

Criminal Laws Update

I. Passed in 2013:

[H.*3184](#) - This bill did three things regarding expungement. When the Omnibus Crime Act was passed in 2010, fines were increased. However, crimes could only be expunged if the maximum fine was \$500. This year, the General Assembly raised that ceiling to \$1,000 in order to account for the increase in fines passed under the Omnibus Crime Act in 2010. Secondly, the bill addressed courtesy summons. Under the bill, when a courtesy summons is issued but is later discharged, the charges are dismissed, or the person is found not guilty, then the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained. Thirdly, if someone is charged with a crime but not fingerprinted and the charges are later dismissed or the person is found not guilty, then under this bill the charge must be removed from any Internet-based public record no later than thirty days from the disposition date.

[H.*3193](#) - The computation of time served may include time under *monitored* house arrest.

[H.*3248](#) - This bill set the venue for an identity fraud to be where the victim lived when the information was obtained, where the information was stolen, or where the information was used. The definition for personal identifying information was also expanded to include card numbers, PINs, and digital signatures.

[H.*3451](#) - The statutory list of crimes for which a uniform traffic ticket may be issued was expanded to include CDV and shoplifting. In [State v. Ramsey](#), 398 S.C. 275, 727 S.E.2d 429 (Ct. App. 2012), the Court of Appeals determined that a uniform traffic ticket could not be used to make an arrest in a CDV case because CDV was not on the statutory list. Now, CDV and shoplifting are on the list.

[H*3568](#) - This bill establishes progressive penalties for a person who alters, tampers with, or bypasses electric or water meters. A third or subsequent offense constitutes a felony. This bill, and the penalties within, do not apply to licensed and certified contractors during performance of usual services in accordance with recognized standards.

[H*3602](#) - This bill addresses retail theft. First the bill creates an offense for stealing goods from a merchant by affixing a fraudulent product code. Additionally, the crime of retail theft is created when retail goods amounting to more than \$2,000 in a ninety-day period are stolen with the intent to sell the goods or to give the goods to a fence. Thirdly, an offense was added for the use of a false or altered identification card to commit retail theft by way of a refund. These offenses have progressive penalties, including a felony charges for second offenses.

[H*3717](#) - This bill clarifies that restraining orders issued by the family court should be treated the same as other restraining orders and injunctions for stalking and harassment crimes. The bill also allows for the destruction of all the records pertaining to mutual orders of protection or temporary restraining orders if the orders were improperly issued.

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II. House Bills in the Senate:

[H. 3014](#) - passed by the House, on Senate Floor - This bill would provide solicitors an alternative program (much like drug court) for veterans. A veteran would only be eligible for this program once and would not be eligible if the veteran had a prior conviction of or pending charges for a violent crime.

[H. 3057](#) - passed the House, in Senate Judiciary - This bill amends Sections 17-22-50 and 17-22-60 to provide that a solicitor may consent to a person participating in a pretrial intervention program more than once unless the individual was initially in pretrial intervention for criminal domestic violence.

[H. 3074](#) - passed the House, in Senate Judiciary - This bill would allow a law enforcement officer or other prosecutor to invalidate a uniform traffic ticket and reissue a ticket for another offence if it is incident to a plea negotiation or agreement.

[H. 3247](#) - passed by the House, in Senate Judiciary - This bill would address the issue of who manages the general sessions docket. The current statute states that the solicitor "exclusively" prepares the docket. The bill strikes the word "exclusively" and acknowledges that the solicitors preparation of the docket does not impede the circuit court's duty to safe guard litigants' rights to a speedy trial. Docket management was addressed in [State v. Langford](#), 400 S.C. 421, 735 S.E.2d 471 (2012).

III. Senate Bills in the House:

[S. 19](#) - passed by the Senate, in House Judiciary (House Version [H. 3051](#) is in House Judiciary) - This bill is intended to prevent repeat, violent offenders from receiving bond. Initially, the bill included a 5-year enhancement for committing a crime while out on bond. The bill, as amended, would require a bond hearing within 30 days if a person on bond for a serious offense is charged with another serious offense while on bond. If the court finds probable cause the person is guilty, then a rebuttable presumption exists that there is no condition that can be placed on the bond to prevent the individual from being a danger. Therefore, unless a condition can be found to rebut the presumption, bond must be revoked.

[S. 137](#) - passed by the Senate, in House Judiciary - This bill, as amended, would require the installation of ignition interlocks for a first offense DUI if the person blew a 0.12 or higher.

[S. 142](#) - passed by the Senate, in House Judiciary - This bill addresses perceived problems precipitating from the Omnibus Crime Bill enacted in 2010. This bill restructures the degrees of arson, creates a minimum sentence of 3 years under the Youthful Offender Act for 2nd degree burglary, and prevents someone from getting a crime expunged under the Youthful Offender Act if the crime was a nonconsensual act that required registry on the sex offender list.

[S. 296](#) - passed by the Senate, in House Judiciary - This bill addresses vandalizing houses of worship by adding fixtures and improvements to the items that may not be vandalized. Furthermore, this bill would remove the mandatory jail sentence of 6 months from the penalty. The maximum sentence of 10 years remains.

[S. 406](#) - passed by the Senate, in House Judiciary (House Version [H. 3823](#) is on the House Floor) This bill adds chemical compounds to the controlled substance schedules. This list of drugs was developed by DHEC and SLED.

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IV. Bills Prefiled in December 2013:

[H. 4387](#) - Underage Drinking - This bill removes the bar to prosecuting someone for underage drinking or unlawfully operating a motor vehicle while under the influence when the underage person has already had their driver's license suspended.

[H. 4368](#) - Criminal Gang Members - This bill would require a court to set a minimum of a \$50,000 bond for a criminal gang member unless the court determines on the record that the defendant is not likely to reoffend, an appropriate pretrial intervention program is available, and the defendant agrees to comply with the pretrial intervention program.

[H. 4343](#) - Criminal Domestic Violence - This bill increases the maximum amount of jail time for a criminal domestic violence first offense from 30 days to 180 days. Additionally, the Court must order a first-time offender to participate in a domestic violence intervention program. This bill provides that it is unlawful for a person convicted of a criminal domestic violence offense or a person subject to an order of protection for domestic or family violence - to ship, transport, possess or receive firearm or ammunition. This bill amends section 16-25-910, which relates to the expungement of criminal records, by increasing the amount of time for when a person can have a first-offense criminal domestic offense expunged from his or her record from 5 years to 7 years from the date of conviction.

[H. 4344](#) - Hate Crime - This bill would make assault and battery of a homeless person a hate crime.

[H. 4398](#) - Implied Consent for Alcohol Test - This bill would extend a driver's implied consent for alcohol testing to a situation where the driver is arrested for driving a vehicle involved in an accident resulting in great bodily injury or death.

[H. 4401](#) - Criminal Sexual Conduct - This bill would add sexual conduct by someone over the age of eighteen to the definition of second and third degree criminal sexual conduct if the victim is under the age of eighteen and the actor is a figure in the victim's life (familial, custodial, or official authority). However, no conviction may be made if the act was consensual, not coerced, and the victim is over fourteen years old.

