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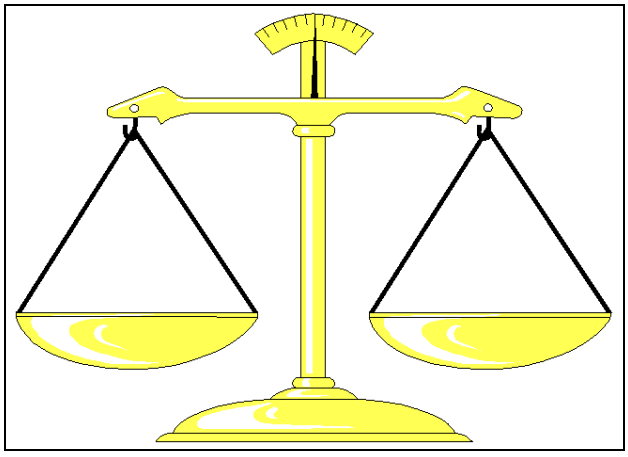

REPORT ON SENTENCING OF MINORS CONVICTED OF FIRST DEGREE MURDER PURSUANT TO SESSION LAW 2012-148, SECTION 2

SUBMITTED TO THE 2013 SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY JANUARY 14, 2013

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NORTH CAROLINA
SENTENCING AND POLICY ADVISORY COMMISSION

REPORT TO THE NORTH CAROLINA GENERAL ASSEMBLY PURSUANT TO SESSION LAW 2012-148, SECTION 2

January 14, 2013

Introduction

In *Miller v. Alabama*, 123 S. Ct. 2455 (June 25, 2012), the United States Supreme Court held that the Eighth Amendment to the United States Constitution bars mandatory sentences of life imprisonment without parole (LWOP) for juveniles under 18 years of age who commit murder or other homicide offenses. The North Carolina General Assembly responded to the *Miller* decision on July 3, 2012, by ratifying Senate Bill 635, Minors/Sentencing for First Degree Murder. The bill was signed into law as Session Law 2012-148 on July 12, 2012.

Senate Bill 635 establishes new sentencing procedures and an alternative sentence of life imprisonment with parole for offenders convicted of first degree murder who are under 18 at the time of the offense. Section 2 of the bill also includes the following mandate to the Sentencing Commission:

> The North Carolina Sentencing and Policy Advisory Commission, in consultation with the Office of the Juvenile Defender, the Conference of District Attorneys, and other organizations and agencies it deems appropriate, shall study the provisions in this act, United States Supreme Court precedent relevant to sentencing a minor for first degree murder, sentencing policies in other jurisdictions, and any other matter relating to the sentencing of minors convicted of first degree murder. The Commission shall report its findings and recommendations to the General Assembly no later than January 31, 2013.

At its quarterly meeting on September 7, 2012, the Commission established the Special Sentencing Issues Subcommittee to address the mandate. The Subcommittee met on October 12 and adopted recommendations, which were presented to the full Commission on December 14, 2012.

Consultation

Prior to the Subcommittee meeting, Commission staff contacted the Juvenile Defender and representatives of the Conference of District Attorneys, the North Carolina Bar Association, and the North Carolina Post-Release Supervision and Parole Commission to seek input on the provisions of SB 635. Representatives of these agencies attended the meeting and participated in its discussions. Members also heard from Becky Parnell, a citizen whose husband was murdered by a 16-year-old assailant during an armed robbery in 2008.

Supreme Court Precedent Prior to *Miller*

The Subcommittee reviewed recent Supreme Court decisions defining the limits imposed by the Constitution on the punishment of juvenile crime. In order to fully assess the consistency of SB 635 with the *Miller* decision, the Subcommittee examined additional case law that formed the foundation of the majority opinion.

