

**CLE Handout |Youth Status Matters: Significant Cases & WA Legislation |Nov. 18, 2022**

See also, [Exceptional Sentence Down – Youth as Mitigating Factor](https://defensenet.org/resources/exceptional-sentence-down_youth-as-mitigating-factor/)

**United States Supreme Court Cases:**

**1988** *Thompson v. Oklahoma,* 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 792 (1988): **The** **Eighth Amendment prohibits the death penalty for youth under age 16 at the time of the crime.**

**1989** *Stanford v. Kentucky,* 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989): **Imposing the death penalty on youth who are 16-18 year old at the time of their offense does not violate the Eighth Amendment.**

**2002** *Atkins v. Virginia*[, 536 U.S. 304 122 S.Ct. 2242 153 L.Ed.2d 335 (2002):](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=708&FindType=Y&SerialNum=2002381685) **[Imposing the death penalty on intellectually disabled individuals violates the Eighth Amendment.](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=708&FindType=Y&SerialNum=2002381685)**

**2005** *Roper v. Simmons* – 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005): **The Eighth Amendment prohibits the death penalty for all youth under age 18 at the time of the offense.**

**2010** *Graham v. Florida,* 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010): **The Eighth Amendment prohibits life without parole (LWOP) for youth convicted of non-homicide crimes, and youth must have meaningful opportunity for release in non-homicide cases**.

**2011** *JDB v. North Carolina,* 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011): **Youth status matters beyond sentencing. The *Miranda* custody test can readily include consideration of the age of a juvenile.**

**2012** *Miller v. Alabama,* 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012): **The Eighth Amendment prohibits mandatory LWOP for youth under age 18 who commit homicide crimes**. **An individualized sentencing hearing must take place and the court must take into account the attributes of youth and the life circumstances of the youth before determining a sentence. Juvenile LWOP should be rare.**

**2016** *Montgomery v. Louisiana,* 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016): ***Miller v. Alabama* is retroactive, life without parole is banned for all but those juveniles whose crime reflects permanent incorrigibility**. “Miller did more than require a sentence to consider a juvenile offender’s youth before imposing life without parole; it established that the penological justification for life without parole collapses in light of the distinctive attributes of youth.” “*Miller*, it is true, did not bar a punishment for all juvenile offenders, as the Court did in *Roper* and *Graham*. ***Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”**

**2021** *Jones v. Mississippi,*593 U.S. \_\_\_, 141 S.Ct. 1307, 209 L.Ed.2d 390 (2021): ***Miller* and *Montgomery* do not require the sentencer to make a separate factual finding of permanent incorrigibility before sentencing an individual to life without parole for homicide committed as a child.** A discretionary sentencing system is constitutionally necessary and constitutionally sufficient.

**Washington State Court Cases**

**1993**

*State v. Scott*, 72 Wn.App. 207, 866 P.2d 1258 (1993) (17 year old prosecuted in adult court for murder, sentenced to 900 months): **Youth/young age is not a basis to depart from the standard range.**

**“**Granted teenagers are more impulsive than adults and lack mature judgment. However, Scott’s conduct cannot *seriously* be blamed on his “lack of judgment” as he contends. Premeditated murder is not a common teenage vice.”

**1997**

*State v. Ha’mim*, 132 Wn.2d 834, 940 P.2d 633 (1997) (18 year old prosecuted for robbery in the first degree committed at age 18): **“Age is not alone a substantial and compelling reason to impose an exceptional sentence.” Age could be relevant to the mitigating factor, that “the defendant's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law was significantly impaired” but no evidence of this mitigator was presented here.**

**2012**

*State v. Posey,* 174 Wn.2d 131, 272 P.2d 840 (2012) (*Posey II*) J. J. Johnson (juvenile court jurisdiction lapsed during appeal, youth resentenced in adult court): **The superior court judge may impose a sentence that is consistent with the Juvenile Justice Act when an individual prosecuted in adult court for an offense committed as a juvenile.**

**2014**

*In re McNeil, In re Rice,* 181 Wn.2d 582, 334 P.3d 548 (2014) (two children prosecuted in adult court for aggravated murder). **The “*Miller*-fix” legislation remedies the unlawful sentence of mandatory LWOP on youth by providing a new sentencing hearing.**

**2015**

*State v. S.J.C.,* 183 Wn2d 408, 352 P.3d 749 (2015). In this juvenile sealing case, the Supreme Court explains the **history of juvenile justice in Washington state and the United States as a whole.**

*State v. E.J.J.*, 183 Wn.2d 497, 354 P.3d 815 (2015). In this juvenile court First Amendment case, J. Gonzales writes a concurrence that includes good language that **we should not criminalize or pathologize standard juvenile behavior**.

*[State v. O’Dell](http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=903379MAJ),* 183 Wn.2d 680, 358 P.3d 359 (2015) (defendant was 10 days past 18th birthday at time of offense), J. Gordon-McCloud. **Age can mitigate a defendant’s culpability, even when that defendant is over 18 at the time of his crime.** **While a defendant’s age is not a *per se* mitigating factor, youthfulness can support an exceptional sentence below the standard range and sentencing court must exercise discretion to decide when that is appropriate**. Despite the scientific and technical nature of the studies underlying *Roper*, *Graham*, and *Miller* decisions, a defendant need not present expert testimony to establish that youth diminished his capacities for purposes of sentencing.

*State v. Ronquillo,* 190 Wn.App. 765, 361 P.3d 769 (Div. I) (2015)(child prosecuted in adult court for murder and other crimes sentenced to 51.3 years): **Sentencing a youth to prison until age 68 is a defacto life sentence.** ***Miller* applies to de facto life sentences. *Miller* applies to aggregate sentences. The *Miller*-fix does not correct the error when the trial court erroneously believed it could not consider the *Miller* factors. Youth relates to culpability and must be considered at sentencing.**

*State v. Keodara,* 191 Wn.App. 305, 364 P.3d 777 (Div. I)(2015) (*published in part*)(child prosecuted in adult court for assault and murder): **An** **831 month sentence for a 17 year old imposed without taking youth into account violates the 8th Amendment**. (\*\*Note, this is from the UNPUBLISHED part of decision)

**2016**

*State v. Solis Diaz*, 194 Wn.App.129, 376 P.3d 758 (Div. II)(2016)(child prosecuted in adult court for non-homicide crimes, sentenced to 1,111 mo, and at the resentencing hearing received same 1,111 mo sentence): **Trial court erred when it failed to consider whether the youth of a 16 year old reduced his culpability and whether the multiple offense policy resulted in an excessive sentence (note the State conceded the trial court erred).** Reversed on other grounds, 187 Wn.2d 535, 387 P.3d 703 (Jan. 2017).

[*In re PRP Wolf*](http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=474557MAJ), 196 Wn.App. 496, 384 P.3d 591 (Div. II) (2016) (child prosecuted in adult court, challenged auto decline when court revoked SSOSA): **PRP dismissed because defendant cannot show**

**prejudice where defendant pleaded guilty and agreed to a SSOSA sentence.**

**2017**

*State v. Solis Diaz,* 187 Wn.2d 535, 387 P.3d 703 (2017) (16 year old tried as adult, sentenced to 92.6 years, and resentenced to same sentence). **Where trial judge indicated he was not open to a mitigated sentence or considering mitigating evidence with an open mind, judge’s ability to be impartial might reasonably be questioned. Remanded for resentencing before a different judge.**

*State v. Ramos,* 187 Wn.2d 420, 434, 387 P.3d 650 (2017) (14 year old resentenced following *Miller* to 85 years for 4 counts of murder, 5 years longer than original sentence), J. Yu.

