

Life Sentences

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Overview

- Life sentences generally
- 25-Year Reviews
- *Miller v. Alabama* update



Life Sentences

- **Pre-Fair Sentencing Act** (before July 1, 1981)
 - Arson, Armed Robbery, Burglary, Damage to Occupied Property with Explosive, Habitual Felon, Kidnapping (sexual assault/serious injury), Murder, Rape
- **Fair Sentencing** (July 1, 1981 to September 30, 1994)
 - Class A felony: First-Degree Murder
 - Class B felony: First-Degree Rape/Sexual Offense
 - Class C felony: Second-Degree Murder, First-Degree Burglary, Arson, Trafficking Heroin, Habitual Felon

Life Sentences

- **Structured Sentencing (on/after Oct. 1, 1994)**
 - Class A felony First-Degree Murder, Murder of Unborn Child
 - Class B1 felony First-Degree Rape/Sexual Offense, Second-Degree Murder

CLASS	I 0–1 Pt	II 2–5 Pts	III 6–9 Pts	IV 10–13 Pts	V 14–17 Pts	VI 18+ Pts	
A Max. Death or Life w/o Parole	Death or Life without Parole Defendant under 18 at Time of Offense: Life with or without Parole						
B1 Max. Life w/o Parole	A 240–300	A 276–345	A 317–397	A 365–456	A 500–499	A 386–419	DISPOSITION Aggravated PRESUMPTIVE Mitigated
	192–240	221–276	254–317	292–365	321–400	386–419	
	144–192	166–221	190–254	219–292	252–336	290–386	

- Second/Subsequent Class B1 felony. G.S. 15A-1340.16B
- Violent Habitual Felon (4 in 2019)

Prison Population

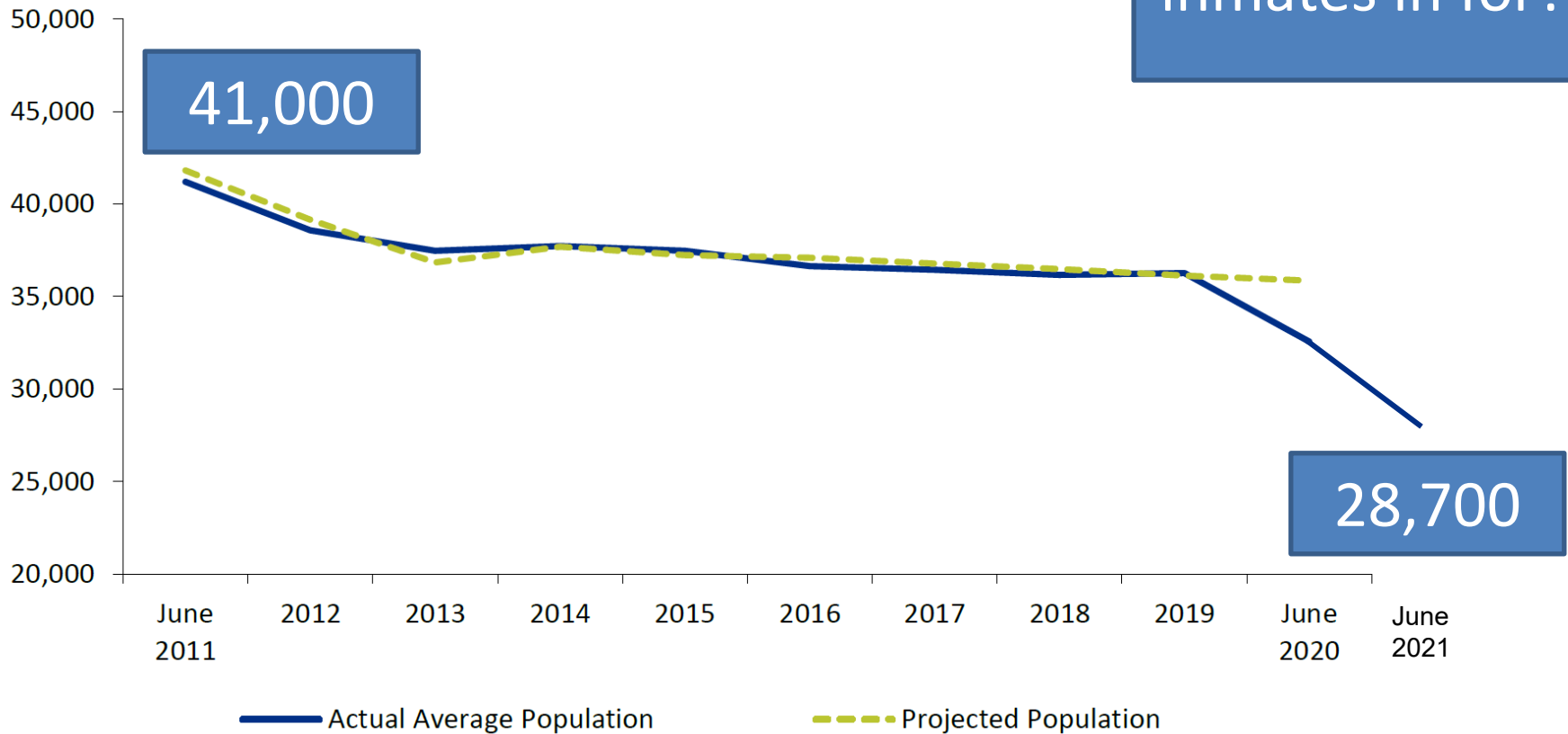
- Structured Sentencing Life: 1,580
- Fair Sentencing Life: 1,303
- Pre-Fair Life: 136
- Total Life-Sentenced Inmates: 3,039

