer or familial pressure;
- (H) level of participation in the offense;
- (I) the extent to which the child honestly believed that criminal behavior was required due to the failure of responsible adults to protect and care for him or her;
- (J) ability to participate meaningfully in his or her defense;
- (K) capacity for rehabilitation;
- (L) school records and special education evaluations;
- (M) trauma history;
- (N) faith and community involvement; and
- (O) involvement in the child welfare system.

(2) Unless waived by the defendant, the court at a sentencing hearing of an individual who was under eighteen years of age at the time of the offense shall consider the outcome of a comprehensive mental health evaluation which shall be conducted by an adolescent mental health professional licensed in the state of Connecticut. The comprehensive mental health evaluation must include the following: family interviews; prenatal history; developmental history; medical history; history of treatment for substance use; social history; and a psychological evaluation.

² Conn. Gen. Stat. § 46b-127(c).