[H. 4402](#) - Strangulation - This bill would clarify that strangulation or smothering of a household member constitutes criminal domestic violence of a high and aggravated nature.

[H. 4406](#) - Criminal Domestic Violence - This bill would prevent someone charged with criminal domestic violence from paying a deposit in lieu of recognizance and being subject for immediate release.

[H. 4412](#) - Driver's License Suspension - If the charge that led to the driver's license suspension is dismissed or nol prossed or the person is found not guilty, then the driver does not need to continue taking the Alcohol and Drug Safety Action Program.

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V. Other Bills Filed in 2013:

[H. 3037](#) - No Parole Offense - This bill seeks to amend the definition of "no parole offense" to exclude all drug-related offenses. Inmates convicted of "no parole offenses" are generally not eligible for work release, early release, or a reduction in sentence for good behavior.

[H. 3039](#) - Video Recording Terms - This bill would require law enforcement officers to video record custodial interrogations, including all statements made by a defendant relating to a crime and all statements regarding rights contained in the United States and South Carolina constitutions. With a few exceptions, in cases where a law enforcement officer fails to video record the custodial interrogation, the court shall instruct the jury that it may draw an adverse inference from the law enforcement officer's failure to comply with the requirement.

[H. 3040](#) - Seizement of Property - This bill would provide that any property seized by a law enforcement agency pursuant to or without a warrant must be returned to its lawful owner within thirty days of its seizure unless a court determines that probable cause exists to allow the law enforcement agency to maintain possession of the property.

[H. 3041](#) - Motor Vehicle Driver's Implied Consent - This bill would provide that a person who is arrested for driving under the influence of alcohol or drugs must be offered the choice of either a breath or blood test to test for the presence of alcohol or drugs in his system. Additionally, this bill would provide that a person who registers a blood alcohol concentration of less than five one-hundredths of one percent or less may not be charged with driving under the influence.

[H. 3045](#) - Registration of Animal Abusers - This bill would require a person over eighteen years old who has been convicted of a felony of any provision in South Carolina designed to protect animals from abuse to register with the county sheriff in the county where he is located.

[H. 3050](#) - No Parole Offense - This bill seeks to amend the definition of "no parole offense" to include Class C, D, E, and F felonies as well as Class A, B, and C misdemeanors, as well as providing that a person who is found guilty of, or pleads guilty or nolo contendere to a no parole offense is not eligible for early release from incarceration, with an exception related to the Youthful Offender Act. This bill also enacts the "Middle Court Processes Act," which requires the creation and administration of a middle court process in each judicial circuit by the Attorney General. These middle court processes are not limited to drug offenses and shall promote the rehabilitation and reentry of certain nonviolent offenders into society.

[H. 3059](#) - Electronic Recording Device Seizure - This bill seeks to prohibit law enforcement officers from confiscating or seizing cell phones, video recorders, or other electronic recording devices at the scene of a law enforcement investigation or lawful arrest unless its use substantially impedes or interferes with the investigation or arrest. Law enforcement officers who violate this provision are guilty of a misdemeanor and, upon conviction, must be fined not more than \$500 or imprisoned for not more than 30 days.

[H. 3060](#) - Relating to Controlled Substances - This bill seeks to remove the mandatory minimum sentences for possession, manufacture, and trafficking of certain controlled substances, such as

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marijuana, cocaine, and ecstasy, allow persons convicted of these crimes to be paroled and participate in supervised furlough, community service, work release, and good conduct credit programs. Additionally, the bill provides for the creation of a committee to study the State's drug laws and make recommendations to the General Assembly concerning proposed changes. The committee would be composed of five members of the Senate and five members of the House of Representatives.

[H. 3064](#) - Relating to Attempted Murder - This bill would create the offense of attempted murder of a law enforcement officer and provides a mandatory minimum term of imprisonment of fifteen years for persons convicted of this offense, with no possibility of a suspended sentence or probation.

[H. 3066](#) - Relating to Penalties for Crimes - This bill seeks to provide penalties for a person convicted of crimes against a person with the intent to assault, intimidate, or threaten a person because of his race, religion, color, sex, age, national origin, or sexual orientation, imposing a fine of not less than \$2000 nor more than \$10,000, or imprisonment of not less than 2 years nor more than 15 years, or both. The minimum penalties may not be suspended. This bill would also apply the same penalties to persons who commit crimes against real or personal property with the intent to assault, intimidate, or threaten another person for the same reasons.

[H. 3073](#) - Brianna's Law - This bill would amend the provision relating to the offense of homicide by child abuse to increase the penalty to life without parole or death if the State seeks the death penalty for murder.

[H. 3121](#) - Electronic Communication Device - This bill seeks to prohibit texting while driving and provide that persons who violate this provision are guilty of misdemeanor distracted driving. Where no great bodily injury or death results from a person's violation, the person will be fined not more than \$100 and required to pay a \$25 Trauma Care Fund surcharge and have 2 points assessed against his driving record, upon conviction. If a person is convicted of violating this provision and great bodily injury or death resulted from the person's violation, the person is guilty of felony improper use of an electronic communication device while operating a vehicle. If great bodily injury results, the mandatory minimum penalty is a \$2,500 fine and 30 days imprisonment. If death results, the mandatory minimum penalty is a \$5000 fine and 1 year imprisonment. Neither mandatory minimum sentence may be suspended, and the person will not be eligible for probation.

[H. 3150](#) - SC Military Service Integrity and Preservation Act of 2013 - This bill seeks to enact the "South Carolina Military Service Integrity and Preservation Act of 2013," which provides that a person who, with the intent of securing a tangible benefit or personal gain, knowingly and falsely represents himself to have served in the United States armed forces or to have been awarded a decoration, medal, ribbon, or other device authorized by Congress or pursuant to federal law for the armed forces, is guilty of a misdemeanor.

[H. 3188](#) - Relating to Peremptory Challenges - This bill seeks to equalize the number of peremptory challenges the Defendant and the State receive in criminal cases. In cases where a person is tried for a Class A, B, or C felony, or a crime that carries a maximum penalty of twenty

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years or more, both the Defendant and the State would receive ten peremptory challenges. In cases where there is more than one defendant jointly tried for a Class A, B, or C felony, or a crime that carries a maximum penalty of twenty years or more, all defendants combined will receive twenty peremptory challenges and the State will receive twenty. In all other cases where more than one defendant is jointly tried, all defendants combined will have ten peremptory challenges and the State will have ten. Additionally, both the State and the defendant are entitled to only one peremptory challenge for each alternate juror called.

[H. 3317](#) - Talking on Phone While Driving - This bill seeks to make it unlawful for a person to drive while using a cell phone, pager, PDA, or other wireless communication device that is not equipped with a hands-free mechanism. Persons in violation of this provision are guilty of a misdemeanor and, upon conviction, are subject to a penalty of imprisonment for up to 30 days, a fine of not more than \$500, or both.