- Total Prison Population (today): 28,707



What crimes
are most
inmates in for?

A Comparison of the Actual and Projected Population for June
FY 2011 to FY 2020 Projections



Prison Population (2020)

- Murder 17 %
- Sexual assaults 12 %
- Robbery 9 %
- Non-trafficking drug 7 %



The Meaning of “Life”

- Pre-Fair Sentencing
 - Generally, a natural life sentence
 - Offenses committed April 8, 1974 – July 1, 1978: “Life” is 80 years. *State v. Bowden* (2009).
 - Eligible for parole upon serving the minimum or 20 years, whichever is less
- Fair Sentencing
 - Class A and B felonies: Parole eligible after 20 years
 - Class C felonies: Parole eligible after 10 years
- Structured Sentencing
 - Generally, Life without parole (LWOP)
 - Under 18: LWOP or Life with possibility of parole after 25 years

Consecutive Sentences

- Consecutive sentences are treated as a “single sentence” for purposes of determining parole eligibility
 - No “paper parole” from one sentence to another
 - Robbins v. Freeman, 127 N.C. App. 162 (1997)



Frequency of Parole Review

- Baseline: Annual review. G.S. 15A-1371.
- Sexually violent offenses: Review every 2 years
- Murder: Review every 3 years
- Inmates who were under 18 at time of offense reviewed more frequently. Hayden v. Keller (E.D.N.C. 2015)



Review of Pre-Structured Cases

- G.S. 143B-721.1
- Parole Commission must compare time served to the time a comparable inmate would serve under Structured Sentencing (use PRL VI; top of presumptive)
- If more time already served, reinitiate parole review



25-Year Review of Life Sentences

6/2021

25-Year Review of Life Sentences

§ 15A-1380.5. Review of sentences of life imprisonment without parole.

(a) For purposes of this Article the term “life imprisonment without parole” shall include a sentence imposed for “the remainder of the prisoner’s natural life”.

(b) A defendant sentenced to life imprisonment without parole is entitled to review of that sentence by a resident superior court judge for the county in which the defendant was convicted after the defendant has served 25 years of imprisonment. The defendant’s sentence shall be reviewed again every two years as provided by this section, unless the sentence is altered or commuted before that time.

(c) In reviewing the sentence the judge shall consider the trial record and may review the defendant’s record from the Department of Correction, the position of any members of the victim’s immediate family, the health condition of the defendant, the degree of risk to society posed by the defendant, and any other information that the judge, in his or her discretion, deems appropriate.

(d) After completing the review required by this section, the judge shall recommend to the Governor or to any executive agency or board designated by the Governor whether or not the sentence of the defendant should be altered or commuted. The decision of what to recommend is in the judge’s discretion.

