MINNESOTA'S SENTENCING SCHEME FOR JUVENILE OFFENDERS

Introduction

A. The purpose of this presentation is to set forth the problem with respect to juvenile offenders convicted of first-degree murder due to recent U.S. Supreme Court decisions, and to propose a solution. Currently, at least eight other states have taken action similar to my proposal.

B. The Guidelines apply when determining the appropriate sentence for a juvenile certified as an adult under Minn. Stat. § 260B.125. Minn. Sent. Guidelines 3, subd. D. But a severity level has not been assigned by the guidelines for first-degree murder because the punishment is a mandatory life sentence. Minn. Sent. Guidelines 1, subd. A.3.

C. The Commission's mandate is not limited to establishing sentencing guidelines. Minn. Stat. § 244.09, subd. 6 (2014). The Legislature has directed the Commission to "*make recommendations to the legislature regarding changes to the criminal code*, criminal procedures, and other aspects of sentencing." *Id.* (emphasis added).

The problem

A. The criminal code currently mandates that courts:

> Sentence a person to life imprisonment without the possibility of release under the following circumstances:
>
> (1) The person is convicted of first-degree murder under section 609.185, paragraph (a), clause (1), (2), (4), or (7);
> (2) The person is convicted of committing first-degree murder in the course of a kidnapping under section 609.185, clause (3); or
> (3) The person is convicted of first-degree murder under section 609.185, clause (3), (5), or (6), and the court determines on the record at the time of sentencing that the person has one or more previous convictions for a heinous crime.

Minn. Stat. § 609.106, subd. 2 (2014). This provision makes no distinction between adult offenders and juvenile offenders who have been certified to adult court.

B. Minnesota statutes allow the court to certify juvenile offenders charged with serious crimes to be tried as an adult if certain criteria are satisfied. Minn. Stat. § 260B.125 (2014) sets forth the criteria for adult certification. Generally, it

requires a court to determine whether the state has established by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety. Minn. Stat. § 260B.125, subd. 6(ii) (2014).

C. Certification is essentially automatic when a juvenile is alleged to have committed first-degree murder after becoming sixteen (16) year of age. Minn. R. Juv. Delinq. P. 18.01; Minn. Stat. § 260B.007, subd. 6(b) (2014); Minn. Stat. § 260b.101, subd. 2 (2014).

D. In Minnesota, there are several juvenile offenders who were certified to be tried as adults, convicted of first-degree murder and sentenced to life imprisonment without the possibility of release, including Timothy Chambers, Lamonte Martin, Tony Roman Nose, Prentis Jackson, and Mahdi Ali.

E. Recently, the U.S. Supreme Court has determined that children are constitutionally different from adults for sentencing purposes and that the mandatory imposition of life without the possibility of release violates the Eighth Amendment of the U.S Constitution. In three recent cases, the Court sets forth certain limits on the sentence that may be imposed upon a *juvenile offender so that the sentence is graduated and proportional*: *Graham v. Florida*, 130 S. Ct. 2011 (2010), *Miller v. Alabama*, 132 S. Ct. 2455 (2012); and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

1. In *Graham*, the defendant was 16 when he pleaded guilty to armed burglary and another crime. The trial court sentenced the defendant to probation and withheld an adjudication of guilt. Later he violated the terms of his probation by committing other crimes. He was sentenced to life for the burglary charge. Notably, the juvenile had no possibility of release under Florida law.

   The Supreme Court held that the Eighth Amendment does not permit a juvenile offender to be sentenced to life in prison without parole *for a nonhomicide offense*. The decision rested on the conclusion that embodied in the cruel and unusual punishment ban is the precept that punishment for a crime should be graduated and proportional to the offense. *Roper v. Simmons*, 125 S.Ct. 1183 (2005) (holding that capital punishment for juvenile offenders is unconstitutional) the Court observed that the proportionality standard requires consideration of whether

the sentence is unconstitutionally excessive, and whether the case falls within certain categorical rules against the death penalty. The Court in *Graham* extended the reasoning of *Roper* to juveniles convicted of a *nonhomicide* offense, holding that a sentence of life without the possibility of release (LWOP) is impermissible for nonhomicide crimes against individuals.

