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DE FACTO LIFE SENTENCING: WHAT IS A DE FACTO LIFE SENTENCE AND HOW ILLINOIS SHOULD DEFINE THIS IN THEIR SENTENCING LAWS

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Abstract

Illinois recently defined juvenile de facto life sentences as any sentence imposed on a juvenile offender that is greater than 40 years in length. This comment explores the state and federal law related to juvenile de facto life sentencing, the history behind it, and the ways in which juvenile de facto life sentencing may be determined. Ultimately, this comment proposes that new legislation be introduced in Illinois that properly analyzes and defines what a de facto life sentence is and addresses how juvenile offenders should be provided meaningful opportunities for release.

I. INTRODUCTION

One moment in a child's life can determine whether they have the chance to grow up free or whether they will be confined to a life behind bars. In 1985, Terry Sanders was a 17-year-old boy who was ordered by two people, holding guns, to tie up and kill a man.[1] He complied by inflicting superficial wounds and hitting the man on the head with a hammer; however, a different man ended up being killed.[2] Terry ran to the police when given the chance, but he was still convicted of murder and attempted murder for helping these people.[3] Terry was sentenced to 100 years in prison.[4] Similarly, in 2009, a 16-year-old boy, Dimitri Buffer, shot a woman he believed to be a rival gang member.[5] He was sentenced to 50 years in prison.[6] These are just a few examples of Illinois children who may spend their entire life in prison for the haunting mistakes they made during their childhood.

A de facto life sentence is a prison sentence that is not explicitly stated to be a life sentence, but includes a "mandatory term-of-years sentence that cannot be served in one lifetime."[7] In 2016, the Supreme Court of Illinois held that subjecting juveniles to serve de facto life sentences is unconstitutional.[8]

This comment will discuss how to determine what prison sentences should be deemed a juvenile de facto life sentence. Part II of this comment explains what a de facto life sentence is. In addition, Part II will detail how the Eighth Amendment has

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1. People v. Sanders, 56 N.E.3d 563, 564 (Ill. App. Ct. 2016).
2. *Id.* at 564-65.
3. *Id.*
4. *Id.* at 571.
5. People v. Buffer, 75 N.E.3d 470, 471, 473 (Ill. App. Ct. 2017).
6. *Id.* at 475.
7. People v. Reyes, 63 N.E.3d 884, 888 (Ill. 2016).
8. *Id.* at 888.

influenced the United States Supreme Court to consider juveniles' youthful mitigating traits during sentencing. Then, it will discuss how Illinois has interpreted the United States Supreme Court's rulings in regard to juvenile de facto life sentences. Part III of this comment details how the United States Supreme Court, federal circuit courts, and some state courts rule on de facto life sentencing. Part III also analyzes different ways to determine what a de facto life sentence is, whether it focuses on a term of years served or an age the juvenile offender will be by the time of release. Finally, Part IV will propose a new standard for determining de facto life sentences in Illinois. Specifically, it will propose an age that provides all juveniles with a "meaningful opportunity for release," rather than an opportunity to live one day outside of prison before death.[9]

II. BACKGROUND

There are three major United States Supreme Court decisions that have established that juveniles are different from adults, and therefore an offender's age should be factored into juvenile sentencing.[10] This section explores the recent history of federal and Illinois law on juvenile sentencing.

A. The Eighth Amendment Ban on Cruel and Unusual Punishment

Condemning juvenile offenders to life in prison without the possibility of parole violates proportionality principles,[11] and in effect, the Eighth Amendment's ban on cruel and unusual punishment.[12] The Eighth Amendment states that "[e]xcessive bail

9. "[The] state must . . . give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Graham v. Florida, 560 U.S. 48, 75 (2010).

10. Roper v. Simmons, 543 U.S. 551, 569-71 (2005); *Graham*, 560 U.S. at 77-78; Miller v. Alabama, 567 U.S. 460, 480 (2012).

11. "Traditionally, the Court has employed a bifurcated mode of proportionality analysis, applying much stricter rules for capital sentences--leading to the axiom, 'death is different.' By contrast, when facing a term of incarceration, an offender must show that her sentence is 'grossly disproportionate' to implicate Eighth Amendment protections." Sean Craig, *Juvenile Life Without Parole Post-Miller: The Long, Treacherous Road Towards a Categorical Rule*, 91 WASH. U.L. REV. 379, 385 (2013).

12. American Jurisprudence has described the unconstitutionality of juvenile life without parole as follows:

> A sentencing scheme that punishes offenders who commit murder when they are under the age of 18 by imposing a mandatory sentence of life in prison without the possibility of parole wholly precludes consideration of the unique

shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[13] "Embodied in the Constitution's ban on cruel and unusual punishment is the 'precept of justice that punishment for a crime should be graduated and proportioned to [the] offense.'"[14] In measuring whether a sentence is unconstitutional, a court looks to the proportionality and "evolving standards of decency" concerning the offense committed.[15]

Proportionality focuses on the question of whether the sentence is so "grossly disproportionate" that the punishment is cruel and unusual.[16] This standard has two classifications: the length of the prison sentence and the categorical rules that limit cruel and unusual punishment.[17] In the cases concerning cruel and unusual punishment, the United States Supreme Court weighed the gravity of the offense against the sentence imposed.[18] The Court would only consider the length of the sentence itself if it found that the gravity of the offense was grossly disproportionate to the sentence imposed.[19] In considering sentence length, courts make an intrajurisdictional analysis[20] and an interjurisdictional analysis,[21] while also considering the jurisdiction's sentencing possibilities and outcomes.[22]

The Eighth Amendment standard of cruelty is a moral judgment that changes as the values of society change.[23] These evolving standards of decency are mainly measured by "objective indicia of a national consensus on what constitutes a proportional

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> characteristics of juvenile offenders and disregards the possibility of rehabilitation even when the circumstances most suggest it. Such a sentencing scheme violates the principle of proportionality and, therefore, the Eighth Amendment's prohibition against cruel and unusual punishment.

21A AM. JUR. 2D *Criminal Law* § 878 (2018) [hereinafter *Criminal Law*].

13. U.S. CONST. amend. VIII.

14. *Graham*, 560 U.S. at 59 (citing Weems v. United States, 217 U.S. 349, 367 (1910)).

15. Kelly Scavone, *How Long is Too Long?: Conflicting State Responses to De Facto Life Without Parole Sentences After Graham v. Florida and Miller v. Alabama*, 82 FORDHAM L. REV. 3439, 3445 (2014).

16. Craig, *supra* note 11, at 384-385.

17. Mary Berkheiser, *Death is Not so Different After All: Graham v. Florida and the Court's "Kids are Different" Eighth Amendment Jurisprudence*, 36 VT. L. REV. 1, 4–5 (2011).

18. The gravity of the offense includes both "the nature of the offense" and "the culpability of the offender." Alison Siegler & Barry Sullivan, *"'Death is Different' No Longer": Graham v. Florida and the Future of Eighth Amendment Challenges to Noncapital Sentences*, 2010 SUP. CT. REV. 327, 334 (2010).

19. *Id.*

20. Intrajurisdictional analysis: "sentences imposed on other criminals in the same jurisdiction[.]" *Id.*

21. Interjurisdictional analysis: "sentences imposed for commission of the same crime in other jurisdictions[.]" *Id.*

22. *Id.*

23. *Criminal Law*, *supra* note 12, at § 852.

punishment for a particular offense."[24] Federal and state-made legislation are the best source of this indicia.[25] However, jury practice, public opinion surveys, professional organizations' opinions, and international views are also considered in determining the evolving standards of decency.[26]

B. The United States Supreme Court Declared that Children are Different

Roper v. Simmons, *Graham v. Florida*, and *Miller v. Alabama* are all based on the precept that "children are different than adults."[27] These differences make the penological reasons behind sentencing adults to life in prison less effective and less purposeful when doing the same to juveniles.[28] Research on these differences indicate that juveniles' "developmental immaturity" may require sentencing them differently under the Eighth Amendment.[29]

1. Roper v. Simmons

In 2005, the United States Supreme Court decided *Roper v. Simmons*, which held that it was unconstitutional to sentence someone under 18 years old at the time of their offense to death.[30] The Court found that sentencing a juvenile to death is a violation of both the Eighth and Fourteenth Amendments.[31] The Court further reasoned that capital sentences are restricted to only those offenders who commit both an extremely serious crime and have the culpability that makes them deserving of said punishment.[32] It then established an "underlying principle that the death penalty is reserved for a narrow category of crimes and offenders."[33]

The *Roper* Court acknowledged three major differences between juveniles and adults that support the conclusion that juveniles cannot reliably be classified as "among the worst

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24. Joanna H. D'Avella, *Death Row for Child Rape? Cruel and Unusual Punishment Under the Roper-Atkins "Evolving Standards of Decency" Framework*, 92 CORNELL L. REV. 129, 139 (2006).

25. *Id.*

26. *Id.* at 139, 141.

27. Gene Griffin & Sarah Sallen, *Considering Child Trauma Issues in Juvenile Court Sentencing*, 34 CHILD. LEGAL RTS. J. 1, 1–2 (2014).