(e) The Governor or an executive agency designated under this section shall consider the recommendation made by the judge.

(f) The recommendation of a judge made in accordance with this section may be reviewed on appeal only for an abuse of discretion. (1994, Ex. Sess., c. 21, s. 7; c. 22, s. 36.)



Legislative History

- Enacted in 1994, alongside elimination of parole

February 9, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR LIFE WITHOUT PAROLE FOR FIRST DEGREE MURDER.

The General Assembly of North Carolina enacts:

Section

"(a) For

15A [July

applicable:

(1

February 9, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR LIFE IMPRISONMENT WITHOUT PAROLE FOR FIRST DEGREE MURDER AND TO PROVIDE THAT, AFTER A DEFENDANT HAS SERVED TWENTY-FIVE YEARS OF IMPRISONMENT AND EVERY TWO YEARS THEREAFTER, THE DEFENDANT'S SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE SHALL BE REVIEWED BY A RESIDENT SUPERIOR COURT JUDGE FOR THE COUNTY IN WHICH THE DEFENDANT WAS CONVICTED AND THE JUDGE SHALL MAKE A RECOMMENDATION TO THE GOVERNOR OR AN EXECUTIVE AGENCY DESIGNATED BY THE GOVERNOR AS TO WHETHER OR NOT THE DEFENDANT'S SENTENCE SHOULD BE ALTERED OR COMMUTED.



Legislative History

- Repealed in 1998

Still applies to offenses
committed October 1, 1994
to November 30, 1998



Division of Adult Correction & Juvenile
Justice

STATISTICS REQUEST

Title:	Inmates Serving Life without Parole for Offenses Committed between 10/1/1994 and 12/1/1998
Reference:	SR1711-15revised
DATE:	04/24/2019
DATABASE:	OPUS
DATABASE DATE:	04/21/2019

Table 1: Inmates Serving Life without Parole for Offenses Committed between 10/1/1994 and 12/1/1998

1a. Total Number of inmates serving life without Parole for offenses Committed between 10/1/94 & 12/18/1998	264
1b. The number of inmates that are only serving life without Parole for offenses Committed between 10/1/94 & 12/18/1998	202
1c. The number of inmates that are only serving life without Parole for offenses Committed between 10/1/94 & 12/18/1998 who will have been incarcerated for at least 25 years on January 1, 2019	5

Table 1a: Corresponding Names (264)

Opus ID	Last Name	First Name	Facility Number	Admit Date	Projected Release
167	ABERCROMBIE	DONALD	3085	20-Aug-96	1-Jan-99
2170	AGER	LEON	4870	19-Nov-99	1-Jan-99
3113	ALEXANDER	JACQUILINE	3010	15-Apr-99	1-Jan-99
3825	ALLEN	ANTOINE	4885	2-Mar-02	1-Jan-99
4796	ALLEN	MAURICE	4850	18-Mar-99	1-Jan-99
5029	ALLEN	RONALD	3710	3-Apr-97	1-Jan-99
5258	ALLEN	WALTER	3805	2-Dec-97	1-Jan-99
6363	ALSTON	JUROTHOR	4870	26-Jun-98	1-Jan-99
7328	ANDERSON	BILLY	4345	26-Oct-99	1-Jan-99
9228	ANTHONY	DWAYNE	3805	28-Jul-00	1-Jan-99
10735	ARRINGTON	BOBBY	3100	12-Jul-96	1-Jan-99
10855	ARRINGTON	PATRICK	4880	17-Feb-99	1-Jan-99
12314	ATKINSON	REDRICK	3710	13-May-99	1-Jan-99
16569	BALDWIN	GEORGE	3305	9-Apr-96	1-Jan-99
19170	BARKELY	DONALD	4680	2-Jan-97	1-Jan-99
19515	BARNARD	BRYAN	4885	30-Oct-95	1-Jan-99
35030	BLOUNT	CHARLES	4875	23-Apr-98	1-Jan-99
37028	BONE	ANTHONY	4150	5-Feb-99	1-Jan-99
37215	BONNETT	SHAWN	3740	27-Sep-96	1-Jan-99
79165	CLEVELAND	HOWARD	3100	21-May-97	1-Jan-99
81173	COFFEY	KENNETH	3100	25-Jan-95	1-Jan-99

Reference: SR1711-15

Rev. 1

25-Year Review of Life Sentences

“A defendant sentenced to life imprisonment without parole is entitled to review of that sentence by a resident superior court judge for the county in which the defendant was convicted after the defendant has served 25 years of imprisonment.”



