

Dear Rep. Grad and Rep. Rachelson,

As I testified before the committee, the Attorney General's Office supports H. 62 as introduced. The bill prohibits imposition of a sentence of life without the possibility of parole ("LWOP") upon a person who commits a crime before turning 18.

There are only three offenses in Vermont law for which an LWOP sentence may be imposed: - First and Second Degree Murder (13 V.S.A. §§ 2303(a)(1)(B) and 2303(a)(2)(B)) and Aggravated Murder (13 V.S.A. § 2311(c)). The LWOP sentence is *mandatory* for aggravated murder.

In *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the US Supreme Court held that The Eighth Amendment prohibits a sentencing scheme that *requires* LWOP for juvenile homicide offenders. Thus, under Vermont law no juvenile may be convicted of aggravated murder because the statutory sentence may not constitutionally be applied to such an offender.

The penalty for first degree murder is a maximum term of life and a minimum term of at least 35 years. Thus, the sentencing court *must* impose a sentence of at least 35 years to life and may impose a longer minimum. Allen Prue, for example, was recently sentenced to 50 years to life – he will not be eligible for parole until he has served 50 years.

The penalty for second degree murder is a maximum term of life and a minimum term of at least 20 years. Thus, the sentencing court *must* impose a sentence of at least 20 years to life and may impose a longer minimum.

The unavailability of an LWOP sentence for juveniles who commit first or second degree murder does not deprive sentencing courts of the ability to appropriately sentence such persons given the authority of a sentencing court to impose longer minimum terms when necessary.

A variety of Vermont offenses carry potential maximum terms of life imprisonment. However, as noted above, a court may sentence an offender to LWOP for only the three offenses noted above. Since juveniles cannot be convicted of aggravated murder, H.62 is only applicable to first and second degree murder and, as I noted, the sentencing court retains substantial flexibility and discretion to impose an appropriate sentence.

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