[H. 3346](#) - Punishment for Murder - This bill seeks to provide a mandatory life sentence where the State seeks a life sentence for a murder committed with certain aggravating factors. If a defendant is convicted of murder as well as the accompanying crime of either criminal sexual conduct, kidnapping, burglary, or robbery while armed with a deadly weapon, this provision will apply. Likewise, if the defendant is found guilty of two or more murders by one act or pursuant to one scheme or course of conduct or if the victim is a child eleven years of age or under, this provision will apply.

[H. 3347](#) - Offense of Attempted Murder - This bill seeks to remove the requirement of intent to kill from the crime of attempted murder.

[H. 3349](#) - Relating to Prohibition Against Testimony of Defendant in Criminal Cases - This bill seeks to repeal § 19-11-50, which provides that the testimony of a defendant in a criminal case shall not be afterwards used against the defendant in any other criminal case, except upon an indictment for perjury founded on that testimony.

[H. 3351](#) - SC Teacher Protection Act of 2013 - This bill seeks to provide that a teacher may bring a civil action against a student who commits a criminal offense against the teacher if the offense occurs on school grounds or at a school-related event, or if the offense is directly related to the teacher's professional responsibilities, and provides that no teacher has civil liability to a student or to a party acting in the interest of the student for an act or omission by the teacher that occurs while the teacher is acting within the scope of his or her employment.

[H. 3441](#) - Relating to the Offense of Kidnapping - This bill seeks to amend the section of the Code relating to the offense of kidnapping to provide that a person convicted of kidnapping prior to June 5, 1991 who was sentenced to life imprisonment may petition the court for a reduction in his sentence from life imprisonment to thirty years unless the person was sentenced for murder. The bill gives the court the sole discretion to reduce the sentence accordingly.

[H. 3449](#) - Social Media Identification Fraud - This bill seeks to create the crime of social media identification fraud, making it unlawful to acquire or utilize a social media service user's identity to knowingly transmit or post misleading or inaccurate information with the intent to harass,

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defraud, cause harm, or wrongfully obtain anything of value from another person. Persons guilty of violating this provision would be guilty of a misdemeanor and, upon conviction, must be fined not more than \$1000 or imprisoned for not more than 1 year. The bill would also make it unlawful to acquire or utilize a social media service user's identity to knowingly transmit or post misleading or inaccurate information with the intent to deceive the recipient of the identity of the person, a crime punishable by a fine of not more than \$500 or imprisonment for not more than 30 days.

[H. 3490](#) - Animal Fighting and Baiting Act - This bill seeks to remove the practice of "bear-baying" from the exemptions to the Animal Fighting and Baiting Act and to provide that a captive bear, for which a permit has been issued and which upon information and belief of the department has been or is being used for the purpose of "bear-baying" must be taken into custody by the South Carolina Department of Natural Resources. The bill further provides that the department shall make every effort to place these bears in a suitable environment, including zoos or animal parks within or outside the State.

[H. 3566](#) - Sex Offender Registry - This bill seeks to amend the provisions relating to the sex offender registry to give the family court discretion to determine whether a juvenile is placed on the registry.

[H. 3857](#) - Sexting for a Person Less than Eighteen - This bill seeks to make it unlawful for a person less than eighteen years of age to use a telecommunications device to knowingly transmit to another person a photograph or text message with an attached photograph depicting a person who is less than eighteen years of age in a state of sexual activity or a state of sexually explicit nudity. A person's first and second offenses under this provision are punishable by a fine of \$150 and \$500, respectively. For a third and subsequent offense, the person is guilty of a misdemeanor and is subject to a fine of \$1000 upon conviction, being adjudicated delinquent, or an entry of a plea of guilty or nolo contendere. Further, a person may not be detained or taken into custody for a first or second offense under this provision, but may be held in contempt of court and ordered to perform community service if the person fails to pay the civil fine for the first or second offense.

[H. 3858](#) - Texting While Driving - This bill seeks to prohibit texting while driving and provide that persons who violate this provision are guilty of misdemeanor distracted driving. Where no great bodily injury or death results from a person's violation, the person will be fined not more than \$100 and required to pay a \$25 Trauma Care Fund surcharge and have two points assessed against his driving record, upon conviction. This bill also seeks to amend § 56-5-2920 to state that driving in a distracted or inattentive manner, which includes texting while driving when bodily injury occurs, qualifies as reckless driving.

[H. 3630](#) - Creating the Offense of Careless Driving - This bill would amend the SC Code of Laws to create the offense of Careless Driving which would include texting while driving. Furthermore, the bill would amend the reckless driving statute to include texting while driving when bodily injury occurs. The reckless driving statute contains a process for suspending a person's driving privileges if convicted of a second charge of reckless driving within a 4 year period.

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[H. 3804](#) - Offense of Cyberbullying - This bill creates the offense of "Cyberbullying" which would be a misdemeanor punishable by a fine of \$1000 or imprisonment of not more than six months for an adult or a fine of not more than \$500 or imprisonment of not more than thirty days for a minor. This bill would criminalize certain acts intended to intimidate or torment a minor or a minor's parent using a computer system. If a minor is found guilty of this offense the bill would allow the charge to be expunged.

[H. 3855](#) - Restraints on Juveniles - This bill would require a Judge to make a finding fact that the juvenile falls into one of the defined categories before the court may continue if the juvenile is restrained by handcuffs or otherwise. Some of those categories would be flight risk, threat to himself or others, or a record of disruptive behavior in the courtroom. Furthermore, the Judge would have to find that there are no less restrictive alternative to restraints.

[H. 3854](#) - Out of Court Statements Made by Children - This bill defines Forensic Interviewer and adds forensic interviewers to the list of persons whose testimony regarding a statement made to them by a child alleging neglect is admissible in family court in certain situations. Other persons already included under the law are law enforcement officers, an officer of the court, family counselor, teachers, physician, school counselor, and DSS staff member.

[H. 3734](#) - Assault of a High and Aggravated Nature - This bill amends the offense of assault and battery of a high and aggravated nature to include the unlawful injury of a law enforcement officer, emergency medical services provider, or firefighter if the person should have known the injured person's status. This removes the requirement that great bodily injury occur or the act be accomplished by means likely to cause death or great bodily injury when a law enforcement officer is injured.

[H. 3768](#) - Drug Court Program Act - This bill would create a Drug Court program in each circuit and sets out the eligibility requirements of participation in the program, the requirements for administration of the program, the duties of the circuit solicitors, and the process appointment and compensation of drug court judges.

[H. 3776](#) - Sexually Violent Predators - This bill would amend the Sexually Violent Predator statutes to allow the court to require a person to complete certain procedures or tests that are requested by an expert in the furtherance of the expert's evaluation. Those procedures include: a clinical interview, psychological testing, plethysmograph testing, polygraph testing, and other procedures and tests relevant to an evaluation.