2. In *Miller* the Court considered whether a mandatory sentence of LWOP was unconstitutional when imposed on a juvenile convicted of a *homicide* offense. *Miller* involved a consolidated appeal by two 14-year-olds who were convicted of murder and sentenced to a mandatory term of LWOP. In one case the Arkansas Supreme Court affirmed the sentence, and in the other the Alabama appellate court affirmed the lower court's decision that the sentence violated the Eighth Amendment.

The U.S. Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates a sentence of LWOP for juvenile homicide offenders. The decision rested on the Eighth Amendment's prohibition against cruel and unusual punishment, which guarantees against sentences that are excessive. This right flows from the basic precept that punishment should be graduated and proportional to both the offender and the offense.

In *Miller*, the Court observed that there are two strands of precedent regarding proportionate sentencing in juvenile cases that are applicable. First, the Eighth Amendment bans capital punishment for children (*Roper v. Simmons*, 125 S.Ct. 1183, 2005), and prohibits a life sentence for children convicted of a nonhomicide offense, *Graham*, which likened life without parole for juvenile offenders to the death penalty thereby evoking a second line of cases. In the second line of cases the Court has required sentencing authorities to consider the characteristics of a defendant and the details of his offense.

Ultimately, the *Miller* Court held that the Eighth Amendment forbids a sentencing scheme that mandates

life in prison without possibility of parole for juvenile offenders. *Cf*. *Graham*, 560 U.S. at ___, 130 S. Ct. at 2030 ("a state is not required to guarantee eventual freedom," but must provide "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"). The Court said:

> By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. Because that holding is sufficient to decide these cases, we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. But given all we have said in *Roper, Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U.S. at 573, 125 S. Ct. at 1183; *Graham*, 560 U.S. at ___, 130 S. Ct. at 2026-27. Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.

3. Most recently, in *Montgomery v. Louisiana*, the U.S. Supreme Court refined the *Miller* rule in a case involving a

defendant, who was 17 at the time of his sentence in 1963. The issue in Montgomery was whether the defendant was entitled to the retroactive benefit of the rule announced in *Miller*.

The U.S. Supreme Court answered the question yes, and remanded the case to the sentencing authorities for further proceedings. As part of its analysis, the *Montgomery* Court clarified that *Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Ibid.* The Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of "children's diminished culpability and heightened capacity for change," *Miller* made clear that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Ibid.* *Miller*, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of "the distinctive attributes of youth." *Id.,* at ___, 132 S. Ct. at 2465. The Court said,

> Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects " 'unfortunate yet transient immaturity.' " *id.,* at ___, 132 S. Ct. at 2469 (quoting *Roper*, 543 U.S. at 573, 125 S. Ct. at 1183. Because *Miller* determined that sentencing a child to life without parole is excessive for all but " 'the rare juvenile offender whose crime reflects irreparable corruption,' " it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—that is, juvenile offenders whose crimes reflect the transient

immaturity of youth. *Penry*, 492 U.S. at 330, 109 S. Ct. at 2934.

F. In response to *Miller/Montgomery*, states across the country have amended their respective statutes mandating life without the possibility of release to conform to *Miller*. Examples of these amendments are set forth in Appendix A.

G. Although states across the country have amended their respective statutes mandating life without the possibility of release to conform to *Miller*, Minnesota has not.

H. During the 2015-2016 legislative session, bills were introduced in the House and Senate to respond to *Miller/Montgomery*. House File 1373 would have required the court to consider the juvenile offender's youthful characteristics before imposing a sentence of life without release for a juvenile offender convicted of first-degree murder. Senate File 994 on the other hand would have eliminated sentences of life without the possibility of release for juveniles and instead would have required life with the possibility of release after 20 years for a juvenile offender convicted of first-degree murder. The Senate file stalled in part because prosecutors and law enforcement agencies argued the 20-year provision should be increased to 30 years.