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“Entitled to Review”

- No specific statutory requirement for anyone to give notice to affected inmates (unlike parole statutes)
- Who initiates review?
 - DACJJ?
 - Parole Commission?
 - **The court?**
 - The inmate?



“Entitled to Review”

- State v. Allen, 346 N.C. 731 (1997)

“Defendant also contends that G.S. 15A-1380.5 infringes upon the clemency power of the Governor. This statute **allows** defendants sentenced to life imprisonment without parole the right to have their cases reviewed by a superior court judge after twenty-five years of imprisonment . . . This statute **allows** a defendant not already benefited by the merciful hand of the Governor to have his case reviewed by a superior court judge; it increases a defendant's chance of parole but does not affect the governor’s clemency power in any way.”

“Entitled to Review”

- No specific statutory requirement for anyone to give notice to affected inmates (unlike parole statutes)
- Who initiates review?
 - DACJJ?
 - Parole Commission?
 - **The court?**
 - The inmate?
 - Prisoner Legal Services

LWOP REVIEW PROJECT



**NORTH CAROLINA PRISONER
LEGAL SERVICES, INC.**
P.O. Box 25397
RALEIGH, NC 27611

Preparing for Your LWOP Review

The following suggestions were gathered from interviews with formerly incarcerated juvenile offenders and different states' parole board members, as well as research from published studies. While no particular outcome can be guaranteed, following these suggestions can help you put your best case forward and prepare for life outside prison.



25-Year Review of Life Sentences

“In reviewing the sentence the judge shall consider the trial record and may review the defendant’s record from the Department of Correction, the position of any members of the victim’s immediate family, the health condition of the defendant, the degree of risk to society posed by the defendant, and any other information that the judge, in his or her discretion, deems appropriate.”

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Hearing Procedure

- State v. Young, 369 N.C. 188 (2016)

“Section 15A–1380.5 . . . guarantees no hearing, no notice, and no procedural rights. In addition, the statute provides minimal guidance as to what types of circumstances would support alteration or commutation of the sentence. The section requires only that the judge ‘consider the trial record’ and notes that the judge ‘may’ review other information ‘in his or her discretion.’”



25-Year Review of Life Sentences

“After completing the review . . . the judge shall recommend to the Governor or to any executive agency or board designated by the Governor whether or not the sentence of the defendant should be altered or commuted. The decision of what to recommend is in the judge’s discretion.”