[H. 3921](#) - Relating to Reckless Driving - This bill would change the offense of reckless driving to include the use of a wireless communication device to type, send, or read a written communication (including a text, instant message, or email). The bill also changes the punishment for conviction of reckless driving to not less than \$100 nor more than \$300 and suspension of driver's license for three months and a fine of not less than \$250 nor more than \$400 for a second offense. Furthermore, the bill provides for a penalty of not less than \$100 nor more than \$300 if a person pleads guilty to a charge of reckless driving while unlawfully using a wireless communication device. The bill does not remove the requirement that the Department

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of Motor Vehicles suspend the license of any person convicted of reckless driving a second or subsequent time within five years. The bill also provides for an additional mandatory fine of \$500 if a law enforcement agency subpoenas the persons phone records and the information is used in a judicial proceeding resulting in conviction. The bill provides that the fines imposed must be placed in the state general fund to maintain roads. Finally, the bill clarifies that this section does not apply when a motor vehicle is off of the travel portion of a roadway, is stopped at a red light, a hands-free device is being used, an emergency or law enforcement officer is doing so within the scope of his official duties, or a person is doing so to report illegal activity or summons medical help.

ACHIEVING EXCELLENCE IN YOUR DUI PRACTICE

DREW CARROLL, ESQ



THE MINIMUM STANDARD

A LAWYER SHALL PROVIDE
COMPETENT REPRESENTATION TO A
CLIENT. COMPETENT
REPRESENTATION REQUIRES THE
LEGAL KNOWLEDGE, SKILL,
THOROUGHNESS AND PREPARATION
REASONABLY NECESSARY FOR THE
REPRESENTATION. SCRPR 1.1

Legal Knowledge and Skill: Relevant Factors

Complexity

Specialized Nature of the Matter

Lawyer's General Experience

**Lawyer's Training and Experience in a
Particular Field**

Amount of Preparation and Study

PERCEPTION IS NOT ALWAYS REALITY



EXCELLENCE

SUPERIORITY; EMINENCE

The background of the slide is a dark blue gradient. On the left side, there is a faint, semi-transparent image of a bookshelf filled with books. On the right side, there is a faint, semi-transparent image of a pair of scales of justice, symbolizing law, equity, and balance.

**EXCELLENCE IS AN ART WON BY
TRAINING AND HABITUTATION. WE
DONOT ACT RIGHTLY BECAUSE WE
HAVE VIRTUE OR EXCELLENCE, BUT
WE RATHER HAVE THOSE BECAUSE
WE HAVE ACTED RIGHTLY. WE ARE
WHAT WE REPEATEDLY DO.
EXCELLENCE, THEN, IS NOT AN ACT
BUT A HABIT. *ARISTOTLE***

STEPS TO ACHIEVING EXCELLENCE

1. MAKE A COMMITMENT
2. LEARN THE LAW
3. LEARN THE SCIENCE
4. COMPLETE THE TRAINING
5. LEAVE NOTHING TO CHANCE

“Start by doing what’s necessary; then do what’s possible; and suddenly you are doing the impossible”

St. Francis of Assisi

COMMITMENT

TIME + MONEY + EFFORT

NO PAINS, NO GAINS

If little labour, little are our gains:

Man's fate is according to his pains.

- Robert Herrick

LEARN THE BODY OF LAW



THE STATUTORY LAW

DUI	56-5-2930
DUAC	56-5-2933
FDUI	56-5-2945
IMPLIED CONSENT	56-5-2950
COMPULSORY PROCESS	56-5-2934
VIDEO RECORDING	56-5-2953
IGNITION INTERLOCK	56-5-2941
RECORD KEEPING	56-5-2954

CASE LAW

ROCKHILL V. SUCHENSKI, 374 S.C. 12, 646
S.E. 2d 879 (S.C. 2007)

STATE V. SULLIVAN, 310 S.C. 311, 426 S.E. 2d
766 (S.C. 1993)

STATE V. PARKER, 271 S.C. 159, 245 S.E. 2d
904 (S.C. 1978)

STATE V. LANDON, 370 S.C. 103, 634 S.E. 2d
660 (S.C. 2006)

TOWN OF MT. PLEASANT V. ROBERTS, 713
S.E. 2d 278 (2011)

**STATE V. GRAVES, 269 S.C. 356, 237 SE2d 584
(S.C. 1977)**

**STATE V. OSBORNE, 335 S.C. 172, 516 SE2d
201 (S.C. 1999)**

**STATE V. McATEER, 340 S.C. 644, 532 SE2d
865 (S.C. 2000)**

**STATE V. RAMEY, 221 S.C. 10, 68 SE 2d 634
(S.C. 1952)**

**ISHMELL V. SC HIGHWAY DEPT. 264 S.C. 340,
215 S.E.2d 201 (S.C. 1975)**

RULES

OMVH

SLED IMPLIED CONSENT POLICY

SLED REGULATIONS

ADMINISTRATIVE LAW COURT

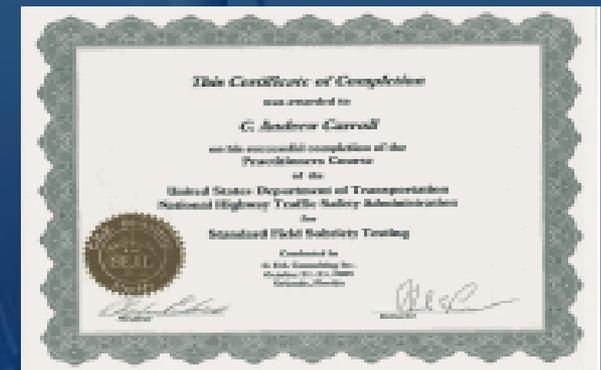
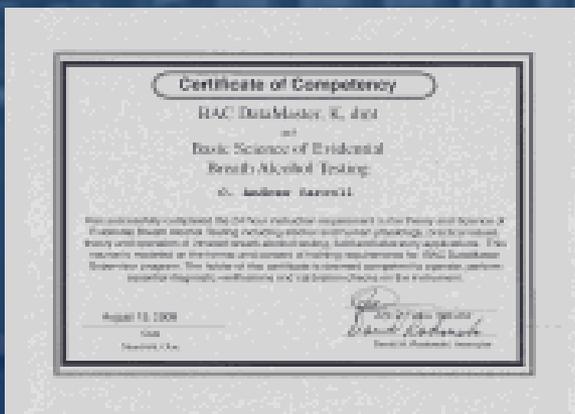
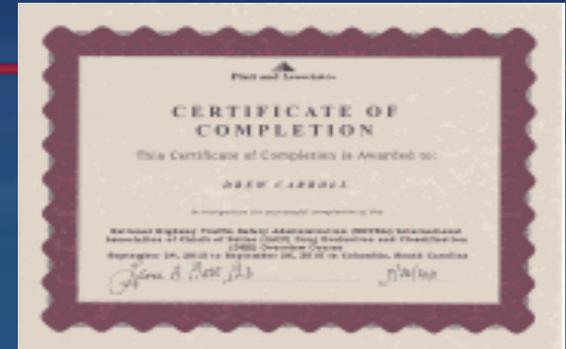
MAGISTRATES COURT