My proposal

My proposal is that just as we recommended changes to the criminal code in December 2015 on the topic of drug sentencing reform, we recommend changes to section 609.106 to conform with *Miller* if we can reach a consensus. The topic of juvenile sentencing is extremely important in light of the recent Supreme Court precedent. Moreover, it is a topic—particularly involving first-degree murder—in which the members of the MSGC have considerable expertise. Moreover, the district courts will need some guidance as to what the fact-finder should consider in a sentencing hearing to determine whether a life sentence is appropriate in a specific case.

APPENDIX A

Louisiana. La. Code Crim. Proc. § 878.1 (2014) provides the following:

> §878.1. Sentencing hearing for juvenile offenders
>
> A. In any case where an offender is to be sentenced to life imprisonment for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) where the offender was under the age of eighteen years at the time of the commission of the offense, a hearing shall be conducted prior to sentencing to determine whether the sentence shall be imposed with or without parole eligibility pursuant to the provisions of R.S. 15:574.4(E).
>
> B. At the hearing, the prosecution and defense shall be allowed to introduce any aggravating and mitigating evidence that is relevant to the charged offense or the character of the offender, including but not limited to the facts and circumstances of the crime, the criminal history of the offender, the offender's level of family support, social history, and such other factors as the court may deem relevant. Sentences imposed without parole eligibility should normally be reserved for the worst offenders and the worst cases.
>
> Acts 2013, No. 239, §2.

Michigan. Mich. Comp. Laws § 769.25 (2014), provides in relevant part:

> **769.25 Criminal defendant less than 18 years; circumstances; imprisonment for life without possibility of parole; violations; motion; response; hearing; record; sentence.**
>
> Sec. 25.
>
> (1) This section applies to a criminal defendant who was less than 18 years of age at the time he or she committed an offense described in subsection (2) if either of the following circumstances exists:
>
> > (a) The defendant is convicted of the offense on or after the effective date of the amendatory act that added this section.
> >
> > (b) The defendant was convicted of the offense before the effective date of the amendatory act that added this section and either of the following applies:
> >
> > > (i) The case is still pending in the trial court or the applicable time periods for direct appellate review by state or federal courts have not expired.
> > >
> > > (ii) On June 25, 2012 the case was pending in the trial court or the applicable time periods for direct appellate review by state or federal courts had not expired.
>
> (2) The prosecuting attorney may file a motion under this section to sentence a defendant described in subsection (1) to imprisonment for life without the possibility of parole if the individual is or was convicted of any of the following violations:
>
> * * *
>
> > (d) Any violation of law involving the death of another person for which parole eligibility is expressly denied under state law.
>
> (3) If the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described in subsection (1)(a), the prosecuting attorney shall file the motion within 21 days after the defendant is convicted of that violation. If the prosecuting attorney intends to seek a sentence of imprisonment for life without the possibility of parole for a case described under subsection (1)(b), the prosecuting attorney shall file the motion within 90 days after the effective date of the amendatory act that added this section. The motion shall specify the grounds on which the prosecuting attorney is requesting

the court to impose a sentence of imprisonment for life without the possibility of parole.

(4) If the prosecuting attorney does not file a motion under subsection (3) within the time periods provided for in that subsection, the court shall sentence the defendant to a term of years as provided in subsection (9).

(5) If the prosecuting attorney files a motion under subsection (2) requesting that the individual be sentenced to imprisonment for life without parole eligibility, the individual shall file a response to the prosecution's motion within 14 days after receiving notice of the motion.

(6) If the prosecuting attorney files a motion under subsection (2), the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, the trial court shall consider the factors listed in *Miller v Alabama*, 576 US_____; 183 L Ed 2d 407; 132 S Ct 2455 (2012), and may consider any other criteria relevant to its decision, including the individual's record while incarcerated.

(7) At the hearing under subsection (6), the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing.

* * *

(9) If the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years.