[W]hile not every juvenile homicide offender is automatically entitled to an exceptional sentence below the standard range, every juvenile offender facing a literal or de facto life-without-parole sentence is automatically entitled to a *Miller* hearing. At the *Miller* hearing, the court must meaningfully consider how juveniles are different from adults, how those differences apply to the facts of the case, and whether those facts present the uncommon situation where a life-without-parole sentence for a juvenile homicide offender is constitutionally permissible. If the juvenile proves by a preponderance of the evidence that his or her crimes reflect transient immaturity, substantial and compelling reasons would necessarily justify an exceptional sentence below the standard range because a standard range sentence would be unconstitutional.

*State v. Houston-Sconiers,* 188 Wn.2d 1, 391 P.3d. 409 (2017) (two children sentenced as adults to 26 and 31 years for multiple counts of robbery and mandatory weapon enhancements) J. Gordon-McCloud.

We now hold that the sentencing judge’s hands are not tied. Because ‘children are different’ under the Eighth Amendment and hence ‘criminal procedure laws’ must take the defendants’ youthfulness into account, sentencing courts must have absolute discretion to depart as far as they want below otherwise applicableSRA ranges and/or sentencing enhancements when sentencing juveniles in adult court, regardless of how the youth got there.

*State v. Saloy* **\*Unreported\***, 97 Wn.App 1080, (Div. I)( 2017). A 60 year sentence for youth, age 16, convicted of murder and assault, is a defacto life sentence; sentence reversed, remanded for trial court to conduct a *Miller* hearing and consider youth. (Note: resentenced in March 2019 to 41 years following *Miller* hearing)

*State v. Bassett*, 198 Wn.App. 714, 394 P.3d 430, (Div. II) (2017) (16 year old sentenced to three LWOP sentences in 2015, after court conducted a *Miller* resentencing hearing) **The *Miller*-fix, RCW 10.95.030, is unconstitutional; youth who were 16 and 17 years old at the time of their crime may not ever be sentence to LWOP.** (Note, the Washington Supreme Court subsequently upheld this COA opinion in *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018)).

**2018**

*State v. Scott*, 190 Wn.2d 586, 416 P.3d 1182 (2018) J. Madsen. In 1989, the State prosecuted Mr. Scott for murder committed when he was 17 years old. Following auto decline to adult court, trial and conviction, the court sentenced Mr. Scott to an exceptional sentence upward of 900 months. In 2016, Mr. Scott filed a motion for relief from judgment requesting a new sentencing hearing. The trial court granted his motion and the State appealed. The Court of Appeals reversed. *Held*, **because the defendant has an adequate remedy through parole under RCW 9.94A.730, relief via PRP is not available**. **A juvenile previously sentenced to life equivalent does not get a new sentencing hearing because he has adequate relief; he can seek parole under RCW 9.94A.730.** (Note – *In re PRP Domingo Cornelio*, *In re PRP Ali* (2020) held *State v. Houston Sconiers* is retroactive and must be applied at resentencing, if petitioners can show prejudice).

*State v. Watkins*, 191 Wn.2d 530, 423 P.3d 530 (2018) J . Fairhurst: The State prosecuted 16 year old Tyler Watkins for first degree burglary in adult court pursuant to the auto-decline statute. ***Held***, **Automatic decline does not implicate the Eighth Amendment’s prohibition on cruel and unusual punishment and does not violate the juveniles’ right to procedural or substantive due process because there is no constitutional right to be tried in juvenile court.**

*In re PRP of Light-Roth*, 191 Wn2d 328, 422 P.3d 444 (2018) J. Madsen: The State prosecuted Mr. Light-Roth in 2003 for a homicide he committed at age 19. Following his conviction, the court imposed 335 months of confinement. In 2016 Mr. Light-Roth filed a PRP arguing he was entitled to resentencing under *State v. O’Dell*. ***Held****,* ***State v. O’Dell* is not a significant change in the law, is not retroactive and therefor does not provide an exception to the one-year time bar**.

*State v. Bassett,* 192 Wn.2d 67, 428 P.3d 343 (2018) J. Owens: In 1996, the State prosecuted 16 year-old Brian Basset as an adult for three counts of aggravated first degree murder. Following conviction, the court sentenced him to life without parole, the only sentence available at that time. After nearly 20 years in prison, Mr. Basset received a new sentencing hearing following *Miller v. Alabama* and the *Miller*-fix. At the resentencing hearing, Mr. Bassett presented evidence of mitigation as well as his rehabilitation. The trial court sentenced Mr. Basset to three consecutive life sentences. ***Held*,** **LWOP for children is unconstitutional, violates Art. 1 section 14 of the Washington Constitution. RCW 10.95.030(3)(a)(ii), which permits trial courts to sentence juveniles between the ages of 16 and 18 convicted of aggravated first degree murder to life, is unconstitutional. Upon remand, the trial court may not impose a minimum term of life.**

*State v. Delbosque,* 6 Wn.App.2d 407 430 P.3d 1153 (Div. II) (2018) *affirmed in part, reversed in part*, *State v. Delbosque*, 195 Wn2d 106, 456 P.3d 806 (2020)

In 1994, a jury found Mr. Delbosque guilty of aggravated first-degree murder committed when he was 17 years old. The trial court sentenced him to life without parole. In 2016, pursuant to the *Miller*-fix statute, RCW 10.95.035, the superior court held an evidentiary hearing and resentenced Mr. Delbosque to a term of 48 years to life. At that hearing the court considered expert testimony about adolescent brain development and the impact of childhood neglect and trauma on Mr. Delbosque**. *Held*, the superior court failed to adequately consider the diminished culpability of youth as required by the *Miller*-fix statute when setting the minimum term**. **The trial court noted Mr. Delbosque’s age, childhood and life experience, degree of responsibility and chances of becoming rehabilitated, but did not address how any of the factors it analyzed related to the poor executive functioning or increased risk taking as reflective of his diminished culpability. The trial court also failed to consider the** **greater prospects for reform from a crime committed as a child**. **Mr. Delbosque’s infraction history does not exhibit a continuing pattern of behavior related to the murder he committed. The court’s rationale is also inconsistent with *Miller’s* recognition that incorrigibility is inconsistent with youth. The superior court’s findings (1) that Mr. Delbosque continues to demonstrate an attitude towards others reflective of the underlying crime and (2) that the murder reflected permanent incorrigibility and irretrievable depravity are not supported by substantial evidence.** Remanded for resentencing.