28. *Id.*

29. Marsha Levick et al., *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J. L. & SOC. CHANGE 285, 293 (2012).

30. *Roper*, 543 U.S. at 578.

31. *Id.*

32. *Id.* at 568.

33. *Id.* at 569.

offenders" deserving of capital punishment.[34] First, juveniles often make reckless decisions because they have "[a] lack of maturity and an underdeveloped sense of responsibility[.]"[35] Second, "juveniles have less control, or less experience with control, over their own environment" than adults do.[36] This causes juveniles to be "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."[37] Lastly, "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed."[38]

Using these characteristics, it is unlikely that even juveniles who commit "a heinous crime" show "irretrievably depraved character" because they are still in the developmental stages.[39] The Court applied the characteristics of juveniles to the two main purposes for capital sentences: "retribution and deterrence of capital crimes by prospective offenders."[40] It found retribution is not proportional to an offender "whose culpability or blameworthiness is diminished . . . by reason of youth[.]"[41] Moving on to the second purpose, deterrence, it was not clear whether the death penalty was deterring other juveniles.[42] Characteristics of youth suggest that juveniles are "less susceptible to deterrence[,]" just as they suggest that juveniles are "less culpable than adults[.]"[43]

The Court found that states should not ask jurors to make the choice of whether to subject a juvenile to the death penalty when psychiatrists are forbidden from diagnosing those under age 18 with antisocial personality disorders.[44] "It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."[45] These reasons supported the holding that the Eighth and Fourteenth Amendments render a death sentence for those offenders under the age of 18 unconstitutional.[46]

2. Graham v. Florida

Five years later, in 2010, the United States Supreme Court

34. *Id.*
35. *Id.* (citing to Johnson v. Texas, 509 U.S. 350, 367 (1993)).
36. *Roper*, 543 U.S. at 569.
37. *Id.*
38. *Id.* at 570.
39. *Id.*
40. *Id.* at 571 (quoting Atkins v. Va., 536 U.S. 304, 319 (2002)).
41. *Roper*, 543 U.S. at 571.
42. *Id.*
43. *Id.*
44. *Id.* at 573.
45. *Id.*
46. *Id.* at 578.

decided *Graham v. Florida*.[47] In *Graham*, the Court found that sentencing juvenile, nonhomicide offenders to life sentences without the possibility of parole was a violation of the Constitution.[48] The petitioner was Terrance Jamar Graham.[49] He was sentenced to life after he was found guilty of committing both an armed robbery and an attempted robbery on the same night while on probation, just six months after being released from jail for his first attempted robbery.[50] The night he engaged in the second round of robberies, Graham was 34 days away from turning 18 years old.[51] He received the maximum sentences for his crimes: "life imprisonment for the armed burglary and 15 years for the attempted armed robbery."[52] There was no option for parole in Florida, so Graham's sentence was life without the possibility of parole.[53] When making its decision, the trial court stated they believed there was no deterring Graham from the "escalating pattern of criminal conduct" he was already engaging in.[54]

Graham presented a new issue in the United States Supreme Court that had not yet been considered: "a categorical challenge to a term-of-years sentence."[55] When adopting a new categorical sentencing rule, the Court had to first determine whether there was a national consensus disproving of the categorical sentence and next, it had to decide, independently, whether the sentencing was unconstitutional.[56] Because this was a categorical sentence that affects juvenile offenders who commit a variety of different crimes, an analysis between the crime committed and the penalty received would not work in determining the constitutionality of the sentence.[57] The Court instead looked at legislation and actual sentencing and found that sentencing juveniles who commit nonhomicide crimes to life without parole was very rare; the Court then concluded that this meant a national consensus had developed against this type of sentencing.[58]

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47. *See Graham,* 560 U.S. at 82 (holding that sentencing a juvenile nonhomicide offender to life without parole is unconstitutional without providing some meaningful opportunity for release).

48. *Id.* at 82.

49. *Id.* at 53.

50. *Id.* at 53-55.

51. *Id.* at 55.

52. *Id.* at 57.

53. *Id.*

54. *Id.*

55. *Id.* at 61. This is different from *Roper* where the Court dealt with a categorical challenge to juveniles who received the death penalty rather than a term-of-years sentence. *Id.*; *see also Roper* 543 U.S. at 555 (considering "whether it is permissible under the Eighth and Fourteenth Amendments to the Constitution of the United States to execute a juvenile offender who was older than 15 but younger than 18 when he committed a capital crime").

56. *Graham*, 560 U.S. at 61.

57. *Id.*

58. *Id.* at 62-67.

Next, when making its own determination about the constitutionality of juvenile life sentences without parole for nonhomicide offenders, the Court first examined the category of juvenile offenders by reiterating the three characteristics of youth discussed in *Roper*, and recognizing it had previously stated nonhomicide offenders are "less deserving of the most serious forms of punishment[.]"[59] The Court then examined the sentence being imposed, reiterating that a sentence of life without parole is "the second most severe penalty permitted by law" because "[i]t deprives the convict of the most basic liberties without giving hope of restoration[.]"[60] The Court pointed out that this is "an especially harsh punishment for a juvenile[,]" as a much greater portion of a juvenile's life is spent in prison when compared to the life of an adult offender sentenced to life without parole.[61]

The Court reinforced its decision by discussing that none of the penal justifications – retribution, deterrence, incapacitation, or rehabilitation – have been recognized as justifications for sentencing juvenile nonhomicide offenders to life without parole.[62] While recognizing that juvenile offenders may be incorrigible and may have to spend the rest of their life in prison, the Court emphasized the importance of allowing juvenile offenders to demonstrate that they have changed[63]:

> A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society.[64]

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59. *Id.* at 68.

60. *Id.* at 69-70.

61. *Id.* at 70 ("A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.").

62. *Id.* at 71-74.

63. *Id.* at 72-73.

64. *Id.* at 75. This "meaningful opportunity for release" becomes an important staple in this comment's determination of Illinois law. This term is used in deciding whether there are safeguards that provide juveniles with a "meaningful opportunity for release," or whether the law is not providing an

In conclusion, the Court decided that Graham's sentence provided him with no meaningful opportunity for release, that no showing of maturity or growth would allow Graham an opportunity for parole given his current sentence, and that Graham's sentence was ultimately unconstitutional.[65] The Court further imposed a categorical rule that prohibited children under the age of 18 to be sentenced to life without parole when committing nonhomicide crimes.[66]

3. Miller v. Alabama

Finally, in 2012, the United States Supreme Court decided *Miller v. Alabama*, which held that all courts, state and federal, must consider youth and attendant characteristics before sentencing a juvenile offender to life without parole.[67] In *Miller*, two 14-year-old boys received life in prison without the possibility of parole because the state sentencing laws mandated life in prison for the homicide crimes committed.[68] The Court found neither the *Roper* nor *Graham* analyses limited the "diminished culpability" of juveniles to only certain crimes – thus, they apply to homicide offenses as well.[69]

The United States Supreme Court further found that mandatory sentencing statutes, which subject a juvenile to life in prison without the possibility of parole, absent allowing a sentencing court to consider youth as a mitigating factor, directly violates the principle set forth in *Roper* and *Graham*: "that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[70] The Court stressed the importance that a sentencing judge must first consider

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opportunity to show the offender's growth and maturity. *See infra* note 112 and accompanying text (finding there was no "meaningful opportunity for release" for an offender when his earliest opportunity for release would occur after his "average life expectancy"); *see also infra* note 161 and accompanying text (noting those juveniles or offenders who can show examples of growth or change should be given a "meaningful opportunity for release").

65. *Graham*, 560 U.S. at 79.

66. *Id.* at 82.

67. *Miller*, 567 U.S. at 479-80, 489.

68. *Id.* at 465. Both petitioners here were sentenced to life without parole. *Id.* Their fate was set as soon as a guilty verdict was rendered because the states' laws required mandatory life sentences for the crimes committed by the petitioners. *Id.* at 466, 469. Both 14-year-old boys were charged as adults. *Id.* at 466, 468-69. Petitioner one, Kuntrell Jackson, was convicted of "capital felony murder and aggravated robbery." *Id.* at 465-66. Petitioner two, Evan Miller, was convicted of "murder in the course of arson." *Id.* at 469. Both crimes of capital murder in Arkansas, and murder in the course of arson in Alabama, require mandatory minimum sentences of life without parole according to their states' sentencing statutes. *Id.* at 469.

69. *Id.* at 471, 473.

70. *Id.* at 474.

