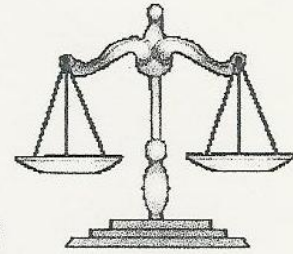


JRC

Justice Reform Consortium



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Language Bill Gets A Second Chance

Last year, [a bill](#) that would help pay the costs for interpreters and translators in civil and criminal cases before Iowa courts died in a subcommittee meeting. This year, the legislation gets a new life in the Senate. [Senate Study Bill 3026](#) moved out of a Senate Judiciary subcommittee on Thursday (Feb. 13) and passed unanimously out of the [Senate Judiciary Committee](#) on the same day. It will be renumbered as a Senate File in the coming week and is eligible for debate in the Senate soon thereafter.

The legislation will bring Iowa into compliance with the U.S. Department of Justice (USDOJ) guidance. It will ensure that interpreter and translator services are provided for all Limited English Proficient (LEP) court participants in legal proceedings without charging interpreter and translator fees back to those participants as is the practice now. The USDOJ has interpreted the Civil Rights Act of 1964, which prohibits discrimination based on national origin (and race or ethnicity), to mean that all organizations that receive federal funds (including the Iowa courts) must provide competent interpreter services to limited English proficient (LEP) participants in their programs. Any recipient of federal funds that fails to comply with the USDOJ requirements could lose its federal funding. In the long run, the cost of noncompliance could be more than it cost to fund this legislation.

The primary goal of the bill: **Comply with USDOJ requirements regarding court interpreters;**

The secondary goal of the bill: **Streamline the payment of court interpreters.**

SSB 3026 will direct the Iowa courts to pay for court interpreters in all types of court proceedings and pre-disposition court-ordered programs (e.g., mediation, Children in the Middle class for parents in a dissolution of marriage case), regardless of case type or economic status of the LEP participant and without charging interpreter fees back to the party or parties.

Appropriations for this bill are a concern to a couple of senators. However, [Senator Tom Courtney](#) (D-Burlington), who is also co-chair of the [Joint Subcommittee on Justice Systems](#), said that he would find the money to fund the bill. The total cost of the program is estimated to be approximately \$633,000, but the total cost is not absolute. During the past fiscal year, the

State Public Defender paid \$300,000 to interpreters; the courts paid approximately \$155,000. John Goerdts, Deputy State Court Administrator, provided information to the subcommittee that “new” money needed would be approximately \$333,000. Mr. Goerdts said that “the state already absorbs about \$410,000 per year (i.e., without reimbursement) of the \$455,000 paid by the state for court interpreters.

During the Senate Committee meeting, Sen. Courtney presented an impassioned case about how this legislation is essential to the economic development efforts of the state. He pointed out that as the governor and local governments persuade foreign corporations to relocate or expand in Iowa, the ability of the Iowa courts to provide qualified translators and interpreters is an added benefit to the persuasion. Executives and their families, particular experts, and essential foreign corporate employees will desire Iowa’s ability to provide proper and certified translations of court documents and proceedings. The measure is an added bonus in negotiations.

Please [contact your state senator](#) and urge your senator to support this legislation.

Getting Rid of Lengthy Mandatory Minimum Sentences for Juveniles

[Senate Study Bill 3146](#) passed out of subcommittee this week and will be considered in the Senate Judiciary Committee next week. [SSB 3146](#) is a bill written in consultation with the ACLU of Iowa that addresses the collective opinions with [Roper](#), [Graham](#), [Miller](#), [Bonilla](#), [Null](#), [Pearson](#), and [Ragland](#). It will be amended before passing out of the Senate Judiciary.

The County Attorneys and Attorney General want some changes to the bill. Black Hawk County Attorney Tom Ferguson listed four concerns. 1) SSB 3146 currently does not provide any option for “life without parole”, which remains an option for courts under [Miller](#) only after an individualized sentencing hearing and only in homicide cases, albeit it is an option the Court has admonished “is appropriate, if at all, only in rare or uncommon cases;” 2) the bill provides uncertainty for victim survivors; 3) [Senate File 288](#), enacted last year, provided some language to address the matter of prohibiting mandatory minimum sentence for juveniles ([Pearson](#)); and 4) the county attorneys do not like the retroactivity provision at the end of the bill.