**ISRB - victim statements at the ISRB are properly considered as to only what community release conditions are appropriate or whether the person is likely to reoffend.**

**ISRB - Early release for a youth convicted as an adult is presumptive unless the ISRB determines, that despite conditions, it is more likely than not that a person will reoffend.**

*[In re Brashear](http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=770471MAJ)*[,](http://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=770471MAJ) 6 Wn.App.2d 279, 430 P.3d 710 (Div. I) (2018) After serving 20 years of confinement, Ms. Brashear petitioned the ISRB for early release pursuant to RCW 9.94A.730 for murder and other crimes committed when she was only 15 years old. The ISRB found she was not releasable, despite a psychological evaluation conducted for DOC that found her to be low or very low risk to reoffend. The DOC evaluator also found Ms. Brashear acknowledged her role in the crimes without distortion or denial. *Held*, “Early release under RCW 9.94A.730(3) is presumptive unless the ISRB determines, that despite conditions, it is more likely than not that a person will reoffend.” Here, the ISRB abused its discretion when it did not rely on any direct evidence of Mr. Brashear’s likelihood to reoffend and when it failed to discuss any conditions associated with her release and why, despite appropriate conditions, she would be likely to reoffend. Instead, the ISRB cited Ms. Brashear’s role in the crimes, the lasting impacts those crimes had on the victim’s survivors, the “relatively small portion” of the minimum term she has served on each count, and on the prosecutor’s objection to her release. Reversed and remanded to the ISRB to order Ms. Brashear released and to determine appropriate release conditions. *Held*, victim statements at the ISRB are properly considered as to only what community release conditions are appropriate or whether the person is likely to reoffend.

**2019**

**Trial courts may depart from mandatory sentencing including consecutive sentences for aggravated murder and companion crimes.**

**Trial court has discretion to impose a downward departure when sentencing a y outh convicted of aggravated first degree murder.**

*State v. Gilbert,* 193 Wn.2d 169, 438 P.3d 133 (2019) J. Johnson: The State prosecuted Mr. Gilbert in 1992 for aggravated first degree murder, premeditated murder and other crimes he committed at age 15. The court imposed a mandatory LWOP for the aggravated murder along with a consecutive term of 280 months for the premediated murder and other crimes. The trial court resentenced Mr. Gilbert pursuant to the *Miller*-fix. At the resentencing hearing, Mr. Gilbert argued that the trial court should address all of his counts and restructure his two sentences to run concurrently. The judge ruled he lacked statutory authority to address anything other than the one count for aggravated murder. The court imposed a sentence of 25 years to life on that count, to run consecutive to the 280 months sentence for premeditated murder and other crimes**.** *Held,* in *State v. Houston-Sconiers* we held that trial courts have discretion to depart from mandatory sentencing of youth, this includes departing from consecutive sentences for aggravated first degree murder and companion crimes. The *Miller*-fix, RCW 10.95.035, providing for new sentencing hearings of youth convicted of aggravated first degree murder and sentenced to LWOP, does not act to limit a trial court’s discretion to impose a downward departure sentence.

**Post-conviction motion for resentencing: no prejudice demonstrated where youth sentenced at top end of the standard range**.

*In re PRP Meippen*, 193 Wn.2d 310, 440 P.3d 978 (2019) J. Owens.

The State prosecuted Mr. Meippen as an adult in 2006 for robbery, assault and weapons crimes committed when he was 16. He filed a PRP seeking a new sentencing hearing where the court could consider his youth, lack of full developmental maturity, and life circumstances at the time of offense. *Held*, The petitioner is not entitled to relief; he does not demonstrate prejudice because the trial court imposed the top end of the standard range**.** We save the issue of retroactivity of *State v. Houston Sconiers* for another day.

**Children are different, youth status matters. The State should not be allowed to deprive an incarcerated juvenile of the benefit of expedited review by violating the applicable rules of appellate procedure.**

*State v. I.N.A.*, 9 Wn.App.2d 422, 446 P.3d 175 (2019)

The State prosecuted I.N.A. in juvenile court on her first offense. I.N.A appealed and the Court of Appeals granted her expedited status The expedited appeal was twice compromised by the prosecutor. *Held*, Children are different, youth status matters. The State should not be allowed to deprive an incarcerated juvenile of the benefit of expedited review by violating the applicable rules of appellate procedure.

**The *Miller* fix, by distinguishing between 15 year-olds from 16 and 17 year-olds, does not violate equal protection or substantive due process**

*In Re PRP Thang*, 9 Wn.App.2d 1081 (2019) \*UNREPORTED\*

In 1997, the State prosecuted Mr. Thang for aggravated murder for a crime he committed at age 17. The court sentenced Mr. Thang to LWOP. In September 2015, the trial court resentenced Mr. Thang pursuant to the *Miller*-fix, RCW 10.95.030(3). The court imposed 420 months (35 years). Mr. Thang filed a PRP, arguing RCW 10.95.030 is unconstitutional. He argued the *Miller*-fix’s distinction between 15 year olds who commit aggravated first degree murder and 16 & 17 year olds who commit aggravated first degree murder is arbitrary. *Held*, the *Miller* fix, by distinguishing between 15 year-olds from 16 and 17 year-olds, does not violate equal protection or substantive due process.

**Predicate convictions for “strike” offenses committed prior to age 18 does not render the POAA unconstitutional.**

*State v. Moretti,* 193 Wn.2d 809, 446 P.3d 609 (2019) J. Fairhurst:

The State separately prosecuted three men in their 30s and 40s, Mr. Moretti, Mr. Nguyen and Mr. Orr, pursuant to the Persistent Offender Accountability Act (POAA) for a third strike offense. In each individual’s case, the State relied one or more prior strike offense convictions for crimes that occurred while the individual was a young adult.*Held*, (J. Fairhurst, 9-0), the WA Constitution does not require a categorical bar on sentences of LWOP for fully developed adults who committed one of their prior strikes as a young adult. The POAA is constitutional. Article 1 section 14 of the Washington does not require a categorical bar on sentences of life in prison without the possibility parole for fully developed adults who committed one of their prior strikes as young adults. The sentences are not grossly disproportionate.

Concurrence (J. Yu, with Gonzales, Madsen joining) I agree that there is currently no categorical bar to the inclusion of an offense committed as a young adult as a predicate for purpose of the POAA. But a punishment that may be constitutionally permissible today may not pass muster tomorrow. I write separately to express my growing discomfort with the routine practice of sentencing individuals to life without the possibility of parole, regardless of the offense or the age of the offender.

Although the current case law does not support this argument [that a proportionality analysis consider the characteristics of the offender, including relative youth and culpability], significant advancements in the scientific community suggest that “emerging adults” should be treated as a distinct developmental stage in the criminal justice system.”

When considering life sentences, it is also important to recognize the disparate impacts that the criminal justice system has on people of color. This necessarily results in disparate impact on the imposition of life sentences. One size fits all approaches to sentencing reveal the institutional and systemic biases of our society. The effects of disproportionate enforcement of criminal laws against people of color, especially African Americans, will continue – exaggerated by laws that limit the discretion of trial judges in sentencing decisions. We can and must avoid the imposition of a cruel punishment by providing an opportunity for release to every convicted defendant. One way to do this would be to reestablish theparole board, which was eliminated in 1981 with the passage of the Sentencing Reform Act.

**Trial court abused its discretion when it denied the defendant time to prepare and present mitigating evidence at sentencing**

*State v. Alltus*, 10 Wn.App.2d 193, 447 P.3d 572 (2019)

The State prosecuted Ms. Alltus as an adult for aggravated first degree murder for a crime committed at age 16. The jury convicted her of first degree murder without aggravators. Sentencing followed the next day, over the defense objection and request for time to prepare. *Held*, the trial court abused its discretion when it denied the defense time to prepare and present mitigating evidence at sentencing of a 16 year old in adult court for murder. Trial courts have a duty to treat children differently, with discretion and with consideration of mitigating factors.