"any mitigating qualities of youth" before sentencing a juvenile to life without the possibility of parole.[71]

That is not to say that the Court made it impossible to sentence a juvenile offender to life without the possibility of parole. Rather, it may only occur if the sentencing judge found the juvenile was irreparably corrupt, even after examining the mitigating factors of youth:

> [G]iven all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.[72]

4. Montgomery v. Louisiana

Four years later, the United States Supreme Court decided that the holding in *Miller v. Alabama* applies retroactively.[73] In *Montgomery v. Louisiana*, 17-year-old Henry Montgomery, was sentenced to a mandatory sentence of life without parole after killing a deputy sheriff in 1963.[74] He sought relief after *Miller* was decided, which was almost 50 years after being taken into custody.[75] The Court found that Montgomery's statements to the Court discussing "his evolution from a troubled, misguided youth to a model member of the prison community" could be used "to demonstrate [his] rehabilitation."[76] The Court concluded that "prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored."[77] Specifically, all people who were sentenced as juveniles to life in prison without the possibility of parole were now able to challenge their sentences, even if they were sentenced before 2012.[78]

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71. *Id.* at 476 (citing *Johnson*, 509 U.S. at 367).
72. *Id.* at 479-80 (citing *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at 68).
73. Montgomery v. Louisiana, 136 S. Ct. 718, 736 (2016).
74. *Id.* at 725-26.
75. *Id.* at 726.
76. *Id.* at 736.
77. *Id.* at 736-37.
78. Because *Montgomery* holds that *Miller* applies retroactively, the holding

C. Illinois Legislation and Court Decisions

1. Supreme Court of Illinois

The Supreme Court of Illinois also held that *Miller* applies retroactively to juveniles sentenced before *Miller* was decided.[79] Placing juveniles in a category of people that cannot be subjected to certain sentencing, life without the possibility of parole made the *Miller* holding retroactively applicable.[80] In 2016, the Supreme Court of Illinois went even further, and made juvenile de facto life sentences unconstitutional.[81] The court stated:

> A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect on a juvenile defendant's life as would an actual mandatory sentence of life without parole—in either situation, the juvenile will die in prison. *Miller* makes clear that a juvenile may not be sentenced to a mandatory, unsurvivable prison term without first considering in mitigation his youth, immaturity, and potential for rehabilitation.[82]

It held that the defendant's sentence was a de facto life sentence because he would not have an opportunity for release until he reached 105 years old.[83] Therefore, finding that de facto life sentences were unconstitutional under *Miller*, the court vacated the defendant's sentence.[84]

2. Appellate Court of Illinois

In 2018, the Appellate Court of Illinois used the principles adopted by their supreme court as they applied to aggregate sentencing.[85] In *People v. Pearson*, the defendant was a 15-year-old

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in *Miller* now applies to those juveniles sentenced before *Miller* was decided in 2012. *Id.* at 736; *Miller*, 132 U.S. 460 (decided June 25, 2012); *see also Retroactive*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining a "retroactive" ruling as "extending in scope or effect to matters that have occurred in the past").

79. People v. Davis, 6 N.E.3d 709, 722 (Ill. 2014).

80. *Id.*

81. *See Reyes*, 63 N.E.3d at 888 (holding the de facto life sentence of a juvenile offender is unconstitutional).

82. *Id.* at 888.

83. *Id.* "[D]efendant will most certainly not live long enough to ever become eligible for release. Unquestionably, then, under these circumstances, defendant's term-of-years sentence is a mandatory, *de facto* life-without-parole sentence." *Id.*

84. *Id.*

85. People v. Pearson, 116 N.E.3d 304, 315-16 (Ill. App. Ct. 2018). In applying these principles, the Appellate Court of Illinois recognized:

> [T]here is no substantive difference between a mandatory aggregate sentence of 97 years in prison, to be served almost

offender who was sentenced to a total of 50 years in prison.[86] However, the court held that because the defendant would be released at age 55, the sentence was constitutional and valid.[87] In dicta, the court mentioned that this problem could be solved altogether if the legislature would enact a statute that requires juvenile offenders be considered for parole after a certain term of years.[88]

Similarly, in *People v. Rodriguez*, the defendant, a 15-year-old offender, was sentenced to consecutive sentences totaling to 65 years in prison.[89] The court found that defendants who may be released in their mid-sixties were generally not subjected to a de facto life sentence; however, the defendant here was looking at a release closer to age 80.[90] "Although defendant's offenses were not part of a single course of conduct," the court still found that *Miller* applied to the defendant's consecutive sentencing.[91] As a result, the defendant's sentence was vacated and remanded for a new sentence that was in line with Illinois law.[92]

3. Section 5-4-5.5-105 of the Illinois Unified Code of Corrections

Illinois courts are not the only governmental body in Illinois trying to change the juvenile sentencing system.[93] Four years after

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> in its entirety, and a sentence of mandatory life in prison. In both cases, the juvenile defendant will spend the rest of his life in prison with no possibility of parole in his lifetime.

Id.

86. *Id.* at 306-07.

87. *Id.* at 317.

88. *Id.* at 316. Here, the court suggested Illinois could solve the issue of de facto life sentencing by enacting a statute that would require juvenile offenders to have the possibility of parole after a certain term of years. *Id. See infra* note 180 for an example of legislation that resembles what the court suggested here, only in a statute that California enacted, CAL. PENAL CODE § 3051 (Deering 2020). Recently, Illinois also enacted a statute requiring certain juvenile offenders to have a possibility of parole after a certain number of years is served. *See infra* Part III.B (discussing 730 ILL. COMP. STAT. 5/5-4.5-115 (2020), a recent Illinois statute that imposes parole possibilities for juvenile offenders after a certain time period has been served).

89. People v. Rodriguez, 118 N.E.3d 557, 569 (Ill. App. Ct. 2018).

90. *Id.* at 570-71.

91. *Id.* at 571-72. The "defendant was sentenced to 45 years" for participating in a drive-by shooting that resulted in murder. *Id.* at 559. This "included a 25-year enhancement for personally discharging the firearm." *Id.* The defendant received an additional 20-year sentence for an unrelated "attempted first degree murder." *Id.* at 560.

92. *Id.* at 573.

93. *See*, for example, 730 ILL. COMP. STAT. 5/5-4.5-105 (2017) (regarding the "sentencing of individuals under the age of 18 at the time of the commission of an offense").

Miller, the Illinois General Assembly enacted a new sentencing law, section 5-4-5.5-105 of the Unified Code of Corrections,[94] which requires that certain factors be considered when sentencing juveniles.[95] This law applies to current sentencing of juveniles and resentencing under *Miller*.[96] In effect, in Illinois if someone sentenced as a juvenile is serving a de facto life sentence, then they must be resentenced using the guidelines set forth in the new Illinois statute.[97]

Although it is unconstitutional to sentence a juvenile to life in prison, many of them will still spend their entire life behind bars.[98] "There is no national legal standard on how many years is too many for a juvenile to serve."[99] "The United States Sentencing Commission considers a 39-year prison sentence the equivalent of life."[100] In December of 2017, there were at least 167 prisoners serving minimum sentences of 50 years for crimes they committed as juveniles.[101] The Supreme Court of Illinois determined in *Buffer* that 40 years is the maximum term-of-years sentence a juvenile offender can receive without the sentence being considered a de facto life sentence.[102]

Like Illinois, several federal circuit courts have determined that de facto life sentences are unconstitutional.[103] However, some federal circuit courts narrowly read the *Miller* decision and find that juvenile de facto life sentences are still constitutional.[104] Other

94. *Id.*

95. "In general, the new statute requires the sentencing judge to take into account several factors in mitigation in determining the appropriate sentence for those under 18. In addition, the statute provides that the imposition of firearm enhancements is a matter of discretion with the trial court[.]" *Reyes*, 63 N.E.3d at 889.

96. 730 ILL. COMP. STAT. 5/5-4.5-105.

97. *Id.*

98. Emily Hoerner & Jeanne Kuang, *Less Than Life*, INJUSTICE WATCH (May 6, 2018), www.injusticewatch.org/features/illinois-juvenile-offenders-life-without-parole/. As of December 2017, there were at least 167 prisoners serving 50 years or more for crimes they committed as juveniles. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. People v. Buffer, 137 N.E.3d 763, 774 (Ill. 2019).

103. *See Reyes*, 63 N.E.3d at 888 (holding the de facto life sentence of a juvenile offender is unconstitutional); United States v. Grant, 887 F.3d 131, 151 (3d Cir. 2018), *reh'g granted* 905 F.3d 285 (3d Cir. 2018) (using retirement age as a factor to determine when a term-of-years sentence became the equivalent to a life sentence); Moore v. Biter, 725 F.3d 1184, 1191-92, 1194, (9th Cir. 2013), *reh'g denied* 742 F.3d 917 (9th Cir. 2014) (holding juvenile offender's discretionary 254-year sentence without the possibility of parole in his lifetime is "materially indistinguishable" from a life sentence without parole and unconstitutional under *Graham*); Budder v. Addison, 851 F.3d 1047, 1049, 1059 (10th Cir. 2017) (finding 16-year-old juvenile offender's sentence unconstitutional under *Graham* when he would not be eligible for parole until he served 131.75 years of his sentence).

104. *See* United States v. Walton, 537 F. App'x 430, 437 (5th Cir. 2013)

federal circuit courts hold that juvenile de facto life sentences are unconstitutional, but will find other reasons for deeming a lengthy term-of-years sentence constitutional.[105] This comment will analyze these choices and propose a new way for Illinois to define and regulate juvenile de facto life sentences.