Miller was the third of a series of rulings addressing the limits placed by the Eighth Amendment on the sentencing of offenders under the age of 18. The amendment, which applies to the states through the Fourteenth Amendment's Due Process Clause, provides in part that the government may not inflict punishments that are "cruel and unusual." The Supreme Court has construed the Cruel and Unusual Punishment Clause to bar not only sanctions that are inherently barbaric but also punishments that are grossly disproportionate to the crimes for which they are imposed. *Graham v. Florida*, 130 S. Ct. 2011, 2021 (2010). This principle of proportionality applies to both the seriousness of the offense and the culpability of the offender. Moreover, the measure of what is cruel and unusual under the Eighth Amendment may change in accordance with the "evolving standards of decency that mark the progress of a maturing society." *Id.*

In the 2005 case of *Roper v. Simmons*, 543 U.S. 551 (2005), the Court overruled its own 1989 decision in *Stanford v. Kentucky*, 492 U.S. 361 (1989), and held that the Eighth Amendment prohibits the death penalty for acts committed by an offender under 18 years of age. The *Roper* Court based its decision on the "diminished culpability" of juveniles as a class, which rendered them unworthy of the severest of punishments permitted by law. *Roper*, 543 U.S. at 571. Specifically, the Court pointed to juveniles' relative immaturity and undeveloped sense of responsibility as compared to adults, as well as their greater susceptibility to environmental influences, including familial and peer pressures. The *Roper* Court also emphasized that, due to unfinished nature of juveniles' character, "a greater possibility exists that a minor's character deficiencies will be reformed." *Id.* at 570. Because of these factors, the Court concluded that "juvenile offenders cannot with reliability be classified among the worst offenders." *Id*. at 569.

Following the *Roper* decision, the General Assembly enacted Session Law 2007-81, amending G.S. 14-17 to exempt 16- and 17-year-old offenders from the death penalty.

In *Kennedy v. Louisiana*, 554 U.S. 447 (2008), the Supreme Court ruled that the Eighth Amendment bars the death penalty for adults who are convicted of a non-homicide crime against an individual. Although applicable only to offenders over the age of 18, the *Kennedy* decision has informed the Court's subsequent Eighth Amendment jurisprudence by establishing a bright line between homicide and non-homicide offenses for purposes of sentence proportionality.

Five years after *Roper* and two years after *Kennedy*, the Supreme Court ruled in *Graham v. Florida*, 130 S. Ct. 2011 (2010), that the Eighth Amendment bars a sentence of LWOP for a non-homicide offense committed by an offender under 18 years of age. As in *Roper*, the Court emphasized the lessened culpability of juveniles as well as their greater capacity for change. While acknowledging the unique irrevocability of the death penalty, the *Graham* Court characterized a sentence of LWOP as akin or analogous to the death penalty in terms of its severity and irrevocability. The Court

stressed the quantitative difference between life imprisonment for a juvenile and for an older adult – finding these sentences to be the same "in name only." *Graham*, 130 S. Ct. at 2028. Having eliminated the juvenile death penalty in *Roper*, the Court in *Graham* established a parallel between adult capital punishment and juvenile LWOP as the maximum punishments countenanced by law for each class of offenders. Combining this framework with *Kennedy v. Louisiana's* view of non-homicide crimes as categorically less severe than homicides, the *Graham* Court held that a sentence of juvenile LWOP for a non-homicide offense offends the Eighth Amendment principle of proportionality. Although the sentence need not guarantee an eventual release from prison, the Court insisted that it provide at least "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Id*. at 2030.

Miller v. Alabama extended the Supreme Court's recent Eighth Amendment jurisprudence by striking down sentencing provisions in Arkansas and Alabama that mandated LWOP for homicide offenses committed by a juvenile. As in *Roper* and *Graham*, the Court noted that juvenile's "diminished culpability and greater prospects for reform" make them "less deserving of the most severe punishments." *Miller*, 132 S. Ct. at 2464. However, the Court also recognized that the distinctive nature of the crime of homicide will sometimes justify the severest of sanctions. Therefore, while recognizing that "children are different" for purposes of the Eighth Amendment, *id.* at 2469, the *Miller* Court declined to bar LWOP for all juvenile homicide offenders. Instead, it furthered the parallel established in *Graham* between the adult death penalty and juvenile LWOP.