***2020***

**Mandatory LWOP as a POAA with a prior predicate offense committed prior to age 18 is not unconstitutional.**

*State v. Teas*, 10 Wn.App.2d 111, 447 P.3d 606 (2019), *rev denied* 195 Wn.2d 1008 (2020)

The State prosecuted Mr. Teas for rape in the first degree by forcible compulsion. The court sentenced him to LWOP as a persistent offender. Mr. Teas was 39 at the time of the rape and had a prior predicate conviction committed as a youth. Held, mandatory LWOP as a POAA with a prior predicate offense committed prior to age 18 is not unconstitutional. \*other COA unreported opinions are consistent with Teas

**Trial court abused its discretion when it failed to adequately consider the defendant’s mitigation evidence at the resentencing hearing.**

**The *Miller*-fix statute, RCW 10.95.030 does not allocate a burden of proof.**

**Individuals who are resentenced pursuant to RCW 10.95.035 may file a direct appeal of their sentence.**

*State v. Delbosque*, 195 Wn.2d 106, 456 P.3d 806 (2020) (J. Yu 9-0)

In 1993, the State prosecuted 17 year old Christian Delbosque as an adult for two murders. A jury found him guilty of one count of aggravated first degree murder and one count of second degree felony murder. The court sentenced Mr. Delbosque to a mandatory LWOP for aggravated murder. In 2016, pursuant to the *Miller-*fix statute, RCW 10.95.030 and .035, the superior court held a four day evidentiary resentencing hearing for Mr. Delbosque. *Held*, the trial court erred and abused its discretion when it sentenced Mr. Delbosque. Mr. Delbosque’s 2010 infraction is not evidence that the crime was not symptomatic of transient immaturity but a reflection of irreparable corruption, permanent incorrigibility, and irretrievable depravity. *Held*, the trial court erred when it oversimplified and disregarded Mr. Delbosque’s mitigation evidence, including expert evidence that Mr. Delbosque’s childhood traumas, poverty, lack of education, lack of social support and alcohol dependence actually negatively impacted his decision making. The trial court also failed to acknowledge evidence supporting Mr. Delbosque’s capacity for rehabilitation and change. *Miller* hearings require sentencing courts to meaningfully consider “mitigating factors that account for the diminished culpability of youth,” including “the youth’s chances of becoming rehabilitated.” Predicting a juvenile’s future dangerousness is extremely difficult…For this reason, resentencing courts must consider the measure of rehabilitation that has occurred since a youth was originally sentenced to life without parole. *Held*, The *Miller*-fix statute, RCW 10.95.030 does not allocate a burden of proof. *Held*, Individuals who are resentenced pursuant to RCW 10.95.035 may file a direct appeal of their sentence. RCW 10.95.035(3) is unconstitutional.

***State v. Houston-Sconiers* is retroactive**.

*In re PRP Domingo-Cornelio*, 196 Wn.2d 255, 474 P.3d 524 (2020) J. Montoya-Lewis: Due to a long delay in reporting, the State prosecuted Mr. Domingo- Cornelio as an adult for a crime committed when he was 15-17. Mr. Domingo-Cornelio was sentenced prior to the Washington Supreme Court’s 2017 decision in *State v. Houston-Sconiers*, a landmark case holding that trial courts must exercise discretion when sentencing youth in adult courts. The trial court failed to consider the impact of youth and adolescent development and imposed a standard range sentence for an adult. Mr. Domingo Cornelio filed a timely PRP arguing *State v. Houston–Sconiers* is a significant change in the law that must be applied retroactively**.** *Held*, *State v. Houston-Sconiers* is retroactive.

*In re PRP Ali*, 196 Wn.2d 220, 474 P.3d 507 (2020) J. Montoya-Lewis: The State prosecuted Mr. Ali in adult court for multiple counts of robbery and assault with weapons enhancements for crimes he committed as a youth. At sentencing, the defense requested a sentence below the standard range based on the mitigating circumstances of Mr. Ali’s youth and his difficult childhood. The trial judge noted the mitigating information but stated that there was no legal basis for a departure based on youth. The judge imposed the low end of the standard range, 312 months. Mr. Ali’s sentence became final in 2011. On March 2, 2017, the Washington Supreme Court decided *State v. Houston-Sconiers*, a landmark case holding that trial courts must exercise discretion when sentencing youth in adult courts. Mr. Ali subsequently filed a PRP arguing *Houston–Sconiers* is a significant change in the law that is material and must be applied retroactively. *Held*, *Houston-Sconiers* is a significant and material change in the law. The case announced a new constitutional rule that must be applied retroactively on collateral review, even to PRPs filed outside the one year time limit in 10.73.100. Relief is appropriate where actual and substantial prejudice is shown. Here, Mr. Ali demonstrates actual and substantial prejudice because the judge heard and considered the mitigating circumstance of Mr. Ali’s youth and imposed the lowest sentence she believed she could give, based on his youth. Remanded for a new sentencing hearing. *Held*, the *Miller*-fix statute RCW 9.94A.730, is not an adequate remedy for a *Houston-Sconiers* violation.

**Youth must prove by a preponderance that mitigating circumstances that justify an exceptional sentence below the standard range.**

*In re PRP Gregg*, 196 Wn.2d. 476, 474 P.3d 539 (2020) J. Johnson: The State prosecuted Mr. Gregg as an adult for murder, burglary, and arson for crimes he committed at age 17. Mr. Gregg pleaded guilty and sought an exceptional sentence down based on his youth at the time of the crime. At the time of his plea, Mr. Gregg received affirmative misinformation that the firearm registry requirement did not apply to him. *Held*,placing the burden to prove mitigating circumstances for an exceptional sentence downward on juvenile defendants in adult court does not violate art. 1, sec. 14 of the Washington Constitution**.**

**Trial courts do not have discretion to depart from mandatory firearm enhancements when an individual is 18 or over at the time of an offense.**

*State v. Mandefero*, 14 Wn. App. 2d 825, 473 P.3d 1239 (2020): The State prosecuted Mr. Mandefero in 2012 for first and second degree assault, both with a firearm enhancement, and unlawful possession of a firearm. Mr. Mandefero was 18 years old at the time of the offense. At the sentencing hearing, the trial court did not consider youth and developmental maturity at the time of the offense. The court imposed a low end standard range sentence, including consecutive time for the firearm enhancements. In 2019, the court resentenced Mr. Mandefero. He sought an exceptional sentence down based on his youth at the time of the offense and the traumatic impact of his involvement with gang violence. The court imposed an exceptional sentence down on the assault in the first degree and imposed the weapons enhancements because the court believed they were mandatory. Mr. Madefero appealed, arguing that trial courts have authority to depart from mandatory enhancements for young adults who are 18 or older at the time of an offense based on the science of human brain development. *Held*, trial courts do not have discretion to depart from mandatory firearm enhancements when an individual is 18 or over at the time of an offense**.**

**Trial court did not abuse discretion at *Miller* fix resentencing hearing when it imposed 42 year minimum after carefully weighing the mitigating circumstances and capacity for rehabilitation.**

*State v. Backstrom*, 15 Wn.App.2d 103, 476 P.3d 201 (originally filed Nov. 2, 2020; ordered published Nov. 20, 2020), *review denied*, 198 Wn.2d 1032 (2022). Mr. Backstrom received two mandatory consecutive LWOP sentences for crimes committed as a child in 1997. In 2017, the trial court held a *Miller* resentencing for Mr. Backstrom and sentenced him to 42 years minimum and a maximum term of life. *Held*, the trial court explicitly, carefully, and thoughtfully considered the mitigating factors as required by the *Miller*-fix statute. It did not minimize the evidence of rehabilitation and impose another life sentence. Mr. Backstrom’s new sentence is roughly half of his original sentence, and he is now eligible for parole. Because the court carefully weighed the mitigating circumstances and capacity for rehabilitation, and the court had complete and absolute discretion to weigh those factors, Mr. Backstrom fails to show the trial court abused its discretion.