III. ANALYSIS

A. Illinois Defines De Facto Life Sentences in People v. Buffer

1. The Majority Relies on the Legislature

In *People v. Buffer*, the petitioner, Dimitri Buffer, shot a young woman because she was in a car similar to a rival gang member's vehicle.[106] Buffer was 16 years old when his friend recognized a car carrying rival gang members as members of the gang who had "jumped him."[107] Buffer was later stopped at a stop sign when he saw, what he thought to be, the car holding rival gang members from earlier.[108] Buffer walked up to the car, fired gun shots into the vehicle, and ran back to his vehicle.[109] Instead of shooting rival gang members, Buffer shot Jessica Bazan twice in her right thigh, which eventually caused her death.[110] Despite having the mitigating

(determining that *Graham* and *Miller* do not prohibit a "discretionary federal sentence for a term of years"); Goins v. Smith, 556 F. App'x 434, 440 (6th Cir. 2014) (holding that neither *Roper* nor *Graham* impose an Eighth Amendment categorical ban on an aggregate term of years juvenile sentence, and *Miller* similarly does not require this ban); Starks v. Everlasting, 659 F. App'x 277, 280 (6th Cir. 2016) (asserting the United States Supreme Court has not extended Eighth Amendment protections to discretionary "juvenile sentences that are the functional equivalent of life"); United States v. Jefferson, 816 F.3d 1016, 1018-19 (8th Cir. 2016) (finding that *Miller* only prohibits mandatory sentencing schemes of life without parole rather than discretionary, non-mandatory juvenile life without parole sentences).

105. *See* Contreras v. Davis, 716 F. App'x 160, 163 (4th Cir. 2017) (finding a possibility of release "under Virginia's geriatric release program" was a "meaningful opportunity to receive parole"); Juarez v. Davis, 2018 U.S. Dist. LEXIS 79996, at *14 (N.D. Tex.) (holding a prison sentence that offered the chance of parole after serving 40 years in prison was constitutional).

106. Dimitri's friend, Aisha Jones, testified that Dimitri thought he was shooting at a rival gang member who attacked his friend. *Buffer*, 75 N.E.3d at 473. Jones testified that "when the petitioner's brother mentioned a woman, the petitioner told him that he 'shot a King' and 'didn't shoot no lady.'" *Id.*

107. *Id.* at 471, 473. The rival gang members hit Buffer's friend in the face several times after confirming that he was a member of a rival gang. *Id.* at 472.

108. *Id.* at 473.

109. *Id.* at 472.

110. *Id.* at 471-72.

factors of being a young teenager and having a supportive family, the court sentenced him to 50 years in prison.[111] Buffer challenged his sentencing, and as a result, the appellate court decided he should be resentenced as he would likely die in prison under his current sentence.[112]

This issue was brought before the Supreme Court of Illinois in April of 2019, leading it to draw an official line for de facto life sentences at 40 years.[113] The court justified drawing this line by citing to Justice O'Connor's dissent in *Roper*, "'[C]lear, predictable, and uniform constitutional standards are especially desirable' in applying the Eighth Amendment."[114]

The State argued that the line drawn for de facto life sentences should be in the "54-to-59-year range[.]"[115] The defendant responded that "the State's 'survivability' standard is 'arbitrary, unjustified, and unworkable.'"[116] Both parties disagreed as to whether or not "actuarial tables and other statistical data"

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111. *Id.* at 474-75.

> In mitigation, defense counsel argued that the petitioner was remorseful, that he was 16 years old at the time of the shooting, that his parents have been present in court and in his "entire life," that he has no history of mental illness, and that he struggled with school but had completed two years of high school with special assistance classes. In addition, defense counsel explained that the defendant's previous arrests can be explained by the fact that he "exists in a world where there is violence" and "senseless deaths." Counsel also emphasized that the petitioner was not alone and that he was very susceptible to the influence of others.
>
> The State argued that the petitioner's arrests as a minor showed "the making of a gang member" and contended that the petitioner "had choices at the age of 14 and yet continued again and again to commit crimes." The State claimed that the petitioner "chose to be a Black P Stone" and that he "chose to have that life." The State further argued for an extended sentence in order "to deter others from committing the same crime" and "to send a message" to the community and to gang members. As the State explained, "these sentences are necessary to deter others from that conduct."

Id.

112. *Id.* at 482, 485. In deciding Buffer's sentence was unconstitutional, the appellate court explained:

> [T]he petitioner's projected parole date is May 12, 2059, at which point he will be 66 years old. The petitioner's projected discharge date is May 12, 2062, at which point he will be 69. Accordingly, as a practical matter, the petitioner, whose average life expectancy is at best 64 years, will not have a meaningful opportunity for release.

Id. at 482.

113. *Buffer*, 137 N.E.3d at 774.

114. *Id.* at 771 (quoting *Roper*, 543 U.S. at. 594 (O'Connor, J., dissenting)).

115. *Id.* at 771-72.

116. *Id.* at 772.

supported their arguments, as well as whether or not it should even be used in the process of determining "survivability."[117]

The Supreme Court of Illinois reiterated the appellate court's reasoning for finding a de facto life sentence was that "geriatric release d[id] not provide a juvenile with a meaningful opportunity to demonstrate the maturity and rehabilitation required to obtain release and reenter society."[118] However, the Supreme Court of Illinois decided to rely instead on the Illinois General Assembly when drawing the line for de facto life sentences.[119] The court used federal common law to conclude that relying on legislation is the best way to draw a line for de facto life sentences.[120] Additionally, the court cited Illinois case law that agreed it should be left to the legislature to define penalties and terms of imprisonment in our society.[121]

The *Buffer* court specifically relied on section 5-4.5-105 of the Illinois Unified Code of Corrections,[122] specifically subsection (c), which provides:

> (c) Notwithstanding any other provision of law, if the defendant is convicted of first degree murder and would otherwise be subject to sentencing under clause (iii), (iv), (v), or (vii) of subparagraph (c) of paragraph (1) of subsection (a) of Section 5-8-1 of this Code based on the category of persons identified therein, the court shall impose a sentence of *not less than 40 years of imprisonment*.[123]

The court then analyzed the language in section 5-4.5-105(c), and concluded that because the General Assembly determined 40 years was the "mandatory minimum sentence" for juvenile offenders, "the legislature evidently believed that this 40-year floor for juvenile offenders who commit egregious crimes complies with the requirements of *Miller*."[124] The court used this reasoning "to draw a

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117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* The court quoted several common law cases: "The United States Supreme Court has 'pinpointed that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures."'" *Id.* (quoting Penry v. Lynaugh, 492 U.S. 302, 331 (1989)); *see also Buffer*, 137 N.E.3d at 772 ("[t]he fixing of prison terms for specific crimes involves a substantive penological judgement that, as a general matter, is 'properly within the province of legislatures, not courts.'") (quoting Harmelin v. Michigan, 501 U.S. 957, 998 (1991) (Kennedy, J., concurring in part and concurring in the judgment, joined by O'Connor and Souter, JJ.)).

121. *See Buffer*, 137 N.E.3d at 773 (quoting and referencing Illinois court cases that support the idea of legislation deciding terms of imprisonment and penalties).

122. *See supra* notes 93-97 and accompanying text (explaining this statute and its purpose).

123. *Buffer*, 137 N.E.3d at 773 (quoting 730 ILL. COMP. STAT. 5/5-4.5-105(c)) (emphasis added).

124. *Id.* at 773-74.

line" of a juvenile's sentence at 40 years.[125] It explained that its choice of the 40-year line did not come from other "court decisions, legal literature, or statistical data."[126] Yet, the court also tried to make it clear that this number was "not drawn from a hat."[127] It relied on existing legislation because it believed the legislature was "best suited to make such a determination."[128] The *Buffer* court concluded by defining Illinois juvenile de facto life sentences as any term-of-years sentence over 40 years.[129]

2. The Concurrence and Alternate Opinions

While 40 years could be a justified choice in drawing the line for de facto life sentences, this should be backed up by a reason that explains why a term of 40 years imposes a de facto life sentence in prison. Such a reason should be based on the conclusion that juveniles would not likely have a meaningful opportunity for release after a period longer than 40 years.[130] The *Buffer* majority does state that "a prison sentence of 40 years or less imposed on a juvenile offender provides 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'"[131] However, this comment agrees more with the assertion put forth in Justice Burke's concurrence that the majority should have made some sort of "mathematical calculation."[132] While this comment does not support the idea of using a predictive life span table,[133] it does assert that the definition of a de facto life sentence should come from some data, analysis, or popular belief that supports sentencing juveniles to a specific term-of-years span will create a de facto life sentence.