* * *

History: Add. 2014, Act 22, Imd. Eff. Mar. 4, 2014

Nebraska. Nev. Rev. St. § 28-105.02 (2014) provides:

> Class IA felony; person under eighteen years; maximum sentence; court consider mitigating factors.
>
> (1) Notwithstanding any other provision of law, the penalty for any person convicted of a Class IA felony for an offense committed when such person was under the age of eighteen years shall be a maximum sentence of not greater than life imprisonment and a minimum sentence of not less than forty years' imprisonment.
>
> (2) In determining the sentence of a convicted person under subsection (1) of this section, the court shall consider mitigating factors which led to the commission of the offense. The convicted person may submit mitigating factors to the court, including, but not limited to:
>
> (a) The convicted person's age at the time of the offense;
>
> (b) The impetuosity of the convicted person;
>
> (c) The convicted person's family and community environment;
>
> (d) The convicted person's ability to appreciate the risks and consequences of the conduct;
>
> (e) The convicted person's intellectual capacity; and
>
> (f) The outcome of a comprehensive mental health evaluation of the convicted person conducted by an adolescent mental health professional licensed in this state. The evaluation shall include, but not be limited to, interviews with the convicted person's family in order to learn about the convicted person's prenatal history, developmental history, medical history, substance abuse treatment history, if any, social history, and psychological history.
>
> Source
>
> Laws 2013, LB44, § 2.

Nevada.

Nev. Rev. Stat. § 176.025 (2015) provides:

> **NRS 176.025 Sentence of death or life imprisonment without possibility of parole not to be imposed on person under age of 18 years.** A sentence of death or life imprisonment without the possibility of parole must not be imposed or inflicted upon any person convicted of a crime now punishable by death or life imprisonment without the possibility of parole who at the time of the commission of the crime was less than 18 years of age. As to such a person, the maximum punishment that may be imposed is life imprisonment with the possibility of parole.
>
> (Added to NRS by 1967, 1432; A 2005, 63; 2011, 19; 2015, 618)

In addition, Nev. Rev. Stat. § 213.12135 (2016) provides:

> **NRS 213.12135 Eligibility for parole of prisoner sentenced as adult for offense committed when prisoner was less than 18 years of age.**
>
> 1. Notwithstanding any other provision of law, except as otherwise provided in subsection 2 or unless a prisoner is subject to earlier eligibility for parole pursuant to any other provision of law, a prisoner who was sentenced as an adult for an offense that was committed when he or she was less than 18 years of age is eligible for parole as follows:
>
> (a) For a prisoner who is serving a period of incarceration for having been convicted of an offense or offenses that did not result in the death of a victim, after the prisoner has served 15 calendar years of incarceration, including any time served in a county jail.
>
> (b) For a prisoner who is serving a period of incarceration for having been convicted of an offense or offenses that resulted in the death of only one victim, after the prisoner has served 20 calendar years of incarceration, including any time served in a county jail.
>
> 2. The provisions of this section do not apply to a prisoner who is serving a period of incarceration for having been convicted of an offense or offenses that resulted in the death of two or more victims.
>
> (Added to NRS by 2015, 618)

Pennsylvania. 18 Pa. Cons. Stat. § 1102.1 (2014) provides in relevant part:

> § **1102.1. Sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer.**
>
> **(a) First degree murder.--**A person who has been convicted after June 24, 2012, of a murder of the first degree, first degree murder of an unborn child or murder of a law enforcement officer of the first degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:
>
> (1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life.
>
> (2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 25 years to life.
>
> * * *
>
> **(d) Findings.--**In determining whether to impose a sentence of life without parole under subsection (a), the court shall consider and make findings on the record regarding the following:
>
> (1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.
>
> (2) The impact of the offense on the community.
>
> (3) The threat to the safety of the public or any individual posed by the defendant.
>
> (4) The nature and circumstances of the offense committed by the defendant.
>
> (5) The degree of the defendant's culpability.
>
> (6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.