***2021***

**Trial court acted within its discretion by sentencing a 16 year-old to a departure down of 106 months confinement on a first degree murder conviction.**

*State v. Rogers,* 17 Wn.App.2d 466, 487 P.23d 177 (2021)

The State prosecuted Mr. Rogers as an adult for the crime of first degree murder committed at age 16. The court imposed an exceptional sentence downward of 106 months. The State appealed the sentence, arguing it was too lenient. *Held*, the trial court acted within its discretion by sentencing a 16 year-old to a departure down of 106 months confinement.

**Trial courts have discretion to impose a determinate sentence on a youth tried as an adult for a crime subject to the indeterminate sentence under RCW 9.94A.507.**

*In re PRP Forcha-Williams*, 18 Wn.App.2d 167, 490 P.3d 255(2021)(*review granted*)

In 2015, the State prosecuted Mr. Forcha-Williams as an adult for rape in the second degree, committed when he was 16 years old. The trial court imposed an indeterminate sentence pursuant to RCW 9.94A.507, with a midrange sentence of 120 months as the minimum and life in prison as the maximum. Mr. Forcha-Williams filed a CrR 7.8 Motion for Relief, later transferred as a PRP to the Court of Appeals, arguing the court’s decision actually and substantially prejudiced him because it failed to acknowledge its discretion to impose an exceptional sentence based on the mitigating qualities of his youth**.** *Held*, trial courts have discretion to impose a determinate sentence on a youth tried as an adult for a crime subject to the indeterminate sentence under RCW 9.94A.507.

**Evidence of post-conviction rehabilitation is not a basis to depart from a standard range sentence.**

*State v. Wright*, 19 Wn.App.2d 37, 493 P.3d 1220 (2021) *review denied* 199 Wn.2d 1001 (2021)

In 2001, the State prosecuted Mr. Wright for murder and other crimes with eight firearm enhancements. The court imposed a sentence of 1,660 months. In 2019, the trial court granted Mr. Wright’s CrR 7.8 motion for resentencing based on *State v. Weatherwax*. In *Weatherwax*, the Washington Supreme Court held that when sentencing an individual for two or more serious violent offenses with the same seriousness level, the rule of lenity requires the court to calculate the standard range using the offense with the lower range. Although the error only impacted two of the counts, the court ordered a full resentencing hearing. At the resentencing hearing, Mr. Wright presented significant evidence of post-conviction rehabilitation. Mr. Wright requested an exceptional sentence downward based on the impact of the multiple offense policy and based on extraordinary rehabilitation. Mr. Wright also requested the court run the firearm enhancements concurrently. The trial court imposed the low end for all counts and exceptional concurrent sentences for most of the underlying counts, reducing the sentence down to 915.75 months. The sentence included the mandatory consecutive 40 years for eight firearm enhancements. *Held*, evidence of post-conviction rehabilitation is not a basis to depart from a standard range sentence. *Held*, the trial court may not impose concurrent firearm enhancements as part of an exceptional sentence down.

**The *Miller*-fix statute, RCW 9.94A.730, applies to children sentenced in adult court prior to the SRA**

*In re Brooks*, 197 Wn.2d 94, 480 P.3d 399 (2021) J. Gonzales

In 1978, 17 year-old Mr. Brooks pleaded guilty to numerous felonies, all involving deadly weapons, and received four consecutive indeterminate life sentences. The parole board set a minimum term of 90 years. In 1981, the passed the Sentencing Reform Act of 1981 (SRA). In 2014, the legislature passed the *Miller*-fix statute, amending the SRA and authorizing a child convicted of one or more crimes to petition the ISRB for early release after serving 20 years of confinement. The ISRB determined Mr. Brooks was not eligible to use the *Miller*-fix statute. *Held*, the *Miller*-fix statute, RCW 9.94A.730, applies to children sentenced in adult court prior to the SRA. Under the plain language of RCW 9.94A.730, “any person” who was convicted of one or more crimes prior to their 18th birthday is entitled to a resentencing hearing.

**Mandatory LWOP for aggravated murder under RCW 10.95.030 is unconstitutional as applied to individuals who were 18-20 years old at the time of offense.**

*In re PRP of Monschke*, *Bartholemew*, 197 Wn.2d 305, 482, P.3d 276 (2021) J. Gordon-McCloud.

In these two consolidated cases, the State prosecuted defendants who were 19 and 20 years old at the time of their offenses. *Held*, *State v. O’Dell*, 183 Wn.2d 680, 696, 358 P.3d 359 (2015), or the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 469-70, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), constitutes a significant, material, and retroactive change in the law under RCW 10.73.100(6), exempting from the time limit on collateral relief a personal restraint petition challenging a sentence of life without release for aggravated first degree murder brought by a petitioner who was 19 years old when he committed the offense. At the time of sentencing no evidence of adolescent brain development was presented or considered by the trial court. Prosecutors acknowledged that Mr. Monshke was less culpable than his co-defendants, who pleaded guilty to lesser crimes and received lesser sentences.*Held*, Mandatory LWOP for aggravated murder under RCW 10.95.030 is unconstitutional as applied to individuals who were 18-20 years old at the time of offense.

**A 46 year sentence is a life equivalent sentence and unconstitutional for a child convicted of aggravated murder.**

**In a *Miller*-fix hearing conducted under RCW 10.95.030, retributive factors must count for less than mitigating factors.**

*State v. Haag*, 198 Wn.2d 309, 495 P.3d 241 (2021) J. Whitener: In 1995, the State prosecuted Mr. Haag for aggravated murder of his 7 year old neighbor. Mr. Haag was 17 years old at the time of the offense. The court imposed the only sentence available at that time, a mandatory life sentence without parole (LWOP). In 2018, at a resentencing hearing pursuant to the *Miller*-fix, the trial court considered Mr. Haag’s youth, lack of full brain development, his life and family circumstances at and prior to the offense, and evidence of his rehabilitation post-conviction. The court imposed a sentence of 46 years to life**.** *Held*, the trial court erred when it emphasized retribution over mitigation and rehabilitation at sentencing. In a *Miller*-fix hearing conducted under RCW 10.95.030, retributive factors must count for less than mitigating factors. *Held*, a sentence of 46 years is a life equivalent sentence and unconstitutional for a child convicted of aggravated murder.