Justice Burke's concurrence pokes holes in the majority's reasoning and illustrates the impractical reasoning behind the majority's conclusion.[134] Justice Burke stated the majority made "an unjustified leap" in drawing the line for de facto life sentencing at 40 years when it stated section 5-4.5-105(c) evidences a "belie[f] that [a] 40-year floor" for this type of sentencing "complies with the requirements of *Miller*."[135]

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125. *Id.* at 774.
126. *Id.*
127. *Id.*
128. *Id.*
129. *Id.*
130. *See supra* note 64 and accompanying text (detailing the importance of "meaningful opportunity for release" in this comment and in sentencing juveniles).
131. *Buffer*, 137 N.E.3d at 774.
132. *Id.* at 776 (Burke, J., concurring).
133. *See infra* notes 194-208 and accompanying text (detailing why life expectancy tables should not be used in analyzing what determines a de facto life sentence).
134. *Buffer*, 137 N.E.3d at 777-78 (Burke, J., concurring).
135. *Id.* at 777 (Burke, J., concurring).

First, Justice Burke asserted that when enacting the section, the legislature was thinking about what minimum sentences must still be met when sentencing juveniles to "the specified types of murder listed in th[is] subsection[;]" the legislature was not imposing a minimum sentence of 40 years because it was considering de facto life sentences or "the life expectancy of juveniles."[136] Section 5-4.5-105(c) became effective on January 1, 2016,[137] but Illinois did not find de facto life sentences unconstitutional until September 22, 2016.[138] This supports Justice Burke's assumption that the legislature was not thinking about de facto life sentences or what term-of-years may constitute a life sentence when creating the section relied upon in *Buffer* to draw the 40-year-line.[139]

In making her second argument, Justice Burke pointed out that:

> [T]he majority claims to be "extrapolating" from the legislature's requirement in section 5-4.5-105(c), that a minimum sentence of 40 years must be imposed for certain offenses, to find that 40 years is the maximum sentence that may be imposed without becoming a de facto life sentence. The majority provides no explanation for this maneuver.[140]

Third, she emphasized that "it is this court's responsibility to decide whether the legislature's sentencing scheme is constitutional, not the other way around."[141] Justice Burke further asserted that the legislature is not the entity to make the decision of "whether its own statutory scheme is unconstitutional[.]"[142]

This comment agrees that the legislature was not deciding what a de facto life sentence was when composing section 5-4.5-105. Rather, the section lays out characteristics of youth that must be considered and is largely related to the holding in *Miller*.[143] While the Illinois legislature could define de facto life sentencing in a statute, it has yet to do so. Illinois legislatures should enact a statute clearly defining what a de facto life sentence is, and it should do so by looking at cases that analyze this specific issue. However, this would not include looking at the reasoning in *Buffer* because the Supreme Court of Illinois mistakenly relies on a statute that is not intended to define de facto life sentencing.

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136. *Id.* (Burke, J., concurring).
137. 730 ILL. COMP. STAT. 5/5-4.5-105.
138. *Reyes*, 63 N.E.3d at 888.
139. *Buffer*, 137 N.E.3d at 777 (Burke, J., concurring).
140. *Id.*
141. *Id.* at 778 (Burke, J., concurring).
142. *Id.*
143. *See supra* notes 93-97 and accompanying text (explaining the section and its purpose).

B. Section 5-4.5-115: Meaningful Opportunity for Release in the Form of Parole

In June 2019, the Illinois General Assembly enacted Public Act 100-1182, which added section 5-4.5-115 to the Illinois Uniform Code of Corrections, titled "Parole review of persons under the age of 21 at the time of the commission of an offense[.]"[144] This section provides an opportunity for parole for those "under the age of 21 at the time of the commission of an offense."[145] The statute provides:

> A person under 21 years of age at the time of the commission of an offense or offenses, other than first degree murder, and who is not serving a sentence for first degree murder and who is sentenced on or after June 1, 2019 . . . shall be eligible for parole review by the Prisoner Review Board after serving 10 years or more of his or her sentence or sentences, except for those serving a sentence or sentences for: (1) aggravated criminal sexual assault who shall be eligible for parole review by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences or (2) predatory criminal sexual assault of a child who shall not be eligible for parole review by the Prisoner Review Board under this Section.[146]

The statute also establishes that those who are under the age of 21 at the time of their offense serving sentences for first degree murder have the chance for parole after serving 20 years of their sentence.[147]

The statute lists three reasons for determining an offender is not eligible for parole: first, there is a "substantial risk" that the offender will not comply with the terms of his release; second, releasing the offender at the time of his or her parole hearing would "deprecate the seriousness of his or her offense or promote disrespect for the law[;]" and third, "the eligible person's release would have a substantially adverse effect on institutional discipline."[148]

In addition to providing reasons not to release an offender, the statute also states that the Prisoner Review Board must consider the mitigating circumstances of youth, as well as any demonstrated "growth or maturity of the youthful offender during incarceration."[149] Additionally, "[i]f the Prisoner Review Board denies parole[,] . . . it shall issue a written decision which states the rationale for denial, including the primary factors considered."[150]

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144. 730 ILL. COMP. STAT. 5/5-4.5-115. This was renumbered to 5-4.5-115 after having been previously numbered as 5-4.5-110. *Id.*

145. *Id.*

146. *Id.* at § 5/5-4.5-115(b).

147. *Id.*

148. *Id.* at § 5/5-4.5-115(j).

149. *Id.*

150. *Id.* at § 5/5-4.5-115(l).

This statute is a great step for Illinois in creating meaningful opportunities for release. The mandating of parole provides juvenile offenders with the hope that they may be released from prison, and the opportunity to demonstrate growth and maturity.[151]

C. Federal Circuit Courts Apply De Facto Life Sentencing

1. Federal Circuit Courts' Narrow Interpretation of Miller and Graham

Federal Circuit Courts are split on whether to extend the holdings of *Roper*, *Graham*, and *Miller* to de facto life sentences. There are decisions in the Fifth,[152] Sixth,[153] and Eighth Circuits[154] that all decline to extend these holdings to consecutive sentences or lengthy term-of-year sentences.[155] These courts narrowly interpret the decisions in *Graham* and *Miller* to only apply to mandatory penalty schemes that prevent accounting for the mitigating factors of youth.[156] However, at least some of these courts recognize that, while narrow in its holding, the words of *Roper*, *Graham*, and *Miller* can apply to all juvenile sentences that amount to spending life in

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151. *Montgomery*, 136 S. Ct. at 736 (stating that "[a]llowing [juvenile] offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment").

152. *See Walton*, 537 F. App'x at 437 (holding that *Graham* and *Miller* are not applicable to a "discretionary federal sentence for a term of years").

153. *See Goins*, 556 F. App'x at 440 (finding that *Miller* does not require the considering of mitigating youthful circumstances when sentencing a juvenile to a term-of-years sentence); *Starks*, 659 F. App'x at 280 (holding that the United States Supreme Court has not found that the Eighth Amendment extends to de facto life sentences).

154. *See Jefferson*, 816 F.3d at 1018-19 (declined to apply *Miller* to discretionary, non-mandatory life sentences).

155. *Walton*, 537 F. App'x at 437; *Goins*, 556 F. App'x at 440; *Starks*, 659 F. App'x at 280-81; *Jefferson*, 816 F.3d at 1019.

156. For example, the *Jefferson* court stated:

> The Court in *Miller* did not hold that the Eighth Amendment categorically prohibits imposing a sentence of life without parole on a juvenile offender. Rather, the Court held that the mandatory penalty schemes at issue prevented the sentencing judge or jury from taking into account "that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."

Jefferson, 816 F.3d at 1018-19 (citing *Miller*, 567 U.S. at 472) (citations omitted).

prison.[157] Rather than allowing Illinois courts to decide how to interpret *Miller*, Illinois should enact legislation that prevents subjecting juveniles to de facto life sentences.

2. Federal Courts Define Meaningful Opportunities for Release

Federal courts have found other reasons for deeming lengthy sentences constitutional.[158] If a juvenile offender shows signs of rehabilitation and maturity rather than irreparable corruption, the offender must be given the chance for release.[159] For example, the United States Supreme Court found signs of maturity when a petitioner started an inmate boxing team and worked in the silkscreen department.[160]

However, no matter the term-of-years imposed, a sentence is considered constitutional if it provides "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[161] For example, the Fourth Circuit found that a 77 consecutive-year sentence did not violate the Eighth Amendment because Virginia provided an opportunity for geriatric parole.[162] The issue with this logic is that geriatric parole is not a meaningful opportunity for release based on the merits of the offender.[163] Instead, it is a circumstantial opportunity that does not have to do with the original sentencing.

Another example of a meaningful opportunity of release was found by the United States District Court for the Northern District of Texas in *Juarez v. Davis*, which found a prison sentence that

157. *See Goins*, 556 F. App'x at 440 (deciding that *Miller* does not *directly* apply to de facto life sentences even though the decision "counsels in favor of" doing so).

158. *See Contreras*, 716 F. App'x at 163 (finding an opportunity for geriatric parole was a "meaningful opportunity to receive parole"); *Juarez*, 2018 U.S. Dist. LEXIS 79996 at *14 (holding a prison sentence that offered the chance of parole after serving 40 years in prison was constitutional).

159. *Montgomery*, 136 S. Ct. at 736-37.