We are willing to make a change to the bill that will allow a judge to sentence a juvenile to life without the possibility of parole after an individualized sentencing hearing where the court considers the factors laid out in [Miller](#). In doing so, the bill may have to be amended to spell out the requirements of sentencing that the Iowa Supreme Court enumerated in [Null](#), finding an independent basis under the Iowa Constitution’s prohibition on cruel and unusual punishment to apply to the holdings of [Roper](#), [Graham](#), and [Miller](#). The Iowa Supreme Court provided clear instruction that the district courts to consider the following:

- **Culpability – Mitigating factors:** The court “must recognize that because ‘children are constitutionally different from adults,’ they ordinarily cannot be held to the same standard of culpability as adults in criminal sentencing.” If a district court judge believes that an exception exists in a particular case, she “should make findings discussion why the general rule does not apply. This

must go beyond a “mere recitation of the nature of the crime,” and characteristics inherent to youth, including “immaturity, impetuosity, and the poor risk management,” must be regarded as mitigating, not aggravating factors.

- Capable of change: The court “must recognize that ‘juveniles are more capable of change than are adults’ and that as a result, ‘their actions are less likely to be evidence of irretrievably depraved character.’” “Further, the district court must recognize that most juveniles who engage in criminal activity are not destined to become lifelong criminals.
- Appropriateness of length of sentence: The court “should recognize that a lengthy prison sentence without the possibility of parole such as that involved . . . is appropriate, if at all, only in rare or uncommon cases.”
- Specific factors under *Miller*: Last, as cited by the Iowa Supreme Court case *Ragland*, *specific factors* the court must consider at the sentencing hearing in the case of a homicide include: (1) the “chronological age” of the youth and the features of youth, including “immaturity, impetuosity, and failure to appreciate risks and consequences”; (2) the “family and home environment” that surrounded the youth; (3) “the circumstances of the homicide offense, including the extent of [the youth’s] participation in the conduct and the way familial and peer pressures may have affected [the youth]”; (4) the “incompetencies associated with youth—for example, [the youth’s] inability to deal with police officers or prosecutors (including on plea agreement) or [the youth’s] incapacity to assist [the youth’s] own attorneys”; and (5) “the possibility of rehabilitation.” *Miller* at 423.

■ *Thanks to Rita Bettis of the
ACLU of Iowa for providing these bullets*

Senator Rob Hogg (D-Cedar Rapids), the bill’s floor manager and Chair of the Senate Judiciary Committee, has said that he is going to add additional requirements, including a provision that will relate to whether the defendant shows remorse. Hopefully, these additional provisions will address the concerns of victims without undermining the constitutional mandate of the factors enumerated by our U.S. and Iowa Supreme Courts. The County Attorneys have raised the yearly parole hearing as an argument against a constitutional sentencing scheme. We agree that victims should not have to relive the event every year. A person who is eligible for parole must have a review each year, the process for most amounts to nothing more than Parole Board members looking at a file and rejecting the opportunity for an in-person interview.

Additionally, in *Null*, the Iowa Supreme Court itself already eloquently addressed and ultimately rejected the argument that the constitutional rule would deprive victims of certainty:

Some have suggested a lack of “certainty” in our disposition. The demand for certainty, however, is a double-edged sword. In *Miller*, as here, more certainty could have been

achieved by a categorical approach—one saying that life without parole or its equivalent can never be imposed on a juvenile offender. Categorical or rule-based solutions may have the advantage of clarity, but they also have a countervailing disadvantage, namely, that they limit case-by-case consideration of facts that might be crucial to a satisfactory outcome. In other words, categorical rules are almost always overinclusive, underinclusive, or both. The teaching of [Miller](#) is that the assumption that juveniles should be treated as adults for the purposes of life-without-parole sentences is dramatically overinclusive and constitutionally unacceptable. At the same time, *Miller* declined to adopt the opposite rule-based approach, namely, that juveniles can never be subject to life in prison without parole. We utilize the [Miller](#) approach in this case.