**P****RP challenging POAA LWOP based on youth conviction is not timely.**

*In re PRP of Raymond Williams,* 18 Wn.App.2d 707 (2021) (filed in WA Supreme Court 9.20.19, sent back to Div. II; Div. II denied relief summer 2020, PFR to WA Supreme Court again Sept 2021*- review denied* April 2022)

Mr. Williams is serving LWOP based in part on a crime committed as a child. He challenges his POAA sentence entered in Cowlitz Co Superior Court in Oct 2008. His first strike, for burglary in the first degree, occurred when he was 16 years old. Mr. Williams asks the Court to determine that Article I section 14 categorically bars a strike offense committed as a child to support a life without parole sentence under the POAA, an issue explicitly left open in *State v. Moretti*, 193 Wn.2d 809, 446 P.3d 609, 614 n. 5 (2019).Mr. Williams’ childhood was marked by multiple adverse childhood experiences (ACEs). Since the court imposed a sentence of LWOP in 2008, Mr. Williams has demonstrated remarkable rehabilitation.

Mr. Williams argued the POAA sentence of LWOP is disproportionate and therefore cruel punishment under article I section 14 and constitutes illegal restraint under RAP 16.4. The POAA mandates that strike offenses committed as juveniles count as predicates to support mandatory LWOP, the harshest punishment in WA. LWOP based on inherently less culpable juvenile conduct violates the categorical proportionality principles of art 1 sec 14 articulated in *St v. Bassett,* 192 Wn.2d 67 (2018) as well as repeated pronouncements that mandatory sentencing schemes that fail to take into account the diminished culpability of children are constitutionally infirm. *State v. Gilbert* (2019) *State v. Houston-Sconiers* (2017).

***2022***

**ISRB abused its discretion by failing to apply the statutory presumption of release.**

*In re PRP Dodge,*198 Wn.2d 826, 502 P.3d 349 (2022) J. Gordon-McCloud: Mr. Dodge went before the ISRB for early release, pursuant to RCW 9.94A.730, permitting early release for some individuals who were youth prosecuted as adults and who had served at least 20 years of their sentence. The ISRB denied release to Mr. Dodge. *Held*, the ISRB abused its discretion by failing to apply the statutory presumption of release. RCW 9.94A.730 requires the ISRB to consider the risk of re-offense, sufficient conditions of release, and public safety. It presumes that a petitioner is releasable and requires the ISRB to determine, by a preponderance of the evidence, that no conditions of release could sufficiently mitigate the petitioner’s risk.

**POAA/Youth in Adult Court:** **Art. I sec. 14 of the Washington Constitution does not categorically prohibit imposition of a life without parole sentence under the POAA on an adult who committed one of their strikes as a child.**

**POAA/Youth in Adult Court: A life sentence without parole under the POAA is not grossly disproportionate to the offense under art. I section 14 of the Washington Constitution.**

**POAA: State presented sufficient evidence that a prior strike offense committed as a child was properly heard in adult superior court following a decline hearing.**

**POAA**: **The POAA does not violate equal protection**.

*State v. Reynolds*, \_\_\_ Wn.App.2d \_\_\_, 505 P.3d 1174 (2022)

The State prosecuted Mr. Reynolds for attempted rape and burglary. Following conviction, the trial court sentenced him to life without parole (LWOP) pursuant to the Persistent Offender Accountability Act (POAA), also known as the Three Strikes law. Mr. Reynolds’ first strike was a 2002 conviction for attempted first degree robbery committed when he was 17 years old. His second strike was a 2006 conviction for burglary in the first degree and robbery in the first degree. *Held*, the trial court did not err by concluding the State met its burden to prove that the 2002 conviction was properly before the adult superior court. The State provided a certified copy of the juvenile court decline order, the minutes of the decline hearing, and a copy of the juvenile probation report submitted by Mr. Reynolds’ juvenile counselor. The certified clerk’s minutes indicated that a hearing took place, counsel was present, a decline report was admitted and Mr. Reynolds stipulated to decline jurisdiction to adult court. *Held*, an LWOP sentence under the POAA is not grossly disproportionate to the offense and is not cruel under art. I section 14 of the Washington Constitution. *Held*, an LWOP sentence under the POAA does not violate equal protection.

**Resentencing/Youth in Adult Court:** **Defendant is entitled to resentencing because the trial court failed to meaningfully consider the mitigating qualities of youth and environmental and family circumstances.**

**Resentencing/Racial Disproportionality: A petitioner seeking resentencing in juvenile sentencing cases must demonstrate actual and substantial prejudice.**

*State v. Miller*, \_\_\_ Wn.App.2d \_\_\_, 505 P.3d 585 (2022)

Ms. Miller sought resentencing pursuant to *State v. Houston-Sconiers*, arguing the trial court did not meaningfully consider mitigating factors related to her youth at sentencing. The State initially prosecuted Ms. Miller in 2012 for the murder of her father’s girlfriend, a crime she committed with her boyfriend, at her father’s request. She was 16 years old and tried as an adult. Ms. Miller pleaded guilty and testified at her father and boyfriend’s trials. The trial court sentenced her to 390 months, 30 months above the parties’ joint recommendation for a midrange standard range sentence. Defense counsel mentioned Ms. Miller’s young age at the time of offense at her sentencing hearing, but did not present facts or arguments related to the mitigating qualities of youth. The trial court did not consider factors related to Ms. Miller’s surrounding environment and family circumstances.

*Held*, the sentencing court’s failure to meaningfully consider Ms. Miller’s youth and environmental and family circumstances at the sentencing hearing resulted in actual and substantial prejudice to Ms. Miller. She is entitled to resentencing.

*Held*, a petitioner seeking resentencing in juvenile sentencing cases must demonstrate actual and substantial prejudice, rather than a “per se prejudice” or presumption of prejudice for children of color, who receive disparate treatment during sentencing.

The court specifically urged all courts to be "vigilant" about race disparities in sentencing, as well as adultification bias operating against children of color. It concluded by saying "in the face of this convincing information about disparities in sentencing, trial courts should consider, in addition to issues common with all youths set forth in *Houston- Sconiers*, these potential biases when sentencing children of color."

We agree that adultification may detrimentally affect children of color at criminal sentencings. In a recent, comprehensive study of bias in the justice system, Washington’s Gender and Justice Commission explained that studies involving justice officials, as well as studies involving the general population, “have shown that girls of color are perceived differently than white girls.” GENDER & JUSTICE COMM’N, WASH. COURTS, 2021: HOW GENDER AND RACE AFFECT JUSTICE NOW at 453 (Sept. 2021). For example, compared with their white counterparts, “Black girls are seen as more adult, needing less protection and nurturing, and being more knowledgeable about sex; and juvenile offenders of color are seen as more blameworthy and deserving of harsher punishment.” *Id*.

[A] nationally-representative survey of white Americans found that when primed to think about Black juvenile offenders, participants were more likely to support the most severe penalty of life without parole in non-homicide cases as compared to priming for a white juvenile offender; and participants perceived youth as more similar to adults in blameworthiness when primed to think of Black juvenile offenders than white juvenile offenders.

*Id*. at 453 n.97. In Washington, Indigenous and Black girls were overrepresented in juvenile detention in every county with populations high enough to report in 2019. *Id*. at 456,7. Thus, we recognize that adultification is real and can lead to harsher sentences for children of color if care is not taken to consciously avoid biased outcomes.