160. *Id.* at 736. *Montgomery* decided whether the petitioner's case should be remanded for a new sentencing or opportunity for parole so factors were not taken as true but only used to demonstrate examples of rehabilitation. *Id.*

161. *Graham*, 560 U.S. at 75. "Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change." *Montgomery*, 136 S. Ct. at 736.

162. *Contreras*, 716 F. App'x at 163. Alternatively, the petitioner's sentence was also deemed constitutional when the sentencing court heard mitigating testimony from five witnesses. *Id.*

163. This comment agrees with the assertion that geriatric parole does not provide a meaningful opportunity for release. Illinois has also opined that they do support geriatric parole as a meaningful opportunity for release. *Buffer*, 137 N.E.3d at 772.

offers the possibility of parole after serving 40 years of the sentence is constitutional.[164] In that case, the chance for parole after 40 years may be a meaningful opportunity; however, a parole hearing should be based on the growth and maturity the offender demonstrates in order to ensure the safeguards of *Miller* are still being applied to juvenile offenders.

3. Determining What a Meaningful Opportunity for Release is

The Third, Seventh, Ninth, and Tenth Circuits extend the holdings of *Roper*, *Graham*, and *Miller* to de facto life sentences.[165] The Third Circuit held that *Graham* applies to de facto life sentencing, and then decided retirement age determined what was a life sentence.[166] The Third Circuit Court tried to determine a time when adults stop living a regular work life and retire, rather than trying to simply determine when death will occur.[167] This is something legislatures and courts should do, as juveniles should be given a "meaningful opportunity for release."[168] Meaningful opportunities for release should not be based on determining at what point will a juvenile survive to see life outside of prison, rather it should be at what point will an offender still be able to live life once they are released.[169]

The Third Circuit applied this rationale when it adopted the "rebuttable presumption that a non-incorrigible juvenile offender should be afforded an opportunity for release before the national age of retirement."[170] It specifically required the "uniform *national* age of retirement" to avoid the inconsistencies that life expectancy tables present when focusing only on certain characteristics of people.[171] The ages given by the Social Security Administration

164. *Juarez*, 2018 U.S. Dist. LEXIS 79996 at *14.

165. *Grant*, 887 F.3d at 153; *Biter*, 725 F.3d at 1191-92, 1194; *Budder*, 851 F.3d at 1059; McKinley v. Butler, 809 F.3d 908, 914 (7th. Cir. 2016).

166. *Grant*, 887 F.3d at 151, 153.

167. *Id.* at 150 (asking the question "at what age is one still able to meaningfully reenter society after release from prison?").

168. *Id.*

169. *Id.* "A 'meaningful opportunity for release' must provide for 'hope' and a chance for 'fulfillment outside prison walls,' 'reconciliation with society,' and 'the opportunity to achieve maturity of judgment and self-recognition of human worth and potential.'" *Id.* (quoting *Graham* 560 U.S. at 79).

170. *Id.* at 152. It is important to note that the Third Circuit here stated that this was "not a hard and fast rule." *Id.* This comment supports the idea of tying a "meaningful opportunity for release" not only to the opportunity to be let out of prison, but to emphasize "meaningful" so that a juvenile offender still has the opportunity to experience life outside of prison.

171. *Id.* at 151.

range from age 62 to 67.[172] It is important to note that this holding was vacated so the Third Circuit Court of Appeals could rehear the case *en banc* in February of 2019, but nevertheless, the court's reasoning here still tries to provide a means of providing meaningful release.[173]

Similarly, the Ninth Circuit upheld a lower federal court's decision, to remand a de facto life sentence because it was contrary to the law established in *Graham*.[174] In addition, the Tenth Circuit held that *Graham* applies to de facto life sentencing and renders such sentencing unconstitutional.[175] And, most notably for Illinois, the Seventh Circuit Court of Appeals, under which Illinois sits, held that the sentencing court should consider *Miller's* holding that "children are different" when deciding a juvenile offender's sentence.[176] The Seventh Circuit further held that the language in *Miller* extends to discretionary and de facto life sentences.[177] As illustrated, the above-mentioned United States Circuit Courts are broadly interpreting *Miller* and are applying it to all sentencings that would subject a juvenile to life in prison. This comment agrees with this interpretation of *Miller*, which prohibits subjecting juveniles to spending their entire life in prison, regardless of the classification of their sentence.

D. Different States Take Different Approaches to De Facto Life Sentencing

Most courts agree that long term-of-years sentencing is a de facto life sentence, though it is questionable as to where the sentencing line is drawn.[178] Alternatively, California's Fourth Appellate District found that a statute precluded all sentencing in their jurisdiction from being de facto life sentences.[179] The California statute, Section 3051,[180] provided the defendant with a

172. *Id.*

173. *Grant*, 905 F.3d 285 (vacating judgement so the case may be heard *en banc*).

174. Moore v. Biter, 742 F.3d 917 (9th Cir. 2014).

175. *Budder*, 851 F.3d at 1059.

176. *McKinley*, 809 F.3d at 911, 914.

177. *Id.* at 914.

178. "[M]ost courts that have considered the issue agree that a lengthy term of years for a juvenile offender will become a de facto life sentence at some point, although there is no consensus on what that point is." Casiano v. Comm'r of Corr., 115 A.3d 1031, 1045 (2015), *see* People v. Coty, 110 N.E.3d 1105, 1123 (Ill. App. Ct. 2018) (finding that releasing someone at age 84 was undoubtedly a de facto life sentence), *see also* State v. Moore, 76 N.E. 1127, 1149 (Ohio 2016) (holding that a 112-year sentence violated the Eighth Amendment).

179. People v. Scott, 208 Cal. Rptr. 3d 449, 460 (4th Dist. 2016).

180. The California code provides juvenile offenders with eligibility for parole on the twenty-fifth year of their sentence. CAL. PENAL CODE § 3051 (Deering 2020).

chance of parole after serving 25 years of his sentence.[181] There, a 16-year-old offender was sentenced to 120 years of consecutive sentencing.[182] This statute fulfills *Graham* and *Miller*'s requirements for a "meaningful opportunity for release."[183] Thus, the sentence was affirmed.[184]

In addition to statutes that may provide a meaningful opportunity for release, another thing worthy of consideration in de facto life sentencing is consecutive sentences. The Superior Court of Pennsylvania held that de facto life sentences without parole are unconstitutional.[185] However, in cases that involve more than one homicide, each sentence for each crime was evaluated separately when determining whether the sentence is a de facto life sentence.[186] The court held that two consecutive sentences adding up to 60 years to life was constitutional when the appellant killed two different people.[187] The Pennsylvania court reasoned that this holding was necessary to maintain valid sentencing of those who commit multiple murders as juveniles.[188]

Similarly, in Missouri a defendant argued that "his aggregated sentences for seven nonhomicide offenses" failed to provide him a "meaningful opportunity for release."[189] There, the court held that *Graham* did not address offenders who committed multiple offenses; it addressed only one single nonhomicidal offense.[190] It further found that "the [United States] Supreme Court has never held that consecutive lengthy sentences for multiple crimes in excess of a juvenile's life expectancy is the functional equivalent of life without parole."[191]

Alternatively, Connecticut law[192] establishes that the functional equivalent of a life sentence happens when someone is sentenced to a minimum of 60 years in prison.[193] The Supreme Court of Connecticut used the average life expectancy in males to find that if a male was released in his sixties in today's world, he may have an average of eight to 10 more years outside of prison.[194]

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181. *Scott*, 208 Cal. Rptr. 3d at 460.

182. *Id.* at 450-51.

183. *Id.* at 461.

184. *Id.*

185. Commonwealth v. Foust, 180 A.3d. 416, 420 (Pa. 2018).

186. *Id.*

187. *Id.* at 420-21.

188. *Id.* at 436. The court reasoned that each individual sentence was already shortened due to mitigating factors of youth and declared this sentence unconstitutional which would provide a discounted sentence for all juveniles who commit multiple murders. *Id.*

189. Willbanks v. State Dep't of Corr., 522 S.W.3d 238, 242 (Mo. 2017).

190. *Id.*

191. *Id.* at 246.

192. CONN. GEN. STAT. § 53a-35b. (LexisNexis 2019).

193. *Casiano.*, 115 A.3d at 1045.

194. *Id.* at 1046. The Court used a life expectancy table provided by the

However, this did not account for the impact prison had on life expectancy.[195]

When trying to predict life expectancy, there are indications that life expectancy tables should not be used in determining the life expectancy of a prisoner.[196] "Life expectancy is a statistic that represents the estimated average length of life of a group of people whose deaths will occur over a long period of time."[197] Life expectancy tables are an insufficient way of predicting life expectancy because there are groups of people that have significantly different life expectancies.[198] In addition, "life expectancy is the number that represents the center of a distribution."[199] Using the average life expectancy in determining life sentences ensures that almost half of the group will die before they reach this age, and more than half if the table is not accurate.[200] Additionally, studies suggest that merely moving or

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Center of Disease Control and Prevention to see that in 2014 the average life expectancy was 76 years old in males. *Id.*

195. *Id.* One year spent incarcerated can take two years off of a person's life. Emily Widra, *Incarceration Shortens Life Expectancy*, PRISON POL'Y INITIATIVE (June 26, 2017), www.prisonpolicy.org/blog/2017/06/26/life_expectancy/.