Drawing from the Court's death penalty cases, *Miller* cited the 1976 decision in *Woodson v. North Carolina*, 428 U. S. 280 (1976), which struck down a state law mandating capital punishment for a particular form of murder. In *Lockett v. Ohio*, 438 U. S. 586 (1978), the Court went on to require that all relevant mitigating circumstances be considered before the death penalty is imposed. "In those cases," the *Miller* Court explained, "we have prohibited mandatory imposition of capital punishment, requiring that sentencing authorities consider the characteristics of a defendant and the details of his offense before sentencing him to death." *Miller*, 132 S. Ct. at 2464. *Woodson* and its progeny thus interpreted the Eighth Amendment's proportionality requirement to demand an individualized sentencing decision – based on the specific characteristics of the offense and the offender – before the most severe and irrevocable of sentences is imposed.

Having characterized juvenile LWOP as akin to the adult death penalty in *Graham*, the Court in *Miller* borrowed principles from the capital cases of *Woodson* and *Lockett* to hold that any jurisdiction that mandates life imprisonment without parole for a juvenile homicide offender violates the Eight Amendment's Cruel and Unusual Punishment Clause. Such a mandatory system, the Court explained "prevents the [sentencer] from considering a juvenile's 'lessened culpability' and 'greater capacity for change,' and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties." *Miller*, 132 S. Ct. at 2460. Before imposing the most severe punishment constitutionally permitted for a juvenile, the sentencer must be able to consider whether the offender's "youth and its attendant characteristics, along with the nature of the crime, ma[kes] a lesser sentence (for example life *with* the possibility of parole) more appropriate." *Id.*

As noted above, the *Miller* decision did not foreclose the option of juvenile LWOP for homicide offenses. However, such a sentence may only be imposed after the sentencer has "the opportunity to consider mitigating circumstances" and makes an individualized sentencing decision, taking into account the offender's "age and age-related characteristics" and the nature of the crime. *Id.* at 2475. The *Miller* Court summarized the relevant factors as follows:

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

Id. at 2468. In cases where juvenile LWOP is deemed inappropriate, the sentencer must have at least one additional punishment option, such as life imprisonment with parole or imprisonment for a term of years. This alternative must provide the juvenile "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham*, 130 S. Ct. at 2030.

Other States' Responses to *Miller v. Alabama*

In banning mandatory LWOP for juvenile homicide offenses, the *Miller* Court recognized that the law in 28 states and the United States mandated such a sentence for at least some juvenile murderers. Each of these jurisdictions is obliged, at minimum, to comply with *Miller* in all future prosecutions as well as any cases pending as of June 25, 2012. As directed by SB 635, the Subcommittee surveyed the affected states to determine how they had responded to *Miller* to bring their sentencing laws into accord with the Eighth Amendment.

North Carolina was the first state to amend its sentencing laws to bring them into compliance with *Miller*. At the time of the Subcommittee's meeting on October 12, 2012, no other affected jurisdiction had yet enacted legislation to address the ruling. Most mandatory juvenile LWOP states, including Alabama, have elected to take up the issue during their next legislative session in 2013. However, the Subcommittee was apprised of the actions taken by other states as of October 12.

Iowa: On July 16, 2012, Governor Jerry Branstad commuted the sentences of the state's 38 inmates who were serving mandatory juvenile LWOP sentences. The governor changed their prison terms to life with parole eligibility after 60 years. Like most states affected by *Miller*, however, Iowa will not pursue a prospective legislative response until 2013.

Pennsylvania: At the time of the Subcommittee's meeting on October 12, Senate Bill 850 was pending in the Pennsylvania General Assembly. The bill was subsequently ratified and signed into law by Governor Tom Corbett on October 25, 2012, and applies to juvenile offenders convicted on or after June 24, 2012.