MUNICIPAL COURT

LEARN THE SCIENCE



COMPLETE THE TRAINING



**LEAVE NOTHING TO
CHANCE**

**PLAN THE FIGHT, AND FIGHT
THE PLAN**

PLAN THE FIGHT

DEVELOP AN OPERATIONAL SYSTEM

**DEVELOP A CASE MANAGEMENT
SCHEDULE**

DEVELOP A TASK LIST

IDENTIFY GOALS

THE SYSTEM

INTAKE FORMS

VIDEO OVERVIEW

CLIENT PHOTO

FILE OPENING INSTRUCTION FORM

CLIENT INFORMATION LETTER

QUESTIONAIRRE

CLIENT COPIES

CLIENT INSTRUCTION FORM

New Case Intake

First Name: MI: Last Name: Suffix:

Age (Party):

Home Address:

Home City: Home State: Home Zipcode:

Home County: Home Country:

Mobile Phone: () - Home Phone: () - Business Phone: () -

Home Email:

Ident: 00/00/0000 Case Type: DUI

opsis:

Agency (Tab6): AO Agency Abbreviated (Tab6):

Officer (Tab6):

Operator (Tab6): DM OP Agency (Tab6):

Arrest (Tab6): 00/00/0000 Day of Arrest (Tab6): Time of Arrest (Tab6): 00:00 AM

Charge 1 (Tab6): Charge 2 (Tab6):

Charge 3 (Tab6): Charge 4 (Tab6):

Arrests/Charges (Tab6):

3): Court Abbreviation (Tab3):

(Tab3): 00/00/0000 Court Time (Tab3): 00:00 AM

DUI CLIENT INTAKE SHEET

LEGAL NAME: _____ NICKNAME: _____

HOME PHONE: _____ CELL: _____ WORK: _____

PHYSICAL ADDRESS: _____

MAILING ADDRESS: _____

E-MAIL: _____

AGE: _____ DOB: ____/____/____ WEIGHT: _____ HEIGHT: _____

DRIVER'S LICENSE NUMBER: _____ STATE: _____

DO YOU HAVE A CDL (COMMERCIAL DRIVER'S LICENSE)? YES/NO (Circle One)

SINGLE/MARRIED/SEPARATED/DIVORCED/WIDOWED? (Circle One)

ACCIDENT? YES/NO (Circle One) HOW MANY CARS INVOLVED? _____

IF YES, WHAT IS THE NAME OF YOUR INSURANCE COMPANY? _____

AGENT: _____ PHONE #: _____ POLICY#: _____

FIELD SOBRIETY TESTS GIVEN? YES/NO (Circle One) IF YES, CHECK WHICH ONES:

- Finger to Nose _____
- One Leg Stand _____
- Heel to Toe _____
- Follow Pen/HGN _____
- Count Backwards _____
- Alphabet _____
- Finger Counting _____
- Stand Still-Look Up/Rhomberg _____
- Other: _____

DID YOU HAVE ANYONE IN YOUR CAR WITH YOU? Y/N (Circle one)

NAME OF PERSON: _____ RELATIONSHIP: _____

WERE THERE OTHER OFFICERS ON THE ROADSIDE? YES/NO (Circle One)

DID YOU TAKE THE BREATH TEST? YES/NO (Circle One)

DID YOU TAKE A BLOOD TEST? YES/NO (Circle One)

DID YOU TAKE A URINE TEST? YES/NO (Circle One)

DID YOU RECEIVE ANY OTHER TICKETS? (i.e. speeding, no seat belt, open container)

IF YES, LIST HERE: _____



FIGHT THE PLAN

OPENING THE FILE

EVERYTHING HAS IT'S PLACE

CALENDAR EVENTS

MEET DEADLINES

DOWNLOAD SLED VIDEO

**SERVE SUBPOENA FOR ROADSIDE
VIDEO**

FILE DISCOVERY MOTION

GAINING ACCESS TO THE EVIDENCE

RULE 5

BRADY

56-5-2934

OMVH RULES

SECTION 56-5-2934

§ 56-5-2934. Compulsory process to obtain witnesses and documents; breath testing software.

Notwithstanding any other provision of law, a person charged with a violation of [Section 56-5-2930](#), [56-5-2933](#), or [56-5-2945](#) who is being tried in any court of competent jurisdiction in this State has the right to compulsory process for obtaining witnesses,

documents, or both, including, but not limited to, state employees charged with the maintenance of breath testing devices in this State and the administration of breath testing pursuant to this article. This process may be issued under the official signature of the magistrate, judge, clerk, or other officer of the court of competent jurisdiction.

OMVH RULE 12

ATTORNEY MAY ISSUE

SERVE LEO PERSONALLY OR AGENCY

COMPEL ATTENDANCE

**COMPEL PRODUCTION A MINIMUM OF 5
DAYS PRIOR TO SCHEDULED
HEARING**

INCIDENT SITE VIDEO

**MUST RECORD SUSPECT'S CONDUCT
NO LATER THAN ACTIVATION OF
BLUELIGHTS**

INCLUDE ANY FST'S

INCLUDE ARREST

INCLUDE MIRANDA

INCIDENT SITE VIDEO

THE PURPOSE IS TO CREATE DIRECT EVIDENCE OF A DUI ARREST

FAILURE TO COMPLY IS FATAL TO THE PROSECUTION OF A DUI CASE

DISMISSAL IS THE REMEDY WHERE A VIOLATION OF 56-5-2953 (A) IS NOT MITIGATED BY A SUBSECTION (B) EXCEPTION TOWN OF MT. PLEASANT V. ROBERTS, 393 S.C. 332, 713 SE2d 278 (2011)

INCIDENT SITE VIDEO

WHAT MUST BE CAPTURED?

**CONDUCT- PRIOR TO 2/10/09 NOT
REQUIRED TO BE IN FULL VIEW
DURING FSTS**

**FIELD TESTS- POST 2/10/09
SUBJECT MUST BE IN FULL VIEW**

MIRANDA

ARREST

MIRANDA

You have the right to remain silent; anything you say can and will be used against you in a court of law; you have the right to talk to a lawyer and have him present with you while you are being questioned; if you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one. State v. Hoyle, 397 S.C. 622, 725 S.E. 2d 720 (Ct. App. 2012)

FIELD SOBRIETY TESTS

SUBJECT QUALIFICATION

INSTRUCTIONS

DEMONSTRATIONS

FULL VIEW OF THE SUBJECT

MURPHY V. STATE, 392 S.C. 626, 709 S.E.2d

685 (Ct. App. 2011)

ARREST

MUST BE SHOWN

**MUST BE UNDER ARREST FOR THE
IMPLIED CONSENT STATUTE TO BE
TRIGGERED**

BREATH TEST VIDEO

**MUST INCLUDE ENTIRE BREATH TEST
PROCEDURE**

**SHOW PERSON BEING INFORMED OF
RECORDING AND RIGHT TO REFUSE**

**PERSON TAKING OR REFUSING THE
TEST**

ACTIONS OF THE BT OPERATOR

PERSON'S CONDUCT DURING THE

EXCEPTIONS

AFFIDAVIT EQUIPMENT DEFECTIVE

**STATE WHICH EFFORTS WERE MADE
TO MAINTAIN THE EQUIPMENT AND
CERTIFYING THAT THERE WAS NO
OPERATION EQUIPMENT IN THE
COUNTY**