196. Adele Cummings & Stacie Nelson Colling, *There is No Meaningful Opportunity in Meaningless Data: Why it is Unconstitutional to Use Life Expectancy Tables in Post-Graham Sentences*, 18 UC DAVIS J. JUV. L. & POL'Y 267, 293 (2014).

197. *Id.* at 282.

198. Groups of people such as different genders, different races, and other factors such as region, income, education, access to healthcare, community types, etc. will create further gaps in life expectancy tables. *Id.* at 280, 282.

> For example, according to the estimates of both the Vital Statistics and the Census Bureau, white females born in 1981 had, in 2001, a life expectancy of 60.6 years, for a total life expectancy of 80.6 years. Black men born in the same year had an estimated life expectancy of 50.3 years, for a total life expectancy of 70.3 years, a difference of more than a decade.

Id. at 280. Another example of the discrepancy in groups includes:

> Taking into account the effect on life expectancy of variables that have long been studied by social scientists but are not included in U.S. Census or vital statistics reports - income, education, region, type of community, access to regular health care, and the like - further widens the observed and projected gaps in life expectancy between disadvantaged and privileged groups in the United States.

Id. at 282.

199. *Id.* at 281.

200. For example:

> A society whose members all either die at birth or live to 100 has a life expectancy of 50 years, as does a society in which everyone lives exactly 50 years. In the first society, people's actual life expectancy is wrong by exactly 50 years for every individual (maximum variance); in the second, the life expectancy of the group is exactly the length of life of every member (zero variance).

adjusting the average life expectancy age of prisoners is an overly simplistic fix as groups of people are affected differently by incarceration.[201]

When determining what a de facto life sentence is, some courts look to life expectancy.[202] However, life expectancy is not an accurate tool that courts or legislatures should use in determining whether someone has been sentenced to life.[203] Life expectancy tables calculate the rate at which a group of people will die.[204] They provide a *center* distribution age of death for this group.[205] This means half of the ages of death calculated occur before the center number provided.[206]

> Prison sentences that prevent people from being released until shortly before they reach average life expectancy ensures that almost one-half of them will have died before they reach that age. This is true when the estimate of average life expectancy for that group is perfectly accurate and precise. And if people facing or serving prison terms that approach the life expectancy of the general population actually have a lower life expectancy, then fewer than one-half will have any opportunity for release, because they will have died.[207]

Life expectancy tables do not provide an opportunity for meaningful release and should not be used when determining a juvenile sentence.[208]

Additionally, if a life expectancy tool is used, then there must be room built in to account for what constitutes meaningful release.[209] The Supreme Court of Connecticut held in *Casiano v. Commissioner of Correction* that a statute which provided eight to ten years outside of prison, according to the life expectancy of males, was a valid meaningful opportunity for release.[210] They also

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Id.

201. Fiona G. Kouyoumdjian et al., *Do People Who Experience Incarceration Age More Quickly? Exploratory Analyses Using Retrospective Cohort Data on Mortality from Ontario, Canada*, PLOS (Apr. 14, 2017), www.journals.plos.org /plosone/article?id=10.1371/journal.pone.0175837.

202. The court used the average life expectancy from a life expectancy table provided by the Center of Disease Control and Prevention to observe that in 2014, the average life expectancy was 76 years old in males. *Casiano*, 115 A.3d at 1046.

203. Cummings & Colling, *supra* note 196, at 283.

204. "Life expectancy is 'the average number of years a person can expect to live if current mortality trends were to continue for the rest of that person's life.'" *Id.* at 278 (citations omitted).

205. "Life expectancy is the number representing the center of a distribution. Another important characteristic of distributions is how widely dispersed around the center the numbers are." *Id.* at 281.

206. *Id.* at 283.

207. *Id.*

208. *Id.* at 294.

209. *Grant*, 887 F.3d at 151.

210. *Casiano*, 115 A.3d at 1045-46.

acknowledged that the life expectancy table did not take into account the effect that prison had on the life expectancy of those spending most of their life in prison.[211]

E. How Prisoners' Life Expectancy is Diminished in Prison

Although it is unclear how to measure the perfect life expectancy for everyone, it is undeniable that incarceration negatively impacts the life expectancy of prisoners.[212] Every year spent in prison can take two years off of an individual's life expectancy.[213] Professor Evelyn Patterson conducted a study of New York state paroles and incarcerations for how it affected mortality, and her findings revealed that "five years in prison increased the odds of death by 78 [percent] and reduced the expected life span at age 30 by 10 years."[214] This showed a direct correlation between "time served" in prison and the "years of life" that a prisoner loses.[215] Professor Patterson's study pointed out that there is a "15.6 percent increase in the odds of death for parolees compared to people who had never been to prison."[216]

Illinois should use this information to create legislation that prevents juvenile de facto life sentencing. Additionally, Illinois should provide legislation that allows juvenile offenders a meaningful opportunity for release.

IV. PROPOSAL

Now, this comment will propose a solution for Illinois in determining what a de facto life sentence is. First, it will explain why determining an exact life expectancy for juvenile offenders is not necessary or possible. This section will discuss more meaningful ways of determining release and how it should be implemented. Finally, this section will propose a resolution that will provide all juveniles with a "meaningful opportunity for release," rather than the false hope of being released.

Illinois should not only uphold the principles of *Miller* in its courts, but also it should strengthen these principles in its legislation. Not only should Illinois define what a de facto life

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211. *Id.* at 76.

212. Widra, *supra* note 195.

213. *Id.*

214. *Id.* (citing Evelyn J. Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003*, 103 AM. J. PUB. HEALTH 523 (2013)).

215. Widra, *supra* note 195.

216. Jim Patterson, *Prison Time Cuts Lifespan Until Parole Ends*, FUTURITY (Feb. 6, 2013), www.futurity.org/prison-time-cuts-lifespan-until-parole-ends/.

sentence is, but also it should put in additional safeguards to ensure that juveniles are protected from this type of sentencing.

A. Eliminating Juvenile De Facto Life Sentencing

First, Illinois should establish, by way of legislation, an age limit at which a juvenile offender's sentence must end, unless they are deemed an incorrigible offender or irreparably corrupt.[217] Since age is considered at the time of the commission of the offense, it should also be an important factor at the time of release in order to ensure offenders will still be young enough to experience life outside of prison. Life expectancy tables should not be used to determine this age limit because they do not factor in the many deteriorating circumstances that juveniles face while in prisons. Therefore, the age they determine will be significantly higher than is accurate.[218] Furthermore, life expectancy tables should not be used because Illinois should try to determine a meaningful opportunity for release, rather than just seeking to release the offender immediately prior to his death.

Juvenile offenders should be released before the time that average adults are ready to start retiring from an average life of working.[219] Therefore, this comment proposes that the age limit for release should be no later than 60 years old. As *Grant* analyzed, ages of retirement span between 62 and 67.[220] However, it is important to remember that this is only true of adults who do not have a deteriorated life span due to life in prison.[221] In order for juvenile offenders to have a meaningful opportunity for release, they should be able to have a chance to start a life upon release.

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217. An incorrigible offender is "[a] criminal who, having been punished for illegal activities, resumes those activities after the punishment has been completed." *Recidivist*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "recidivist" as synonymous with "habitual offender"); *see also Habitual Offender*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "habitual offender" as synonymous with "incorrigible offender").

218. Cummings & Colling, *supra* note 196, at 283.

219. For example, *Grant* explained the importance of being released before a retirement age:

> "[I]n order to effectuate the Eighth Amendment's requirement of meaningful opportunity for release, a juvenile offender that is found to be capable of reform should presumptively be afforded an opportunity for release at some point before the age of retirement. A sentence that preserves the juvenile offender's opportunity to contribute productively to society inherently provides him or her with "hope" to "reconcil[e] with society" and achieve "fulfillment outside prison walls."

Grant, 887. F.3d at 150-51 (citations omitted).

220. *Id.* at 151.

221. Patterson, *supra* note 216.

Thus, they should be released before age 60, so they have the chance to do so.

Second, if a juvenile offender is determined to be incorrigible or irreparably corrupt, then the court must explicitly explain *why* the juvenile is deemed to be an incorrigible offender.[222] This must be more than simply the crime committed, it must be the mindset and lack of rehabilitation present in the offender. This would be beneficial so that Illinois courts can remain consistent in their determinations of what makes an offender incorrigible. It will also help the Illinois appellate courts determine whether the reasoning by the trial courts truly makes the juvenile offender incorrigible. Defining what makes an offender incorrigible requires sentencing courts to look at the offender's characteristics of youth, childhood experiences, and circumstances surrounding the offense, and then determine that the offender cannot be rehabilitated.[223] This is another way to prevent courts from subjecting juvenile offenders to life in prison without measuring all of the circumstances surrounding the crime and offender.[224]

In effect, this legislation should abrogate[225] the holding in *Buffer*.[226] In this case, abrogating *Buffer* is necessary in order to truly provide an accurate description of what a juvenile offender de facto life sentence is. *Buffer* does not accomplish this, as it improperly relies on legislation that does not consider de facto life sentencing, but rather only considers juvenile sentencing as a whole without factoring in de facto sentences.[227] Because this legislation considers an age limit rather than a term-of-years, the proposed sentencing statute may not always follow the holding in *Buffer*. Thus, the new legislation should abrogate *Buffer* and explicitly state that *Buffer* should not be considered when deciding whether a juvenile sentence is a de facto life sentence.[228]

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222. Illinois is already doing this in their new parole statute. 730 ILL. COMP. STAT. 5/5-4.5-115(l). However, they should also do this at the time of sentencing, if the sentencing court finds a juvenile de facto life sentence should be imposed.