25-Year Review of Life Sentences

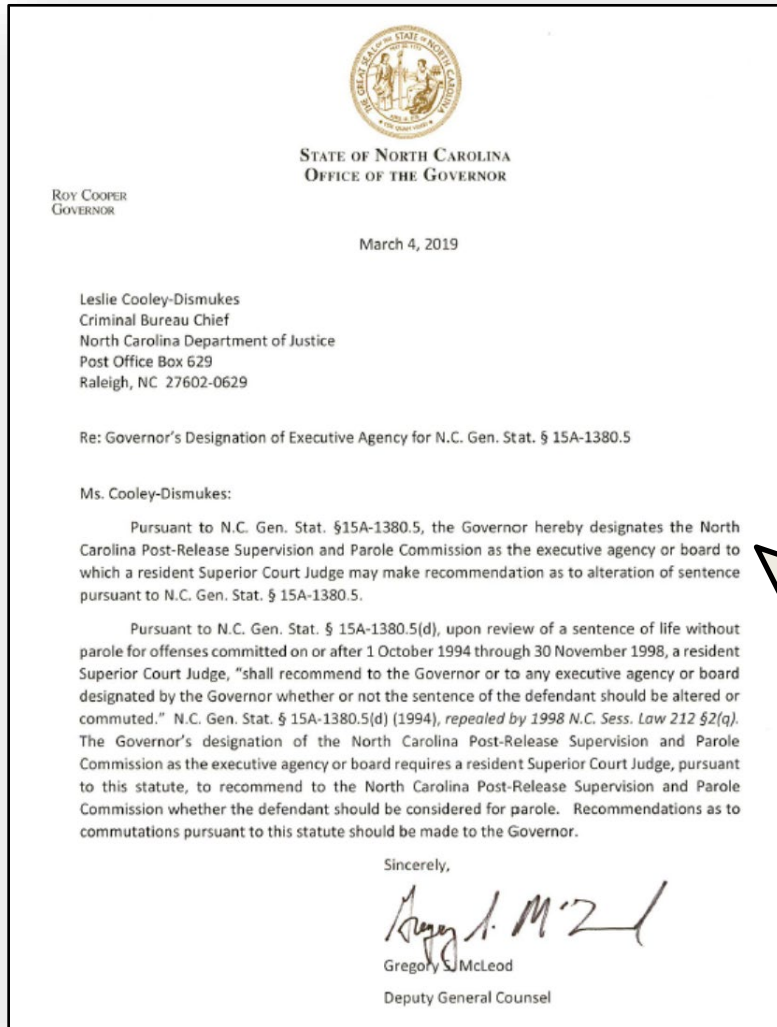
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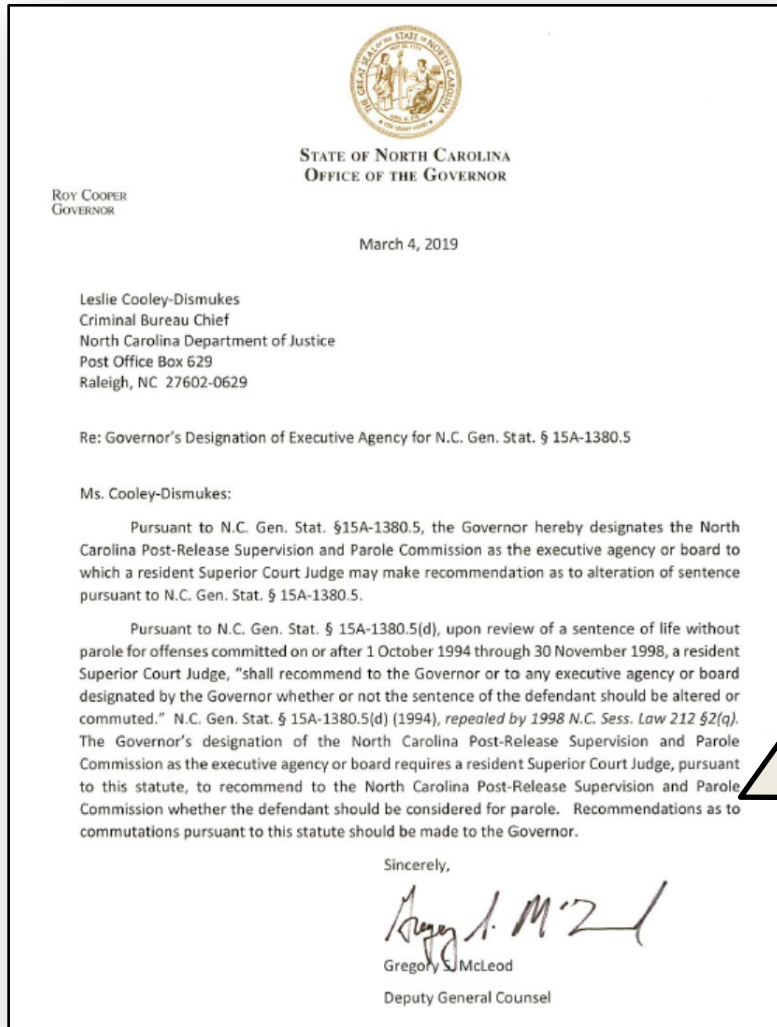
“After completing the review . . . the judge shall recommend to the Governor or to any executive agency or board designated by the Governor whether or not the sentence of the defendant should be altered or commuted. The decision of what to recommend is in the judge’s discretion.”