MEDICAL EMERGENCY

EXIGENT CIRCUMSTANCES

RECORDS

56-5-2954 DETAILED RECORDS OF MALFUNCTIONS, REPAIRS AND COMPLAINTS

STATE V. LANDON, 370 S.C. 103, 634
S.E.2d 660 (2006)

SLED WEB SITE

PROOF BARD OF BAC

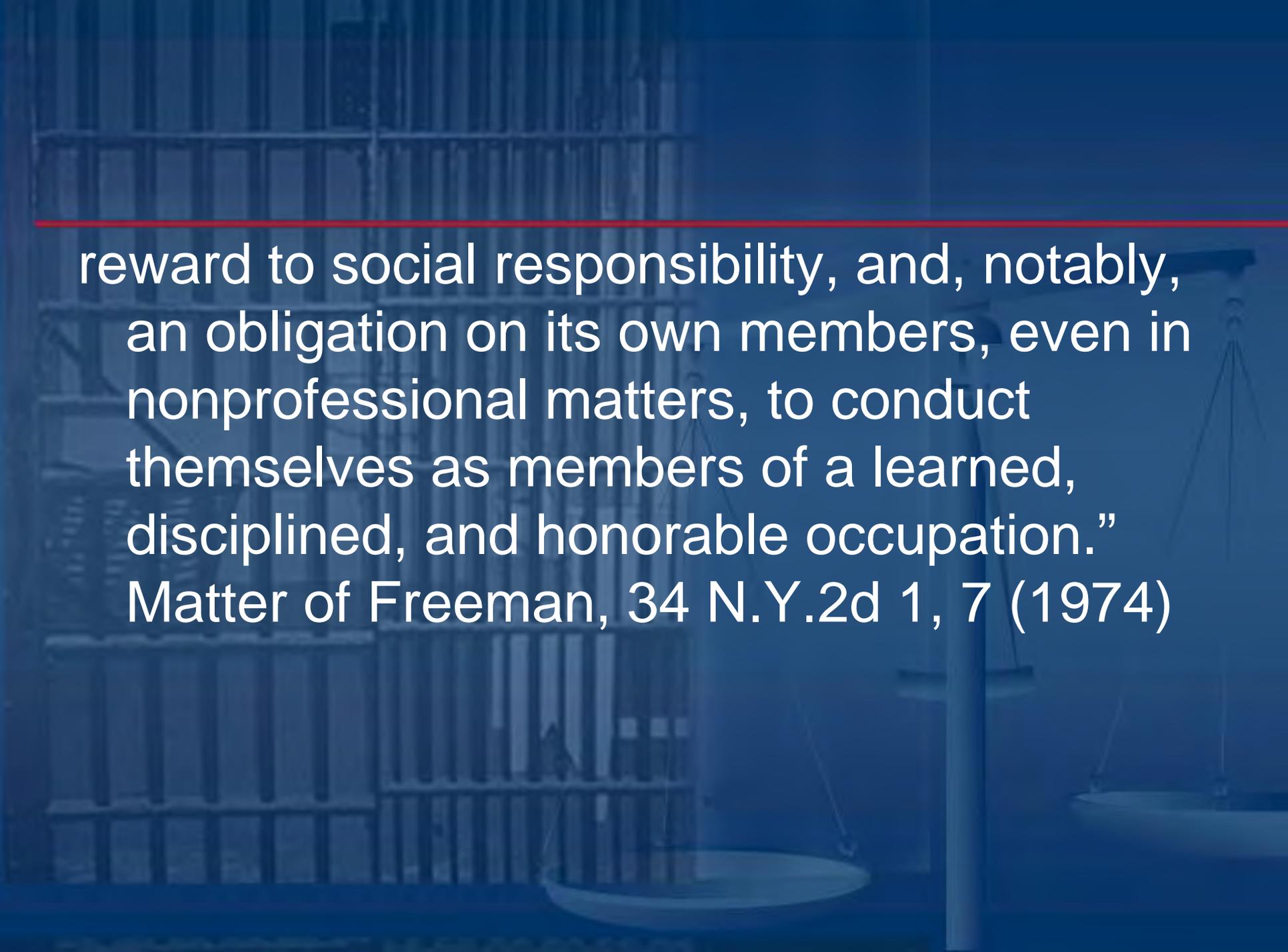
IF JURY FINDS DEFENDANT GUILTY,

THEN A SEPARATE FACTUAL
DETERMINATION OF THE BAC

ANY FACT THAT INCREASES THE
MINIMUM SENTENCE IS AN ELEMENT
THAT MUST BE SUBMITTED TO THE
JURY ALLEYNE V. U.S., 570 U.S. ____ (2013)

WHY EXCELLENCE?

“A profession is not a business. It is distinguished by the requirements of extensive formal training and learning, admission to practice by qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the marketplace, a system for discipline of its members for violation of the code of ethics, a duty to subordinate financial

The background of the slide is a dark blue-tinted image. On the left, there are several rows of bookshelves filled with books. On the right, a large, faint image of a scale of justice is visible, symbolizing law and equity. A thin red horizontal line is positioned near the top of the slide, just above the text.

reward to social responsibility, and, notably,
an obligation on its own members, even in
nonprofessional matters, to conduct
themselves as members of a learned,
disciplined, and honorable occupation.”
Matter of Freeman, 34 N.Y.2d 1, 7 (1974)

SENTENCING IN JUVENILE MURDER CASES AFTER *MILLER V. ALABAMA*

Luther Strange, *Alabama Attorney General*
John Neiman, *Alabama Solicitor General*
Lauren Simpson, *Assistant Alabama Attorney General*

*Miller v. Alabama*¹ arose from a murder case in our state, but the Supreme Court’s decision already has had significant impact throughout the country. To this end, this handout is designed to provide you with two kinds of information about these developments. The first is background on the *Miller* decision itself—what the parties argued to the Court, and what the Court actually held. The second is information about the two major implementation issues that have arisen in the wake of *Miller*—namely, how legislatures and courts have addressed the lack of discretion afforded to sentencing judges under current statutes, and whether *Miller* will be retroactively applied to long-final convictions and sentences.

I. The *Miller* decision

A couple of facts sometimes get lost in the shuffle when people talk about the Supreme Court’s decision in *Miller*.

The first was the *Miller* majority’s precise holding. Much as they would do a few days later in reporting on the Affordable Care Act case, reporters initially mischaracterized what the Supreme Court had done in *Miller*. The first news stories represented that the Court held that juvenile murderers can *never* receive sentences of life without parole, even in the most egregious of cases. Perhaps because of this initial gaffe, many people still appear to believe that *Miller* flatly barred these sentences for juveniles. But the *Miller* majority did not go that far. It instead held that while life without parole remains a permissible sentence for juvenile murders, judges must also be given the discretion, in appropriate cases, to sentence these defendants to a lesser sentence that provided some possibility of parole.² The Court drew support for that holding from capital cases in the 1970s holding that the Eighth Amendment precluded the States from making the death penalty the mandatory sentence for capital murder.³

The second fact about *Miller* that sometimes gets lost in the shuffle is that the Supreme Court’s ruling was much more limited than the one the defense bar

¹ 132 S. Ct. 2455 (2012).