223. The Court in *Miller* held that courts may determine a juvenile offender incorrigible, but "require [the sentencing court] to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 567 U.S. at 479-80.

224. *Id.*

225. Abrogate: "To abolish (a law or custom) by formal or authoritative action; to annul or repeal." *Abrogate*, BLACK'S LAW DICTIONARY (11th ed. 2019).

226. Rush Univ. Med. Ctr. v. Sessions, 980 N.E.2d 45, 50 (Ill. 2012). "Common law rights and remedies remain in full force in this state unless expressly repealed by the legislature or modified by court decision." *Id.*

227. *See supra* Part III.A.2 (analyzing why *Buffer* improperly relies on a statute in defining juvenile de facto life sentences).

228. *Sessions*, 980 N.E.2d at 50. "Any legislative intent to abrogate the common law must be plainly and clearly stated, and such intent will not be presumed from ambiguous or questionable language." *Id.*

B. Parole Opportunities for Juvenile Offenders

Alternatively, Illinois should keep a statute eliminating the impossibility of parole for non-incorrigible juvenile offenders but should ensure the statute provides a meaningful opportunity for release to all juvenile offenders who are not irreparably corrupt. This statute must consider more than the average age of retirement, as juvenile offenders drastically lose years off of their life while in prison.[229] The age for granting a parole review should be no later than 45 years old.[230] If juvenile offenders are spending the majority of their life in prison, then their life expectancy is drastically lower than that of an average individual.[231] The new parole statute in place for juvenile offenders, section 5/5-4.5-115, seems to align with these guidelines and the majority of this statute should remain good law.[232]

For those juvenile offenders whose crimes are not first degree murder, aggravated criminal sexual assault, or predatory criminal sexual assault of a child, an opportunity for parole should be presented after 10 years spent in prison.[233] This comment agrees with the new parole statute on this matter. It also allows an opportunity for parole for juvenile offenders who committed first degree murder, after serving 20 years of their life sentence.[234] However, the statute should also include that those who are serving

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229. "For every year spent behind bars, a person's overall life expectancy decreases by two years." Patterson, *supra* note 216.

230. The social security administration provides ages of retirement spanning between 62 and 67 years old. *Grant*, 887 F.3d at 151. However, studies show that spending a year in prison can take two years off of your life. Patterson, *supra* note 216. This makes 45 years old a more appropriate age for release than anywhere in an offender's 60s because their life span will have been drastically reduced by incarceration. *Id.*

231. *Id.*

232. 730 ILL. COMP. STAT. 5/5-4.5-115.

233. *Id.* This guideline is still in line with the new parole statute:

> A person under 21 years of age at the time of the commission of an offense or offenses, other than first degree murder, and who is not serving a sentence for first degree murder and who is sentenced on or after June 1, 2019 (the effective date of Public Act 100-1182) shall be eligible for parole review by the Prisoner Review Board after serving 10 years or more of his or her sentence or sentences, except for those serving a sentence or sentences for: (1) aggravated criminal sexual assault who shall be eligible for parole review by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences or (2) predatory criminal sexual assault of a child who shall not be eligible for parole review by the Prisoner Review Board under this Section.

Id. at § 5-4.5-115(b).

234. *Id.*

sentences for aggravated criminal sexual assault or predatory criminal sexual assault of a child be given an opportunity for parole by the time they reach age 45.[235] As de facto life sentences are unconstitutional for all except the rare individual showing irreparable corruption,[236] a meaningful opportunity for release should also be afforded to them, or, alternatively, Illinois must define in its legislation that these offenses are in the narrow category of offenses that demonstrate irreparable corruption.[237]

The Prisoner Review Board may base this determination off of the severity of the crime, while also considering any mitigating and aggravating factors surrounding the circumstances of the offender's youth. To determine what is a mitigating or aggravating factor, the court should look to the relevant crime sentencing statute and the sentencing statute for juveniles, section 5/5-4.5-105.[238] The Prisoner Review Board should also look for signs that the offender experienced rehabilitation, growth, or maturity while in prison.[239] If the offender shows signs of maturity and growth, the offender should be released on parole. Alternatively, if the offender shows no signs of growth or rehabilitation, parole should be denied.

The Prisoner Review Board should give the same consideration that sentencing judges must give when determining whether an offender showed transient characteristics of youth at the time of the offense, or whether the offender is incorrigible.[240] This is different from an actual sentencing because now the juvenile offenders have served years in prison and their actions as adults may now be examined. Rather than trying to predict maturity as an adult, the Prisoner Review Board can actually review the offender's actions as an adult. These factors should include whether the offender has committed any harmful or offensive acts while incarcerated.[241] These factors should also include productivity while incarcerated, such as any skills learned, jobs performed, or education received.[242] If the offender has made more steps towards rehabilitation rather

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235. Currently these types of offenders are not eligible for parole under Section 5-4.5-115(b). *Id.*

236. *Miller*, 567 U.S. at 479-80 (citing *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at 68).

237. *Roper* explains that there exists "the underlying principle that the death penalty is reserved for a narrow category of crimes and offenders." 543 U.S. at 568-69. Similarly, a narrow category of offenses may exist for irreparably corrupt offenders. However, if Illinois finds this to be true, the legislation should make it clear that certain crimes fall within this category and deem an offender to be irreparably corrupt.

238. 730 ILL. COMP. STAT. 5/5-4.5-105.

239. 730 ILL. COMP. STAT. 5/5-4.5-115(j).

240. *Montgomery*, 136 S. Ct. at 736.

241. "Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of Miller's central intuition—that children who commit even heinous crimes are capable of change." *Id.*

242. *Id.*

than towards recidivism, then he or she should be given an opportunity for parole.[243]

V. CONCLUSION

Illinois has already declared that de facto life sentences are an unconstitutional fate for juvenile offenders that are not irreparably corrupt.[244] Illinois should further the holding in *People v. Reyes* by passing legislation that does not allow juveniles who are not incorrigible to be sentenced past the age of 60. Illinois should also pass legislation that does not allow these juveniles to spend life in prison past the age of 45 without the opportunity for meaningful release. In effect, this legislation should expressly state that it is repealing the holding in *Buffer*. This opportunity must be a parole hearing that affords consideration of the mitigating factors of the offender's maturity and rehabilitation. This statute should allow those who committed crimes, that were not first degree murder, criminal sexual assault, or predatory criminal sexual assault of a child, an opportunity for parole after ten years. Juvenile offenders who commit more serious crimes, such as first degree murder, should be considered for parole after 20 years. Those juvenile offenders who committed criminal sexual assault or predatory criminal sexual assault of a child should be considered for parole by age 45. This new legislation will truly provide juvenile offenders with meaningful opportunity of release rather than a life condemned to prison.

Meaningful release means giving a juvenile the chance to leave prison and have some semblance of a life outside of confinement. There are two major ways to prevent subjecting juveniles to spending their entire life in prison. The first is implementing a set

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243. The Court in *Montgomery v. Louisiana* found that petitioner had made steps towards rehabilitation during his time incarcerated when:

> Petitioner has discussed in his submissions to this Court his evolution from a troubled, misguided youth to a model member of the prison community. Petitioner states that he helped establish an inmate boxing team, of which he later became a trainer and coach. He alleges that he has contributed his time and labor to the prison's silkscreen department and that he strives to offer advice and serve as a role model to other inmates. These claims have not been tested or even addressed by the State, so the Court does not confirm their accuracy. The petitioner's submissions are relevant, however, as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation.

Id. Although these were just examples of how the petitioner may have changed, if the petitioner has truly shown this type of change, parole should be achieved.

244. *Reyes*, 63 N.E.3d at 888.

time of release. However, the time limitation proposed, age 60, is still the majority of a prisoner's life. This is enough to incentivize not committing the crime in the first place.

The second major way to accomplish this goal is finding ways to make sure the offender's parole hearing is providing a "meaningful opportunity for release." This is supported by not only setting requirements that allow opportunities for release, but also by making judges or the Prisoner Review Board give explicit reasoning as to *why* someone is not being resentenced or released on parole. This will ensure the reasons set forth are in line with the reasons established in *Miller*. It also ensures that they will consider all circumstances of youth and factors of rehabilitation upon parole review. This proposed legislation prevents subjecting a juvenile to spending their life behind bars for mistakes made during their childhood.