Find the Korematsu Center’s Amicus Brief [here](https://defensenet.org/resources/state-v-asaria-miller-3-2022/) on the WDA website.

**Resentencing/Young Adult:** ***State v. Houston-Sconiers* does not apply to young adults 18 or older.**

*In re PRP Young*, \_\_\_ Wn.App.2d \_\_\_, \_\_\_ P.3d \_\_\_ ( 2022)

July of 2014, Mr. Young pleaded guilty to first degree robbery and second degree robbery, both while armed with a firearm, and unlawful possession of a firearm. Mr. Young was 20 at the time of the crimes. The sentencing court followed the parties’ joint recommendation of an exceptional sentence upward plus two sentencing enhancements running consecutively. The court imposed a sentence of 258 months. More than a year after Mr. Young’s convictions became final, the Washington Supreme Court decided *State v. Houston-Sconiers*. Mr. Young moved for resentencing, arguing that *State v. Houston-Sconiers* was a significant change in the law that should be applied retroactively to his case. *Held*, *State v. Houston-Sconiers* expressly limited its holding to juvenile defendants. It is not material to Mr. Young’s sentence.

**Youth/Young Adult Sentencing****:** **The trial court is not required to take into account the defendant’s age at the time of offense, when as a 25 year old, he violated the terms of a SSOSA**.

**Youth/Young Adult Sentencing:** **Defense Counsel was not ineffective for failing to argue for an exceptional downward departure based on youthfulness.**

*State v. Zwede*, \_\_\_ Wn.App.2d \_\_\_ (No. 81186-0) (Div. I) (May 2, 2022)

In 2014, Mr. Zwede pleaded guilty to one count of first degree rape of a child for a crime he committed at the age of 19. The trial court followed the agreed recommendation and imposed a SSOSA. Five years later, the trial court revoked Mr. Zwede’s SSOSA and imposed the suspended indeterminate standard range sentence of 120 months to life in prison. *Held*, RCW 9.94A.670 does not give trial courts the discretion to modify an originally suspended indeterminate sentence at a revocation hearing. *Held*, neither the Eighth Amendment nor article 1 section 14 of the Washington Constitution required the trial court to take into account Mr. Zwede’s age at the time of offense, when as a 25 year old, he violated the terms of a SSOSA. *Held*, Mr. Zwede’s attorney was not ineffective for failing to argue for an exceptional downward departure based on youthfulness. Nothing in the record suggests the State would have agreed to a SSOSA if Mr. Zwede did not agree to a standard range indeterminate sentence as part of the plea agreement.

**Youth/Young Adult**: **A de facto LWOP sentence for a child does not violate the Washington Constitution when the crimes do not reflect the mitigating qualities of youth**

[State v. Anderson](https://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filename=978905MAJ), \_\_\_ Wn.2d \_\_\_,516 P.3d 1213 (Sept. 8, 2022)

In 1998, the State prosecuted Mr. Anderson for two murders committed when he was 17 years old. Following his trial, the court imposed the high end of the standard range, 736 months (just over 61 years). The trial court did not consider the potentially mitigating qualifies of youth prior to imposing his sentence. In 2018, Mr. Anderson moved for a resentencing hearing and sought an exceptional sentence below the standard range. The State agreed to a resentencing hearing, but recommended the same sentence of 736 months. The trial court found that Mr. Anderson’s crimes did not reflect the mitigating qualities of youth and re-imposed the original sentence.

*Held*, when a child’s crimes do not reflect the mitigating qualities of youth, the Washington Constitution does not bar a de facto LWOP sentence. Here, the trial court found no evidence supports the assertion that Mr. Anderson acted impetuously, was immature, or didn’t understand the consequences of his actions at the time of the murders. Instead, the court found that his actions were premeditated and calculated, and that he fully understood the consequences of his actions.

*Haag’s* state constitutional holding recognized a categorical bar prohibiting de facto LWOP sentences for juvenile offenders who have shown that their crimes reflect youthful immaturity, impetuosity, or failure to appreciate risks and consequences. Here, the resentencing court appropriately considered Anderson’s youthful characteristics and that substantial evidence supports the court’s conclusion that Anderson’s crimes did not reflect those characteristics.

The central question under article I, section 14 is whether and to what extent a juvenile offender’s youthful characteristics were a factor in the commission of their crime(s). This is not a binary question; some juvenile offenders will be more influenced by their youthful characteristics than others. Accordingly, sentencing courts must meaningfully consider how, if at all, a juvenile offender’s mitigating characteristics of youth affected the commission of their crime(s) to determine whether the juvenile offender is less culpable than an adult who engages in the same behavior.

**Post-conviction: Recent scientific research into the brain development of late adolescence is not “newly discovered evidence.”**

**Post-conviction: *Monschke* is not material in a case that does not involve aggravated first degree murder and mandatory LWOP.**

*In re PRP Davis*, 200 Wn.2d 75, 514 P.3d 653 (Aug. 11, 2022)

In 2012, the State prosecuted Mr. Davis for murder in the first degree and attempted murder in the second degree. He was 21 years old at the time of the offense. At sentencing, Mr. Davis requested an exceptional sentence or one at the bottom of the range because a mid-range sentence would essentially take his life away. He did not seek an exceptional sentence based on the mitigating qualities of his youth. The court imposed a sentence at the low end of the range, 767 months. In 2017, more than one year after his sentence became final, Mr. Davis filed a PRP seeking a resentencing hearing at which the court could take into account the mitigating qualities of youth. After the *Monshke* decision, Mr. Davis filed an additional argument that *Monschke* was a significant change in the law that was material to his sentence and should be applied retroactively. *Held*, scientific research into the brain development of late adolescence is not “newly discovered evidence.” *Held*, *Monschke* is not material in a case that does not include a charge of aggravated murder with a mandatory LWOP sentence.

**Post-Conviction/Resentencing: The *Monschke* decision is not a significant and retroactive change in the law that is material to the defendant’s sentence because defendant was not convicted of aggravated murder and did not receive a mandatory LWOP sentence.**

**Post-Conviction/Newly Discovered Evidence:** **Advancements in scientific evidence supporting mitigated sentences for young adults are not “new evidence” for defendant, who was sentenced in 2007.**

*In re Kennedy*, 200 Wn.2d 1, 513 P.3d 769 (July 28, 2022)

In 2007, the State prosecuted Mr. Kennedy for homicide by abuse for the death of his cousin’s 11 month old child. Mr. Kennedy was 19 years old at the time of his offense. The sentencing court imposed 380 months of confinement. Mr. Kennedy’s direct appeal became final in 2009. In 2019, Mr. Kenney filed a PRP seeking a resentencing hearing based on “newly discovered evidence.” He argued that advancements in the scientific understanding of brain development since his 2007 sentencing would have probably changed the trial court’s discretionary sentencing decision because he could have argued for a mitigated sentence based on youthfulness. After the Court granted review of his PRP, Mr. Kennedy raised a second argument that the Court’s 2021 decision in *Monschke* represented a significant change in the law and exempted him from the time bar.

*Held*, Mr. Kennedy’s PRP is time barred. The recent research cited by Mr. Kennedy may have strengthened his argument for mitigation, but it is not newly discovered evidence. Mr. Kennedy could have argued for a lower sentence based on youth in 2007.