(7) Age-related characteristics of the defendant, including:

(i) Age.

(ii) Mental capacity.

(iii) Maturity.

(iv) The degree of criminal sophistication exhibited by the defendant.

(v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.

(vi) Probation or institutional reports.

(vii) Other relevant factors.

* * *

(Oct. 25, 2012, P.L.1655, No.204, eff. imd.)

2012 Amendment. Act 204 added section 1102.1.

Texas. Tex. Penal Code § 12.31 (2014) provides in relevant part:

> Sec. 12.31. CAPITAL FELONY. (a) … An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for:
>
> (1) life, if the individual committed the offense when younger than 18 years of age; or
>
> (2) life without parole, if the individual committed the offense when 18 years of age or older.
>
> * * *
>
> Amended by:
>
> Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 1, eff. September 1, 2005.
>
> Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.145, eff. September 1, 2009.
>
> Acts 2009, 81st Leg., R.S., Ch. 765 (S.B. 839), Sec. 1, eff. September 1, 2009.
>
> Acts 2013, 83rd Leg., 2nd C.S., Ch. 2, Sec. 1, eff. July 22, 2013.

Washington. Wash. Rev. Code ann. § 10.95.030(3) (2016) provides in relevant part:

> (a)(i) Any person convicted of the crime of aggravated first degree murder for an offense committed prior to the person's sixteenth birthday shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of twenty-five years.
>
> (ii) Any person convicted of the crime of aggravated first degree murder for an offense committed when the person is at least sixteen years old but less than eighteen years old shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of no less than twenty-five years. A minimum term of life may be imposed, in which case the person will be ineligible for parole or early release.
>
> (b) In setting a minimum term, the court must take into account mitigating factors that account for the diminished culpability of youth as provided in *Miller v. Alabama*, 132 S.Ct. 2455 (2012) including, but not limited to, the age of the individual, the youth's childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth's chances of becoming rehabilitated.
>
> [… 2014 c 130 § 9 …]

Wyoming. Wyo. Stat. § 6-10-301(c) (2014) provides in relevant part:

> . . . A person sentenced to life imprisonment for an offense committed after the person reached the age of eighteen (18) years is not eligible for parole unless the governor has commuted the person's sentence to a term of years. A person sentenced to life imprisonment for an offense committed before the person reached the age of eighteen (18) years shall be eligible for parole after commutation of his sentence to a term of years or after having served twenty-five (25) years of incarceration, except that if the person committed any of the acts specified in W.S. 7-13-402(b) after having reached the age of eighteen (18) years the person shall not be eligible for parole.

APPENDIX B

House File 1373, 89th Minn. Legislature, as introduced. The proposal read:

Section 1. Minnesota Statutes 2014, section 244.05, subdivision 4, is amended to read:

Subd. 4. **Minimum imprisonment, life sentence.** (a) An inmate serving a mandatory life sentence under section 609.106, subdivision 2, ~~or~~ 609.3455, subdivision 2, or Minnesota Statutes 2014, section 609.106, must not be given supervised release under this section.

(b) An inmate serving a mandatory life sentence under section 609.185, clause (3), (5), or (6); or Minnesota Statutes 2004, section 609.109, subdivision 3, must not be given supervised release under this section without having served a minimum term of 30 years.

(c) An inmate serving a mandatory life sentence under section 609.385 must not be given supervised release under this section without having served a minimum term of imprisonment of 17 years.

(d) An inmate serving a mandatory life sentence under section 609.3455, subdivision 3 or 4, must not be given supervised release under this section without having served the minimum term of imprisonment specified by the court in its sentence.

(e) An inmate serving a mandatory life sentence under section 609.106, subdivision 3, must not be given supervised release under this section without having served a minimum term of:

(1) 50 years, if the inmate was under the age of 18 at the time of the offense and convicted under section 609.185, paragraph (a), clause (4);

(2) 20 years, if the inmate was 16 or 17 years old at the time of the offense and clause (1) does not apply; or

(3) 15 years, if the inmate was 14 or 15 years old at the time of the offense and clause (1) does not apply.