Pennsylvania law includes three degrees of murder. Murder in the first degree is a willful, deliberate and premeditated killing; murder in the second degree is a killing "committed while . . . engaged as a principal or an accomplice in the perpetration of a felony." 18 Pa. Code 2502(a), (b), (c). Senate Bill 850 provides for sentencing of juvenile offenders who commit first and second degree murder under 18 Pa. Code 2502, first and second degree murder of an unborn child under 18 Pa. Code 2604, and first and second degree murder of a law enforcement officer under 18 Pa. Code 2507.

For first degree murder, SB 850 enacts the following sentencing options for juvenile offenders:

- For offenders 15 to 17 years of age, a prison sentence of LWOP, or at least 35 years to life;
- For offenders under 15 years of age, a prison sentence of LWOP, or at least 25 years to life.

The prosecution must provide reasonable notice to the offender of its intention to seek LWOP. In determining whether to impose LWOP, the sentencing court must make findings on the record on a variety of factors, including victim and community impact, any ongoing threat to safety posed by the offender, the nature of the offense and the offender's degree of culpability, and the age-related characteristics of the offender as contemplated by *Miller*.

For second degree murder, SB 850 does not authorize LWOP but prescribes the following minimum sentences:

- For offenders 15 to 17 years of age, imprisonment for at least 30 years to life;
- For offenders under 15 years of age, imprisonment for at least 20 years to life.

For both first and second degree murder, the sentencing court may impose a sentence in excess of the minimum terms set forth above. 18 Pa. Code 1102.1(e).

California, a state without mandatory LWOP for juveniles, also enacted legislation following the *Miller* decision. Senate Bill 9, signed by Governor Jerry Brown on September 30, 2012, applies to juvenile offenders sentenced to LWOP under the state's discretionary sentencing system, excluding those who engaged in torture or who killed a public safety official, firefighter, or law enforcement officer. Introduced prior to the Supreme Court's ruling in *Miller*, SB 9 allows juvenile offenders to petition the court to reduce their LWOP sentence of 25-years-to-life based on a showing of remorse and steps toward rehabilitation. The petition may be filed after the inmate has served 15 years in prison. Offenders whose initial petitions are denied may file two additional requests for relief, after 20 and 24 years of confinement.

Provisions of SB 635

The Subcommittee reviewed each of the major provisions of SB 635, which are codified as new Part 2A[1] within Article 81B (Structured Sentencing) of the Criminal Procedure Act. Part 2A establishes special sentencing options and procedures for offenders who are convicted of first degree murder under G.S. 14-17, and who were under 18 years of age at the time of the crime. The central provision of Part 2A is a new punishment of "life imprisonment with parole" which is not otherwise authorized under North Carolina's determinate structured sentencing system. The incidents of life imprisonment with parole are as follows:

- The offender must serve a minimum of 25 years in prison before becoming parole-eligible;
- The parole terms and conditions in G.S. 15A, Article 85, apply except that:
    - The period of parole supervision is five years and is not subject to early termination by the Post-Release Supervision and Parole Commission; and
    - Offenders who are returned to prison for violating parole must serve an additional five years of confinement before they are eligible for re-parole;
- "Life" means imprisonment for the offender's natural life if parole is not granted.

If the sole basis for a juvenile offender's first-degree murder conviction is the felony murder rule, Part 2A prescribes a mandatory sentence of life imprisonment with parole, as described above. Otherwise, the trial court holds a sentencing hearing and chooses between a sentence of life with parole or LWOP.

For those cases in which the court has discretion to impose life imprisonment with or without parole, Part 2A establishes specific procedures for the sentencing hearing. The hearing is conducted by the trial court as soon as practicable after the guilty verdict is returned. Evidence adduced at trial need not be re-introduced but may be considered by the court insofar as it is relevant to sentencing. Both parties may offer additional evidence on any matter that the court deems relevant to sentencing. Furthermore, Part 2A allows the defense to submit mitigating circumstances from the following non-exclusive list of factors:

- Age at the time of the offense
- Immaturity
- Ability to appreciate the risks and consequences of the conduct
- Intellectual capacity
- Prior record

[1] Senate Bill 635 enacted four statutes, G.S. 15A-1476 through 15A-1479, as a new Article 93 within G.S. Chapter 15A. However, the statutes were codified within Article 81B as new Part 2A (Sentencing of Minors Subject to Life Imprisonment Without Parole), at G.S. 15A-1340.19A through G.S. 15A-1340.19D.