Held, *Monschke* is not a “significant change in the law” that is material to Mr. Kennedy’s sentence because he was neither convicted of aggravated first degree murder nor sentenced to mandatory LWOP.

**Pending Issues related to youth and young adult sentencing at the Washington Supreme Court - as of Nov 18, 2022**

***State v. Garza.*. No. 100012-0 (Oral argument 6/14/22).** (Yakima Co., Defense Kate Benward) review accepted 199 Wn.2d 1001, 504 P.3d 824

Whether, in this case involving a 1995 juvenile adjudication for third degree rape, the trial court’s authority under RCW 13.50.260(3) to vacate an “order and findings” authorized the court to vacate the adjudication of guilt. Unpublished. WA Supreme Court Briefs found [here](https://www.courts.wa.gov/appellate_trial_courts/coaBriefs/index.cfm?fa=coaBriefs.ScHome&courtId=A08).

***In re Pers. Restraint of Hinton* (petitioner). No. 98135-3. (Oral argument 5/24/22**). (King Co., Defense Greg Link)

Whether in relation to this personal restraint petition by an individual sentenced to a 37-year prison term for a crime he committed when he was 17 years old, and who claims the sentencing court failed to consider the mitigating qualities of his youth, RCW 9.94A.730, which permits juveniles sentenced to lengthy terms to petition for parole after serving 20 years, is an adequate alternative remedy for this individual who is currently eligible to petition for parole, precluding relief by personal restraint petition. See RAP 16.4(d). See the WA Supreme Court Briefs, found [here](https://www.courts.wa.gov/appellate_trial_courts/coaBriefs/index.cfm?fa=coaBriefs.ScHome&courtId=A08).

***In re Pers. Restraint of Carrasco* (petitioner). (Oral argument 5/24/22). No. 100073-1** (Yakima Co., Defense Emily Gause)

Whether in relation to this personal restraint petition by an individual sentenced to a 93-year prison term for a crime he committed when he was 17 years old, and who claims the sentencing court failed to consider the mitigating qualities of his youth, RCW 9.94A.730, which permits juveniles sentenced to lengthy terms to petition for parole after serving 20 years, is an adequate alternative remedy, precluding relief by personal restraint petition. See RAP 16.4(d). See the WA Supreme Court Briefs, found [here](https://www.courts.wa.gov/appellate_trial_courts/coaBriefs/index.cfm?fa=coaBriefs.ScHome&courtId=A08).

***In re Pers. Restraint of Forcha-Williams* (petitioner). (Oral argument 5/26/22). 18 Wn.App.2d 167 (2021) No. 100051-1.** (King Co., Defense Jeff Ellis)

Whether in this prosecution in adult court for a sex offense committed by a 16-year-old, where the sentence is required by statute to be indeterminate, the sentencing court had discretion to impose a determinate term in consideration of the mitigating qualities of the individual’s youth. See the WA Supreme Court Briefs, found [here](https://www.courts.wa.gov/appellate_trial_courts/coaBriefs/index.cfm?fa=coaBriefs.ScHome&courtId=A08).

***In re Pers. Restraint of Williams* (petitioner). (Oral argument 5/26/22).** **No. 100296-3. (**Pierce Co., Defense David Allen, Todd Maybrown, Cooper Offenbecher, Alisa Smith, Danielle Smith)

Whether in this prosecution in adult court for a sex offense committed by a 17-year-old, the superior court had discretion to impose an indeterminate sentence with a maximum less than life in light of the individual’s youth, and if so, whether the life indeterminate sentence in this case, imposed without consideration of the mitigating qualities of the individual’s youth, constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution or cruel punishment under article I, section 14 of the Washington Constitution. See the WA Supreme Court Briefs, found [here](https://www.courts.wa.gov/appellate_trial_courts/coaBriefs/index.cfm?fa=coaBriefs.ScHome&courtId=A08).

**Washington State Legislative Responses – Juvenile Justice Reforms**

**2005**

In response to *Roper*, the Washington Legislature passes HB 1187, codified at RCW 9.94A.540(3), exempting youth tried as adults from mandatory minimum sentences. RCW 9.94A.540 requires mandatory minimum terms for assault in the first degree, assault of a child in the first degree, murder in the first degree, rape in the first degree and sexually violent predator escape. “**The Legislature finds that emerging research on brain development indicates that adolescent brains, thus adolescent intellectual and emotional capabilities, differ significantly from mature adults. It is appropriate to take these differences into consideration when sentencing juveniles tried as adults. The legislature further finds that applying mandatory minimum sentences for juveniles tried as adults prevents trial court judges from taking these differences into consideration in appropriate circumstances.”**

**2013/14**

In response to *Graham* and *Miller*, the Washington Legislature passes 2SSB 5064, often called the “*Miller*-Fix” legislation. The bill provides for new sentencing hearings for those previously sentenced to mandatory LWOP for aggravated first-degree murder for crimes prior to age 18; allows for a hearing before the ISRB and possible release for those youth sentenced as adults longer than 20 years for crimes other than aggravated murder. For the crime of aggravated first-degree murder, the new sentencing scheme allows for indeterminate life sentences with mandatory minimum of 25 years for youth under 16 and a court determined mandatory minimum of at least 25 years for youth who are 16 and 17 at the time of the crime. The statute still permits a trial court to impose LWOP for youth 16 and 17 at the time of the crime. RCW 9.94A.730, RCW 10.95.030 (although LWOP was ruled unconstitutional in *State v. Bassett*.)

**2014/2015**

Washington Legislature passes HB 1319 –modifies the “*Miller-*Fix,” allows youth sentenced to more than 20 years to be released even with mandatory sentencing enhancements, adds community custody for those individuals released by the ISRB. RCW 9.94A.730, RCW 10.95.030 and comm custody statutes

**2018**

**WA Legislation revises Decline and Auto-decline**: In response to *Graham* and *Miller*, the Washington Legislature passed E2SSB 6160 substantially altering Decline and Auto-Decline rules and changed the confinement term for youth previously auto declined to include commitment at the Dept. of Juvenile Rehabilitation (JR) up to age 25.

(1) **Auto Decline** reduced: removed from the list includes 16/17 year olds charged with robbery 1, drive by shooting and burglary 1 (with certain priors), and violent offense committed with a firearm;

(2) **Mandatory Decline** hearings are limited to “escape” while serving commitment until age 21;

(3) **Discretionary Decline** hearings, previously unlimited, are significantly reduced and limited to youth 15 years and older who commit serious violent offenses and 14 years and younger charged with murder.

**2019**

**“JR to 25” - WA Legislation revises decline and place of confinement for youth convicted as adults**: In 2019 the Washington Legislature passed E2SSB 1646, permitting youth who are declined and convicted as adults to remain in the custody of JR until age 25. This bill also expands discretionary decline to include youth charged with custodial assault while serving a commitment in JR until at least age 21.

**2021**

**Juvenile Access to Counsel:** [1140](https://app.leg.wa.gov/billsummary?Year=2021&BillNumber=1140), Law enforcement must provide children access to an attorney, in person, by phone, or by video prior to waiver of any constitutional rights if they (1) question a child during a custodial interrogation, or (2) detain the child based on probable cause, or (3) request consent to search the child or the child’s property, dwelling or any vehicle under the child’s control.