25-Year Review of Life Sentences



“The Governor hereby designates the [Parole Commission] as the executive agency or board to which a resident Superior Court Judge may make recommendation as to alteration of sentence pursuant to 15A-1380.5”

Designation of Executive Agency



- Recommendations that the defendant be considered for parole go to the Parole Commission
- Recommendation as to commutations should be made to the Governor

25-Year Review of Life Sentences

The defendant's sentence shall be reviewed again every two years as provided by this section, unless the sentence is altered or commuted before that time."

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25-Year Review of Life Sentences

- Review, not necessarily a hearing
- No statutory entitlement to counsel
- You shall consider the trial record
- You may consider other information
- This is not a resentencing or MAR
- Result is a recommendation “whether or not”
Governor should grant clemency



Juvenile Life Without Parole *(Miller v. Alabama)*



Miller v. Alabama (2012)

- *Mandatory* life imprisonment without parole for a homicide committed by a defendant under 18 is cruel and unusual punishment

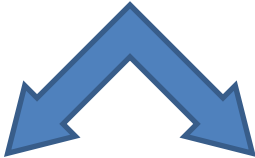


Miller fix legislation

- Created life with possibility of parole option for first-degree murder defendants under 18
- If felony murder rule → life with parole
- If not felony murder →
 - Defendant may submit mitigating evidence
 - Court holds hearing, considers mitigating factors
 - Court makes findings on “absence or presence of any mitigating factors”
 - Court decides between life without parole or life with possibility of parole after 25 years



Defendant under 18 convicted
of first-degree murder

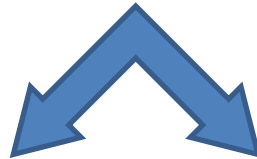


Felony murder rule

Not solely felony murder



Life with possibility of
parole after 25 years



Life with
possibility of
parole after
25 years

LWOP

G.S. 15A-1340.19B

- (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.



Miller Sentencing Hearings

- LWOP is not the “default” or “presumption”
- “The relevant statutory language treats [LWOP] and life with parole as alternative sentencing options, with the selection between these two options to be made on the basis of an analysis of all the relevant facts and circumstances.”
 - State v. James, 371 N.C. 77 (2018)



Miller Sentencing Hearings

- The focus should be on the offender, not the offense
 - Guiding question: *Is this defendant “the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible?”*
- Is “irretrievable depravity” / “irreparable corruption” / “permanent incorrigibility” a required threshold finding?



Threshold Finding?

- *Montgomery v. Louisiana*, 577 U.S. 190 (2016)
 - LWOP is permissible only for defendants “whose crimes reflect permanent incorrigibility.”
- *Jones v. Mississippi* (2021)
 - *Miller* and *Montgomery* did not require an explicit “permanent incorrigibility” finding.
 - Having a process where a judge considers a defendant’s youth and has discretion to impose a sentence other than LWOP is “constitutionally necessary and constitutionally sufficient.”

Threshold Finding?

- State v. James, 371 N.C. 77 (2018)
 - Lack of a requirement for specific “narrowing findings” did not render the statute unconstitutionally vague
- State v. Williams, 261 N.C. App. 516 (2018)
 - “[W]e hold that whether a defendant qualifies as an individual within the class of offenders who are irreparably corrupt is a threshold determination that is necessary before [LWOP] may be imposed by the trial court.
 - Stayed; Review allowed. 372 N.C. 358 (2019).

Other Factors

- Age at the time of the offense.
- Intellectual capacity.
- Prior record.
- Mental health.
- Escalation of criminal activity over time. *Lovette*.