EFFECTIVE DATE. This section is effective the day following final enactment, and applies to offenses committed on or after that date.

Sec. 2. Minnesota Statutes 2014, section 244.05, subdivision 5, is amended to read:

Subd. 5. **Supervised release, life sentence.** (a) The commissioner of corrections may, under rules promulgated by the commissioner, give supervised release to an inmate serving a mandatory life sentence under section 609.106, subdivision 3, 609.185, clause

(3), (5), or (6); 609.3455, subdivision 3 or 4; 609.385; or Minnesota Statutes 2004, section 609.109, subdivision 3, after the inmate has served the minimum term of imprisonment specified in subdivision 4.

(b) The commissioner shall require the preparation of a community investigation report and shall consider the findings of the report when making a supervised release decision under this subdivision. The report shall reflect the sentiment of the various elements of the community toward the inmate, both at the time of the offense and at the present time. The report shall include the views of the sentencing judge, the prosecutor, any law enforcement personnel who may have been involved in the case, and any successors to these individuals who may have information relevant to the supervised release decision. The report shall also include the views of the victim and the victim's family unless the victim or the victim's family chooses not to participate.

(c) The commissioner shall make reasonable efforts to notify the victim, in advance, of the time and place of the inmate's supervised release review hearing. The victim has a right to submit an oral or written statement at the review hearing. The statement may summarize the harm suffered by the victim as a result of the crime and give the victim's recommendation on whether the inmate should be given supervised release at this time. The commissioner must consider the victim's statement when making the supervised release decision.

(d) When considering whether to give supervised release to an inmate serving a life sentence under section 609.3455, subdivision 3 or 4, the commissioner shall consider, at a minimum, the following: the risk the inmate poses to the community if released, the inmate's progress in treatment, the inmate's behavior while incarcerated, psychological or other diagnostic evaluations of the inmate, the inmate's criminal history, and any other relevant conduct of the inmate while incarcerated or before incarceration. The commissioner may not give supervised release to the inmate unless:

(1) while in prison:

(i) the inmate has successfully completed appropriate sex offender treatment;

(ii) the inmate has been assessed for chemical dependency needs and, if appropriate, has successfully completed chemical dependency treatment; and

(iii) the inmate has been assessed for mental health needs and, if appropriate, has successfully completed mental health treatment; and

(2) a comprehensive individual release plan is in place for the inmate that ensures that, after release, the inmate will have suitable housing and receive appropriate aftercare and community-based treatment. The comprehensive plan also must include a postprison employment or education plan for the inmate.

(e) As used in this subdivision, "victim" means the individual who suffered harm as a result of the inmate's crime or, if the individual is deceased, the deceased's surviving spouse or next of kin.

EFFECTIVE DATE. This section is effective the day following final enactment, and applies to offenses committed on or after that date.

Sec. 3. **[244.115] SENTENCING REVIEW FOR JUVENILE CERTIFIED AS ADULT.**

Subdivision 1. **Petition for resentencing.** (a) Notwithstanding any other provision of law and except as provided in paragraph (b), a person convicted for an offense committed prior to the person's 18th birthday may file a petition in the district court in the county in which the conviction was had to vacate and set aside the original sentence and resentence the person, if:

(1) the person has served a minimum of:

(i) ten years for nonhomicide offenses;

(ii) 15 years for homicide offenses if the inmate was 14 or 15 years old at the time of the offense; or

(iii) 20 years for homicide offenses if the inmate was 16 or 17 years old at the time of the offense; and

(2) the person has not submitted a motion pursuant to this section within the last five years.

(b) A person convicted under section 609.185, paragraph (a), clause (4), may not file a petition under this section.

Subd. 2. **Contents of petition.** A copy of the petition shall be served on the agency that prosecuted the case and shall include the information required under subdivision 1. The motion shall also include the petitioner's statement describing any work towards rehabilitation, including rehabilitative, educational, or vocational programs, if those programs have been available; using self-study for self-improvement; or showing evidence of remorse.