- Mental health
- Familial or peer pressure exerted upon the defendant
- Likelihood that the defendant would benefit from rehabilitation in confinement
- Any other mitigating factor or circumstance.

The parties may also present arguments for and against LWOP, with the defense entitled to the last argument.

As an alternative to this new sentencing process, Part 2A further provides that the procedures for guilty pleas in superior court set forth in Article 58 of the Criminal Procedure Act also apply to cases governed by Part 2A.

At the conclusion of the sentencing proceeding, the court determines whether to impose a sentence of LWOP or life with parole. The sentencing court must consider any mitigating factors proffered by the defense. The sentencing order must also include findings on the absence or presence of mitigating factors, as well as any other findings the court deems appropriate.

Senate Bill 635 makes Part 2A effective July 12, 2012, and applicable to any sentencing hearings held on or after that date. The new statutes include procedures for addressing any post-conviction motions seeking relief under Part 2A. Such motions are assigned in a manner consistent with the amendments to the Criminal Procedure Act found in Session Law 2012-168. The judge who presided at trial will consider the motion unless unavailable. If relief is awarded, resentencing is to be conducted in accordance with Part 2A.

Senate Bill 635 thus accommodates but does not require the retroactive application of *Miller v. Alabama* to juvenile offenders who were previously sentenced to LWOP in cases that were final as of June 25, 2012. As a general matter, the retroactivity of a new rule of federal constitutional jurisprudence is determined by the courts based on analytical framework in *Teague v. Lane*, 489 U.S. 288 (1989) and *State v. Zuniga*, 336 N.C. 508, 513 (1994).

Commission Deliberations

The Subcommittee presented its recommendations to the full Commission at its quarterly meeting on December 14, 2012. The Commission received additional information from Mary S. Pollard, Executive Director of Prisoner Legal Services, Inc., Professor James E. Coleman, Jr., of Duke University School of Law, and Representative Rick Glazier (District 45). After due consideration, the Commission amended and adopted the Subcommittee's recommendations as set forth below.

COMMISSION RECOMMENDATIONS

1. **The Commission recommends that the General Assembly expand the applicability of Part 2A of G.S. Chapter 15A, Article 81B, to include other Class A homicide offenses.**

   Because the holding in *Miller v. Alabama* applies to any homicide offense for which LWOP is mandated for a juvenile offender, the Subcommittee recommends amending Part 2A to include the Class A homicide offense of murder of an unborn child in G.S. 14-23.2(b)(1), as well as future homicide offenses classified by the General Assembly as Class A felonies.

2. **The Commission finds that there is a non-homicide offense (Willful injury by use of a nuclear, biological, or chemical weapon of mass destruction, G.S. 14-288.22(a)) and a status offense that mandate a sentence of life imprisonment without parole, in violation of the rulings in *Miller v. Alabama* and *Graham v. Florida*.**

   In *Graham v. Florida*, the U.S. Supreme Court held that the Eighth Amendment prohibits a sentence of LWOP for a non-homicide offense committed by a juvenile under 18 years of age. North Carolina law currently mandates LWOP for the Class A felony non-homicide offense of willfully injuring another by use of a nuclear, biological, or chemical weapon of mass destruction in G.S. 14-288.22(a), as well as for Class B through E felonies (homicide and non-homicide) committed by an offender who has attained violent habitual felon status pursuant to G.S. 14-7.7 to -7.12. The Commission wishes to alert the General Assembly to these provisions and their conflict with *Miller* and *Graham*.