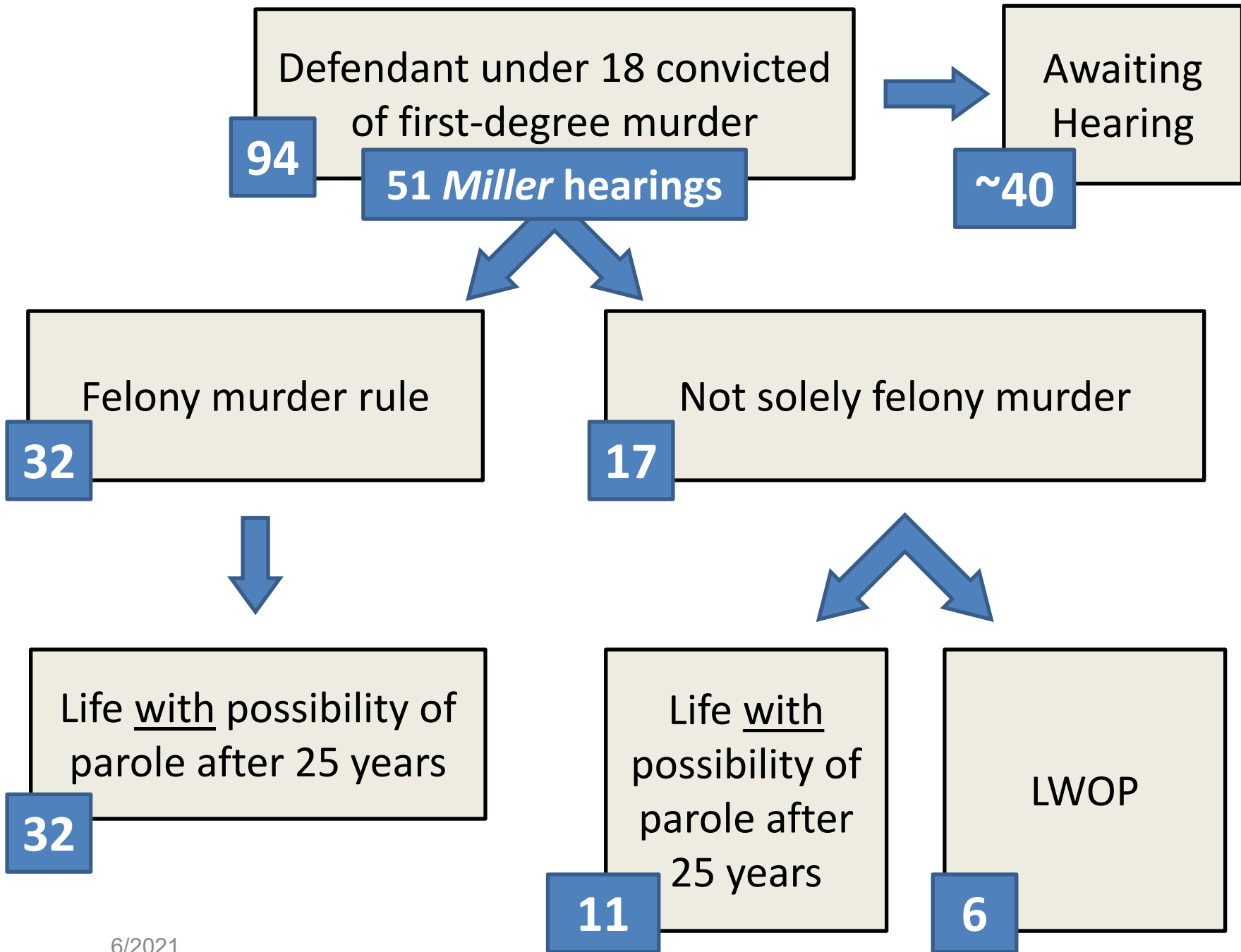
The order adjudging the sentence shall include findings on the absence or presence of any mitigating factors and such other findings as the court deems appropriate to include in the order.
G.S. 15A-1340.19C.



What we know

- Generally, the fix law satisfies *Miller*
- There is no presumption of LWOP (*James*)
- “Irreparable corruption” may not be a required threshold finding, but it is the key inquiry
- LWOP “is a disproportionate sentence for all but the rarest of children”





De Facto Life Without Parole

- State v. Kelliher (2020)
 - Defendant received consecutive sentences of life with the possibility of parole after 25 years
 - Parole eligibility after 50 years is a de facto LWOP sentence
- State v. Conner (2020)
 - Parole eligibility after 45 years is not a de facto LWOP sentence when life expectancy for a 15-year-old is 61.7 years
- State v. Anderson (2020)
 - Parole eligibility after 50 years is not a de facto LWOP sentence when life expectancy for a 17-year-old is 59.8 years



Questions?

6/2021