² *Id.* at 2469.

³ See *Woodson v. North Carolina*, 428 U.S. 280 (1976) (plurality opinion); *Lockett v. Ohio*, 438 U.S. 586 (1978).

was hoping to achieve. It is no exaggeration to say that Miller devoted almost all of his argument to the Supreme Court to the notion that the Eighth Amendment precluded life-without-parole sentences for juveniles altogether. He based that argument on two recent Supreme Court decisions. The first was *Roper v. Simmons*, which held that the Eighth Amendment precludes the death sentence for juveniles who commit capital murder.⁴ The second was *Graham v. Florida*, which held that the Eighth Amendment precludes sentences of life without parole for juveniles convicted of non-homicide offenses.⁵ These decisions opined that because of juveniles' relative immaturity and international sentiment, among other things, the Constitution rendered those sentences unconstitutional. And the petitioner in *Miller* argued that those same considerations applied with full force to life-without-parole sentences for juveniles.

We were able to convince the Court that *Roper* and *Graham* could not get Miller that far, and the Court instead opted for a middle ground that had not been the focus of Miller's briefing. Instead of holding that the Eighth Amendment flatly precluded life-without-parole sentences altogether, the Court held that in murder cases, the judge must have a choice between life without parole, on the one hand, and a sentence that provides the juvenile defendant a chance at parole. The Court did not hold that the defendant *must* be paroled, but rather that the defendant must have a meaningful opportunity to *seek* parole at some point in his or her life.

The Court's decision created two issues that states are currently trying to address. The first was how to deal with juvenile murder prosecutions going forward. The second was retroactivity—namely, how to deal with juveniles who are already serving life-without-parole sentences that had been imposed by a procedure *Miller* deemed unconstitutional.

II. The statutory problems moving forward

Miller was decided under the Eighth Amendment, so the upshot of the majority's holding was that any statute that sets life without parole as the mandatory sentence for a juvenile murderer is "cruel and unusual." One obvious practical problem with that holding was that life without parole was the minimum sentence for capital murder in most states at the time of the Court's decision. As applied to juvenile defendants, each of these statutes was therefore unconstitutional under *Miller*. Indeed, we had argued, and Chief Justice Roberts had agreed, that

⁴ 543 U.S. 551 (2005).

⁵ 560 U.S. 48 (2010).

this reality made it impossible for the defendant in *Miller* to claim that these statutes were unusual.⁶

Therefore, after the Court decided *Miller*, two things began to happen. First, juvenile murder defendants in these states began to seek dismissals of their capital-murder indictments, on the theory that these states had no constitutional statute under which they could be prosecuted. Second, legislatures in many of these states enacted so-called “*Miller* fix” statutes designed to address the constitutional problem *Miller* had identified.

Although the Court has clearly held that these “fix” statutes must offer *some* alternative to life without parole, the Court has steadfastly refused to say precisely what that alternative must be. The Court has said only that the judge must have the option of choosing a sentence that gives the defendant a meaningful chance at parole. Thus, a statute would clearly be constitutional if it set the alternative as life imprisonment *with* the possibility of parole, with no minimum term before the defendant became parole-eligible. It also seems highly likely that a state can specify that defendants serve a minimum term of years before becoming parole-eligible. One big question is precisely what that minimum term will be. If legislatures set the minimum term at, say, one hundred years, defendants undoubtedly will claim that the statute is unconstitutional because that sentence would not give them a meaningful chance at release.

While the legislatures in many states have passed *Miller*-fix statutes, Alabama has not. In the 2013 session, several Alabama legislators proposed a law under which the sentencing judge would have two options: life without parole, or life with the possibility of parole after a minimum of forty years in prison.⁷ That bill passed one of Alabama’s two houses, but it did not get a vote in the other. Accordingly, our legislature’s 2013 session ended without a fix on the books.

The legislature’s failure to act meant that the courts had no choice but to decide whether they could proceed with prosecutions under the old statute—which, by their terms, provided no alternative to life without parole. Fortunately, we were able to persuade the Alabama Supreme Court to adopt a saving construction of our statute. Under this saving construction, the courts are to view the mandatory aspect of the life-without-parole sentence under the capital-murder statute as severed in cases involving juveniles.⁸ This means that when a judge believes that

⁶ See *Miller*, 132 S. Ct. at 2479 (Roberts, C.J., dissenting).

⁷ See Ala. House Bill 351 (introduced Feb. 26, 2013).

⁸ See *Ex parte Henderson*, No. 1120140, 2013 WL 4873077 (Ala. Sept. 13, 2013).

the defendant does not deserve life without parole, the judge may sentence the defendant to life with the possibility of parole. In light of the way Alabama parole law works, this means that juvenile defendants sentenced to life with the possibility of parole will have their first parole hearings approximately twenty years after they are sentenced. Courts in other states have adopted similar saving constructions of their statutes.⁹

III. Retroactivity and final convictions

The Alabama Supreme Court's decision addresses prosecutions going forward. But what is to happen to the numerous defendants currently serving life without parole under the pre-*Miller* understanding of our statute? Does *Miller* mean that a defendant sentenced to life without parole some thirty years ago is entitled to a new sentencing hearing? This is the so-called retroactivity question, and it is a matter of national significance that will ultimately need to be resolved by the United States Supreme Court.

In arguing about *Miller*'s retroactivity, three issues tend to arise: the bar to retroactive application provided in *Teague v. Lane*, the Supreme Court's treatment of *Miller*'s companion case, and *Miller*'s retroactive precedent.

First, under the test put forth by the Supreme Court in *Teague v. Lane*,¹⁰ new rules of constitutional law are applied retroactively only if they are substantive rules or new watershed rules of criminal procedure. Substantive rules “place[] certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe,” while watershed procedural rules “require[] the observance of those procedures that . . . are implicit in the concept of ordered liberty.”¹¹

Some courts have found that the *Miller* rule is substantive because it prohibits mandatory sentences of life without parole for juveniles, thereby invalidating state sentencing schemes.¹² Others disagree, deeming the rule merely procedural because it did not categorically bar life without parole for juveniles, but rather altered the permissible methods by which the State could impose the

⁹ See *Ortiz v. State*, 119 So. 3d 494 (Fla. Dist. Ct. App. 2013); *Commonwealth v. Knox*, 50 A.3d 732 (Pa. Super. Ct. 2012).

¹⁰ 489 U.S. 288 (1989).

¹¹ *Id.* at 307.