3. **The Commission recommends that the General Assembly ask the Attorney General and the Office of the Juvenile Defender or other appropriate entity to provide opinions on the issue of whether the holding of *Miller v. Alabama* should be applied retroactively.**

   In reviewing the provisions of SB 635, members discussed the possible retroactive effect of *Miller* on the 89 juvenile offenders sentenced to mandatory LWOP whose cases were final prior to June 15, 2012. The Commission recognizes that the Supreme Court left the issue unresolved but did provide retroactive relief to the petitioner in *Jackson v. Hobbs*, the companion case to *Miller*. The Commission further recognizes the General Assembly's authority to provide legislatively for the retroactive application of G.S. Chapter 15A, Article 81B, Part 2A. In order to obtain information on both sides of the issue, the Commission recommends that the General Assembly request formal opinions on retroactivity from the appropriate state agencies.

Appendices

A. Senate Bill 635 (Session Law 2012-148)

B. Handout from the Special Sentencing Issues Subcommittee meeting, October 12, 2012: Senate Bill 635 as Response to *Miller v. Alabama*.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-148
SENATE BILL 635

AN ACT TO AMEND THE STATE SENTENCING LAWS TO COMPLY WITH THE UNITED STATES SUPREME COURT DECISION IN MILLER V. ALABAMA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 93.

"Sentencing for Minors Subject to Life Imprisonment Without Parole.

"**§ 15A-1476. Applicability.**

Notwithstanding the provisions of G.S. 14-17, a defendant who is convicted of first degree murder, and who was under the age of 18 at the time of the offense, shall be sentenced in accordance with this Article. For the purposes of this Article, "life imprisonment with parole" shall mean that the defendant shall serve a minimum of 25 years imprisonment prior to becoming eligible for parole.

"**§ 15A-1477. Penalty determination.**

(a) In determining a sentence under this Article, the court shall do one of the following:

(1) If the sole basis for conviction of a count or each count of first degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.

(2) If the court does not sentence the defendant pursuant to subdivision (1) of this subsection, then the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in G.S. 14-17, or a lesser sentence of life imprisonment with parole.

(b) The hearing under subdivision (2) of subsection (a) of this section shall be conducted by the trial judge as soon as practicable after the guilty verdict is returned. The State and the defendant shall not be required to resubmit evidence presented during the guilt determination phase of the case. Evidence, including evidence in rebuttal, may be presented as to any matter that the court deems relevant to sentencing, and any evidence which the court deems to have probative value may be received.

(c) The defendant or the defendant's counsel may submit mitigating circumstances to the court, including, but not limited to, the following factors:

(1) Age at the time of the offense.

(2) Immaturity.

(3) Ability to appreciate the risks and consequences of the conduct.

(4) Intellectual capacity.

(5) Prior record.

(6) Mental health.

(7) Familial or peer pressure exerted upon the defendant.

(8) Likelihood that the defendant would benefit from rehabilitation in confinement.

(9) Any other mitigating factor or circumstance.

(d) The State and the defendant or the defendant's counsel shall be permitted to present argument for or against the sentence of life imprisonment with parole. The defendant or the defendant's counsel shall have the right to the last argument.

(e) The provisions of Article 58 of Chapter 15A of the General Statutes apply to proceedings under this Article.

"**§ 15A-1478. Sentencing; assignment for resentencing.**

(a) The court shall consider any mitigating factors in determining whether, based upon all the circumstances of the offense and the particular circumstances of the defendant, the defendant should be sentenced to life imprisonment with parole instead of life imprisonment without parole. The order adjudging the sentence shall include findings on the absence or presence of any mitigating factors and such other findings as the court deems appropriate to include in the order.

(b) All motions for appropriate relief filed in superior court seeking resentencing under the provisions of this Article may be heard and determined in the trial division by any judge (i) who is empowered to act in criminal matters in the superior court district or set of districts as defined in G.S. 7A-41.1, in which the judgment was entered and (ii) who is assigned pursuant to this section to review the motion for appropriate relief and take the appropriate administrative action to dispense with the motion.