Subd. 3. **Hearing.** If the petition meets the requirements of subdivisions 1 and 2, the court shall hold a hearing to consider whether to grant the petition, provided that a new sentence, if any, is not greater than the original sentence. The petitioner and the petitioner's counsel must be given an opportunity to speak on the petitioner's behalf during the hearing. Victims or victims' family members, if a victim is deceased, retain the right to participate in the hearing.

Subd. 4. **Factors.** The court, in determining whether to grant the petition and resentence the petitioner, shall consider the following factors:

(1) age of petitioner at the time of the offenses;

(2) the circumstances surrounding the offenses;

(3) the extent of the petitioner's role in the offense and whether and to what extent an adult was involved in the offense;

(4) peer or familial pressure at the time of the offense;

(5) intellectual capacity of the petitioner at the time of the offense;

(6) ability of the petitioner to participate meaningfully in the original defense;

(7) prior involvement of the petitioner in the juvenile justice or child protection system;

(8) medical and mental health conditions of petitioner;

(9) family and community environment at the time of the offense;

(10) educational history of petitioner;

(11) petitioner's experiences of trauma or abuse;

(12) the diminished culpability of juveniles as compared to that of adults;

(13) the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences;

(14) any statement by any victim of the offenses for which the petitioner is imprisoned or by a family member of the victim, if the victim is deceased;

(15) the petitioner's participation in rehabilitative, educational, or vocational programs, if those programs have been made available, using self-study for self-improvement, or evidence of remorse;

(16) whether the petitioner has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction; and

(17) any other factors the court deems relevant to its decision.

Subd. 5. **Decision on record.** If, after considering the factors in subdivision 4, the court finds by a preponderance of the evidence that the petitioner is not a danger to public safety, is rehabilitated, and has remorse for the offenses committed, the court may grant the petition and resentence the petitioner. The court shall state on the record and make written findings as to the reasons for granting or denying the petition under this section.

Subd. 6. **Additional petitions.** If the petition is denied, the person may file another petition for resentencing five years from the date of the original petition. If the second petition is denied, the person may file a third petition for resentencing five years from the date of the second petition. The court shall not entertain a fourth or successive petition.

Subd. 7. **Right to counsel.** The court shall appoint counsel to represent a person under this section, including any appeal, if the person is financially unable to obtain counsel under the guidelines set forth in section 611.17.

Subd. 8. **Purpose.** The provisions of this section and the hearing conducted pursuant to subdivision 3, shall be conducted to provide persons who were under the age of 18 at the time of the offenses with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. Minnesota Statutes 2014, section 609.106, subdivision 2, is amended to read:

Subd. 2. **Life without release.** Except as provided in subdivision 3, the court shall sentence a person to life imprisonment without possibility of release under the following circumstances:

(1) the person is convicted of first-degree murder under section 609.185, paragraph (a), clause (1), (2), (4), or (7);

(2) the person is convicted of committing first-degree murder in the course of a kidnapping under section 609.185, clause (3); or

(3) the person is convicted of first-degree murder under section 609.185, clause (3), (5), or (6), and the court determines on the record at the time of sentencing that the person has one or more previous convictions for a heinous crime.

EFFECTIVE DATE. This section is effective the day following final enactment, and applies to offenses committed on or after that date.

Sec. 5. Minnesota Statutes 2014, section 609.106, is amended by adding a subdivision to read:

Subd. 3. **Life imprisonment; juveniles certified as adults.** If the defendant was convicted under circumstances listed in subdivision 2, and the defendant was under 18 years of age at the time of the commission of the offense, the court may sentence the defendant to imprisonment for life if it is proven by a preponderance of the evidence that the defendant's relative youth and potential for rehabilitation in prison outweighs the public's interest in a sentence under subdivision 2. The court shall consider the following factors in its decision:

(1) the age, education, experience, and background, including mental and emotional development, of the defendant at the time of the commission of the offense;