¹² See *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013); *Jones v. State*, No. 2009-CT-02033-SCT, 2013 WL 3756564 (Miss. July 18, 2013).

penalty.¹³ Only certain Illinois courts have found that the *Miller* rule qualifies as a watershed procedural rule.¹⁴ Those latter courts' determination is somewhat surprising, as the Supreme Court has yet to find a rule other than that of *Gideon v. Wainwright* that falls under the second *Teague* exception.¹⁵

The second issue that arises is the matter of *Jackson v. Hobbs*, *Miller's* companion case out of Arkansas. Unlike *Miller*, who came before the Supreme Court on direct appeal, *Jackson's* case was on post-conviction collateral review. The Court reversed and remanded both cases for further proceedings, thereby giving support to the position that the Court intended for the *Miller* rule to have retroactive application.¹⁶ On the other hand, the Court never held that the new rule was retroactive.¹⁷ Moreover, it is possible for the Court to remand a case on post-conviction review and later deem the new rule non-retroactive for failing to surmount the *Teague* bar.¹⁸

The final issue concerns the two strands of retroactive precedent that led to *Miller*. The first, characterized by *Roper v. Simmons*¹⁹ and *Graham v. Florida*,²⁰ consists of cases categorically banning sentences for juveniles. The second, characterized by *Woodson v. North Carolina*²¹ and *Lockett v. Ohio*,²² consists of cases mandating individualized sentencing. The question, then, is whether *Miller* flows "directly" enough from these cases to be retroactive by extension. The Supreme Court has held that "[m]ultiple cases can render a new rule retroactive," but "only if the holdings in those cases necessarily dictate retroactivity of the new

¹³ See *State v. Tate*, No. 2012-OK-2763, 2013 WL 5912118 (La. Nov. 5, 2013); *Commonwealth v. Cunningham*, No. 38 EAP 2012, 2013 WL 5814388 (Pa. Oct. 30, 2013).

¹⁴ *People v. Cooks*, 2012 Ill. App. (1st) 112991-U (2013) (First District); *People v. Williams*, 367 Ill. Dec. 503 (Ill. App. Ct. 2012) (First District).

¹⁵ See, e.g., *Beard v. Banks*, 542 U.S. 406, 417 (2004).

¹⁶ See, e.g., *Teague v. Lane*, 489 U.S. 288, 300 (1989) ("[O]nce a new rule is applied to the defendant in the case announcing the rule, evenhanded justice requires that it be applied retroactively to all who are similarly situated.").

¹⁷ See, e.g., *Tyler v. Cain*, 533 U.S. 656, 663 (2001) (noting that the only way in which the Supreme Court can construct a rule's retroactivity is through a holding).

¹⁸ See *Chaidez v. United States*, 133 S. Ct. 1103 (2013) (finding the rule of *Padilla v. Kentucky*, 559 U.S. 356 (2010), non-retroactive).

¹⁹ 543 U.S. 551 (2005).

²⁰ 130 S. Ct. 2011 (2010).

²¹ 428 U.S. 280 (1976).

²² 438 U.S. 586 (1978).

rule.”²³ Concurring in *Tyler v. Cain*, Justice O’Connor explained that such holdings “must *dictate* the conclusion and not merely provide principles from which one *may* conclude that the rule applies retroactively.”²⁴ Whether the *Miller* rule was sufficiently dictated by previous holdings remains to be decided.

Federal and state courts across the country have split over these questions. Currently, the Fifth and Eleventh Circuit Courts of Appeals, the Supreme Courts of Louisiana, Minnesota, and Pennsylvania, the Court of Appeals of Michigan, two of Florida’s District Courts of Appeal, and federal district courts in the Eastern District of Virginia and the District of Minnesota have held that *Miller* is not retroactive.²⁵ The Supreme Courts of Iowa and Mississippi, two Illinois Appellate Courts, and a federal district court in the Southern District of New York have reached the opposite conclusion,²⁶ and the Department of Justice has taken the position that *Miller* is retroactive. In addition, the Second, Third, Fourth, and Eighth Circuit Courts of Appeals have found that petitioners raising claims under *Miller* made a sufficient showing of possible merit to warrant fuller exploration by the district courts.²⁷ In short, a national consensus on *Miller*’s retroactivity has yet

²³ *Tyler v. Cain*, 533 U.S. 656, 666 (2001).

²⁴ *Id.* at 669 (O’Connor, J., concurring) (emphasis in the original).

²⁵ *In re Morgan*, 713 F.3d 1365 (11th Cir. 2013); *reh’g denied*, 717 F.3d 1186 (11th Cir. 2013); *Craig v. Cain*, No. 12-30035, 2013 WL 69128 (5th Cir. Jan. 4, 2013); *Johnson v. Ponton*, No. 3:13-CV-404, 2013 WL 5663068 (E.D. Va. Oct. 16, 2013); *Martin v. Symmes*, No. 10-CV-4753 (SRN/TNL), 2013 WL 5653447 (D. Minn. Oct. 15, 2013); *Geter v. State*, 115 So. 2d 375 (Fla. Dist. Ct. App. 2012) (Third District); *Gonzalez v. State*, 101 So. 3d 886 (Fla. Dist. Ct. App. 2012) (First District); *State v. Tate*, No. 2012-OK-2763, 2013 WL 5912118 (La. Nov. 5, 2013); *People v. Carp*, 828 N.W.2d 685 (Mich. App. 2012); *Chambers v. State*, 831 N.W.2d 311 (Minn. 2013); *Commonwealth v. Cunningham*, No. 38 EAP 2012, 2013 WL 5814388 (Pa. Oct. 30, 2013).

²⁶ *Alejandro v. United States*, Nos. 13 Civ. 4364(CM), S4 94 Cr. 290-06(CM), 2013 WL 4574066 (S.D.N.Y. Aug. 22, 2013); *People v. Cooks*, 2012 Ill. App. (1st) 112991-U (2013) (First District) (watershed rule); *People v. Luciano*, 370 Ill. Dec. 587 (Ill. App. Ct. 2013) (Second District) (substantive rule); *People v. Williams*, 367 Ill. Dec. 503 (Ill. App. Ct. 2012) (First District) (watershed rule); *People v. Morfin*, 367 Ill. Dec. 282 (Ill. App. Ct. 2012) (First District) (substantive rule); *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013); *Jones v. State*, No. 2009-CT-02033-SCT, 2013 WL 3756564 (Miss. July 18, 2013).

²⁷ *In re Pendleton*, Nos. 12-3617, 12-3996, 13-1455, 2013 WL 5486170 (3rd Cir. Oct. 3, 2013); *Johnson v. United States*, 720 F.3d 720 (8th Cir. 2013); *Stone v. United States*, No. 13-1486 (2d Cir. June 7, 2013); *In re Landry*, No. 13-247 (4th Cir. May 30, 2012); *In re Jones*, No. 12-287 (4th Cir. May 10, 2013).

to emerge. It seems inevitable that these issues eventually will be decided by the Supreme Court.

* * *

One practical question we will grapple with in the future, in addition to the statutory and retroactivity issues discussed above, is the extent to which judges may still impose life without parole *at all*. Although the Court held that life without parole remains a possibility, the Court also stated that it expects those sentences to be rare. How rare is rare? And to the extent that judges actually begin imposing the sentences only rarely, won't defendants just start arguing that the sentence has become so "cruel and unusual" that it can't be imposed at all? *Miller* thus raises more questions than it purports to answer, and judges and lawyers can expect to be dealing with these questions for several years to come.