(c) The judge who presided at the trial of the defendant is empowered to act upon the motion for appropriate relief even though the judge is in another district or even though the judge's commission has expired; however, if the judge who presided at the trial is still unavailable to act, the senior resident superior court judge shall assign a judge who is empowered to act under subsection (b) of this section.

(d) All motions for appropriate relief filed in superior court seeking resentencing under the provisions of this Article shall, when filed, be referred to the senior resident superior court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions.

"**§ 15A-1479. Incidents of parole.**

(a) Except as otherwise provided in this section, a defendant sentenced to life imprisonment with parole shall be subject to the conditions and procedures set forth in Article 85 of Chapter 15A of the General Statutes, including the notification requirement in G.S. 15A-1371(b)(3).

(b) The term of parole for a person released from imprisonment from a sentence of life imprisonment with parole shall be five years and may not be terminated earlier by the Post-Release Supervision and Parole Commission.

(c) A defendant sentenced to life imprisonment with parole who is paroled, and then violates a condition of parole and is returned to prison to serve the life sentence, shall not be eligible for parole for five years from the date of the return to confinement.

(d) Life imprisonment with parole under this Article means that unless the defendant receives parole, the defendant shall remain imprisoned for the defendant's natural life."

SECTION 2. The North Carolina Sentencing and Policy Advisory Commission, in consultation with the Office of the Juvenile Defender, the Conference of District Attorneys, and other organizations and agencies it deems appropriate, shall study the provisions in this act, United States Supreme Court precedent relevant to sentencing a minor for first degree murder, sentencing policies in other jurisdictions, and any other matter relating to the sentencing of minors convicted of first degree murder. The Commission shall report its findings and recommendations to the General Assembly no later than January 31, 2013.

SECTION 3. This act is effective when it becomes law and is applicable to any sentencing hearings held on or after that date. This act also applies to any resentencing hearings required by law for a defendant who was under the age of 18 years at the time of the offense, was sentenced to life imprisonment without parole prior to the effective date of this act, and for whom a resentencing hearing has been ordered.

In the General Assembly read three times and ratified this the 3rd day of July, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 3:59 p.m. this 12th day of July, 2012

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
SPECIAL SENTENCING ISSUES SUBCOMMITTEE
OCTOBER 12, 2012

Senate Bill 635 as Response to *Miller v. Alabama*
New G.S. Chapter 15A, Article 931 (Sentencing for Minors Subject to Life Imprisonment Without Parole)

Issue	What *Miller* Says	What Article 93 Provides
Offenders Covered	Any juvenile offender (under 18 at the time of the offense).	"[A]ny defendant who is convicted of first degree murder, and who was under 18 at the time of the offense." • Juveniles under age 13 are not subject to criminal prosecution. • Juveniles aged 13-15 who are charged with a Class A felony are automatically transferred to criminal court upon a finding of probable cause by the juvenile court. • Juveniles aged 16-17 are adults for purposes of the criminal law.
Offenses Covered	Any homicide offense. Note: The 8th Amendment bars LWOP for a juvenile convicted of a non-homicide offense. *Graham v. Florida*, 560 U.S. __ (2010).	1st degree murder under G.S. 14-17. Does not cover Class A felony homicide offenses other than first degree murder under G.S. 14-17: • Murder of an unborn child, G.S. 14-23.2(b)(1). • Future Class A felony homicide offenses. Does not address Class A felony non-homicide offense. • Willful injury by use of a nuclear, biological, or chemical WMD, G.S. 14-288.22(a). • Future Class A felony non-homicide offenses. Does not address other LWOP sentencing provisions: • Class B1/PRL V-VI/Aggravated (homicide, non-homicide) • Violent habitual felon (homicide, non-homicide)

1 Following enactment, Article 93 was codified as new Part 2A of G.S. Chapter 15A, Article 81B (Structured Sentencing of Persons Convicted of Crimes).