(2) the circumstances and nature and severity of the offense, including any aggravating or mitigating factors in the commission of the offense;

(3) the impact on the victim and the community, including age and vulnerability of the victim;

(4) the defendant's level of participation in the planning and carrying out of the offense, including familial or peer influence in the commission of the crime;

(5) the defendant's juvenile delinquency and criminal history;

(6) the defendant's programming history, including traumatic history and involvement in child protection, school and community-based programming, and probation interventions, and the defendant's willingness to participate meaningfully in programming, probation, or both; and

(7) any other aggravating or mitigating circumstances bearing on the defendant's culpability or potential for rehabilitation.

EFFECTIVE DATE. This section is effective the day following final enactment, and applies to offenses committed on or after that date.

Article 2, **Senate File 994**, 89th Minn. Legislature, 2nd Engrossment. The proposal read in relevant part:

ARTICLE 2

SENTENCES

Section 1. **LEGISLATIVE FINDINGS AND INTENT.**

The legislature finds that emerging research on brain development indicates that adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults. It is appropriate to take these differences into consideration when sentencing extended jurisdiction juveniles and juveniles tried as adults. The legislature further finds that requiring mandatory minimum sentences for these juveniles prevents judges from taking these differences into consideration in appropriate circumstances. The legislature intends to eliminate the nondiscretionary application of mandatory minimum sentences to extended jurisdiction juveniles and to juveniles tried as adults while continuing to apply all other adult sentencing provisions to these juveniles.

Sec. 2. Minnesota Statutes 2014, section 244.05, subdivision 4, is amended to read:

Subd. 4. **Minimum imprisonment, life sentence.** (a) An inmate serving a mandatory life sentence under section 609.106, subdivision 2, or 609.3455, subdivision 2, paragraph (a), must not be given supervised release under this section.

(b) Except as provided in paragraph (f), an inmate serving a mandatory life sentence under section 609.185, clause (3), (5), or (6); or Minnesota Statutes 2004, section 609.109, subdivision 3, must not be given supervised release under this section without having served a minimum term of 30 years.

* * *

(f) An inmate serving a mandatory life sentence for a crime described in paragraph (b) who was under 18 years of age at the time of the commission of the offense requiring the life sentence, and who was certified under section 260B.125 or designated an extended jurisdiction juvenile under section 260B.130, must not be given supervised release under this section without having served a minimum term of imprisonment of 20 years.

* * *

Sec. 6. Minnesota Statutes 2015 Supplement, section 609.106, subdivision 2, is amended to read:

Subd. 2. **Life without release.** Except as provided in subdivision 3, the court shall sentence a person to life imprisonment without possibility of release under the following circumstances: * * *

* * *

Sec. 7. Minnesota Statutes 2014, section 609.106, is amended by adding a subdivision to read:

Subd. 3. **Offender under age 18; life imprisonment with possibility of release.** If the defendant was under 18 years of age at the time of the commission of an offense that would require a life without release sentence under subdivision 2, and the child has been certified under section 260B.125 or designated an extended jurisdiction juvenile under section 260B.130, the court shall sentence the defendant to imprisonment for life.

Sec. 8. Minnesota Statutes 2014, section 609.3455, subdivision 2, is amended to read:

Subd. 2. **Mandatory life sentence without release; egregious first-time and repeat offenders.** (a) Except as provided in paragraph (c), notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person convicted under section 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h); or 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h), to life without the possibility of release if: * * *

* * *

(c) If the defendant was under 18 years of age at the time of the commission of an offense that would require a life without release sentence under paragraph (a), and the child has been certified under section 260B.125 or designated an extended jurisdiction juvenile under section 260B.130, the court shall sentence the defendant to imprisonment for life.

Sec. 9. **EFFECTIVE DATE; RETROACTIVITY.**

Sections 2, 3, 6, 7, and 8 are effective the day following final enactment and apply to offenders sentenced on or after that date, and also retroactively to offenders sentenced to life without release before that date.