Issue	What *Miller* Says	What Article 93 Provides
Sentence Term	No mandatory sentence of life imprisonment without parole (LWOP). Note: If LWOP is inappropriate, the sentence imposed must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham v. Florida*, 560 U.S. __ (2010).	1. Felony murder: Life imprisonment with parole. 2. Other 1st degree murders: (a) Life imprisonment without parole, or (b) Life imprisonment with parole. Details of life with parole sentence: • Eligibility for parole after serving a minimum of 25 years in prison; • Article 85 parole conditions and procedures apply, except as noted; • Parole term is 5 years and not subject to early termination; • Defendants returned to prison for a parole violation must serve 5 years before eligible for re-parole; • "Life" means imprisonment for natural life if parole is not granted.
Sentencing Procedures	Before sentencing a juvenile offender to LWOP, the sentencer must make "an individualized sentencing decision" and "consider mitigating circumstances."	1. Felony murder: Defendant sentenced to life with parole. 2. Other first degree murders: Trial just shall hold a sentencing hearing as soon as practicable after guilty verdict. a. Parties need not resubmit trial evidence but may present any evidence, including rebuttal evidence, on any matter the court deems relevant to sentencing. The court may receive any evidence it deems of probative value. b. Defendant or counsel may submit mitigating circumstances c. Parties may present argument for or against LWOP. Defendant or counsel shall have the right to the last argument. d. Court must consider any mitigating factors and determine whether the defendant should receive LWOP or life with parole. e. Sentencing order shall include findings on the absence or presence of mitigating factors and such other findings as the court deems appropriate. 3. The provisions of G.S. Chapter 15A, Article 58 (Guilty Pleas) apply to proceedings under Article 93.

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Factors Considered Before Imposing LWOP	Offender's "age and age-related characteristics" and the nature of the crime. "[H]ow children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Factors cited: • The juvenile's chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. • The juvenile's family and home environment – from which he cannot usually extricate himself. • The circumstances of the homicide offense, including the extent of the juvenile's participation in the conduct and the effect of familial and peer pressures. • Whether the juvenile might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – e.g., his inability to deal with police officers or prosecutors, or incapacity to assist his own attorneys. • The possibility of rehabilitation.	Any mitigating circumstances, based upon all the circumstances of the offense and the particular circumstances of the defendant. Mitigating circumstances may include, but are not limited to, the following factors: 1. Age at the time of the offense; 2. Immaturity; 3. Ability to appreciate the risks and consequences of the conduct; 4. Intellectual capacity; 5. Prior record; 6. Mental health; 7. Familial or peer pressure exerted upon the defendant; 8. Likelihood that the defendant would benefit from rehabilitation in confinement; 9. Any other mitigating factor or circumstance.)

Issue	What *Miller* Says	What Article 93 Provides
Effective Date	Date of opinion: June 25, 2012. Note: Applies to all pending and future cases, including cases on direct appeal or otherwise not final as of June 25, 2012. *Griffith v. Kentucky*, 479 U.S. 314 (1987).	Effective July 12, 2012, and applies to sentencing hearings held on or after that date.
Retroactivity	No discussion of retroactivity.	• Allows for, but does not establish, retroactivity. • Applies to any resentencing hearings required by law for a defendant who was under the age of 18 at the time of the offense, was sentenced to LWOP prior to July 12, 2012, and for whom resentencing has been ordered.
Collateral Review Procedures	No discussion of collateral review procedures.	• All motions for appropriate relief seeking resentencing under Article 93 shall be referred to the senior resident superior court judge for assignment pursuant to G.S. 15A-1478(b)-(c). • A motion for appropriate relief seeking resentencing under Article 93 may be heard by any judge empowered to act in criminal matters in the superior court district(s) in which judgment was entered, and who is assigned to hear the motion. • The judge who presided at the defendant's trial is empowered to act on a motion for appropriate relief even if the judge is in another district or the judge's commission has expired. If the trial judge is unavailable, the senior resident superior court judge shall assign the motion to another eligible judge.