Further, slippery-slope arguments, like arguments seeking certainty, are two-way streets. Frederick Schauer, *Slippery Slopes*, 99 Harv. L. Rev. 361, 381 (1985) (“[I]n virtually every case in which a slippery-slope argument is made, the opposing party could with equal formal and linguistic logic also make a slippery slope claim.”). One could plausibly employ a slippery-slope argument to suggest the elimination of the Cruel and Unusual Punishments Clauses of the State and Federal Constitutions by deferring to other branches of government.

While we do not concede that the exception would be consistent with the Iowa Constitution, we are willing to drop provisions in the bill that pertain to habitual offenders for now. A person who is sentenced as a habitual offender is not eligible for parole until the person has served a minimum of three years.

[SF 288](#), enacted last year, does not address the Pearson concerns related to mandatory minimums as the county attorneys claim. SF 288 is a bill that relates to matters associated with Youthful Offenders. The Iowa Code Section relating to Youthful Offenders is rarely used. In any case, there is a bill that is currently active in the Legislature that amends the provisions of SF 288.

The concern of retroactivity is decided already. [Bonilla](#), [Null](#), [Pearson](#), and [Ragland](#) have been decided previously with retroactive implications. Persons given sentences that are illegal under the Constitution are *already* immediately eligible for resentencing. But this bill would give the courts the guidance it needs to resentence in a constitutionally permissible manner.

With JRC and allies offering changes in the bill, it should be able to move through the legislative process with ease. This legislation is a significant trailblazing model that will prevent numerous lawsuits in the coming years, it will give judges direction, and more importantly, it will put bad actors away for life while allowing those with regret and remorse a positive outlook at preparing for the future with a “meaningful opportunity for release.”

Interesting Tidbits

Sitting in on a meeting of the Legislature’s Joint Subcommittee on the Justice System can often reveal information that is not otherwise widely distributed. Legislators asked questions about the Iowa Department of Corrections to representatives of the IDOC at its Tuesday, February 4 meeting. Some interesting answers were given to the Committee on Thursday, Feb. 6. Below are a few of those statistics.

- In Fiscal Year 2013, 16.7% of offenders entered the prison system without a high school equivalent or GED [The GED in Iowa is now called the HiSET, a national high school equivalency testing program]. In FY 2013, 15.1% of offenders leaving prison had no diploma or equivalent.
- “During FY 2013, 112 of the 113 assaults on staff were committed by mentally ill offenders.” An assault includes the act of throwing substances (ketchup, feces, urine, spit, gravy, etc.) on a correctional officer.
- “The DOC requires all staff complete a two-day training [class] on Mental Illness especially focused on Biological Basis of Mental Illness and Categories of Mental Illness. Training also focuses on de-escalation techniques, crisis management, coping mechanisms and how to take care of oneself to alleviate stress. This is followed with an annual e-Learning module that is mandatory for all staff.”
- The Department reports that the “Statewide DOC Avg Daily Cost” per offender is \$83.69.



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Selected links:

“Re-thinking The "Steel Door Solution"

<http://www.thecrimereport.org/news/inside-criminal-justice/2014-02-steel-door-solution-fades-as-states-put-fewer-inmate> Gest, Ted. *The Crime Report*

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UPCOMING EVENTS

Voices to be Heard is a support group for families and children of an incarcerated loved one. The group gathers to support and comfort those who know too well the grief that comes to those left behind when someone they love is incarcerated. The group meets on the first and third Tuesdays of the month at Union Park Methodist Church (East 12th & Guthrie in Des Moines) from 5:30 – 7:00 p.m. The group brings in speakers, performs outreach, provide support groups and leadership classes. It is a good idea to contact Melissa ahead of time because the group provides dinner and a head count is preferred. Contact Melissa at 515/229-2645 for more information.

The next **Friends of Iowa Women Prisoners** meeting is at noon on **Tues., February 18th** at Wesley United Methodist Church, 800 East 12th.

MISSION: To bring together and inform individuals and groups concerned about women in the Iowa correctional system and to act on their behalf.

FIWP Mailing Address: Post Office Box 71272, Clive, IA 50325

Our February 18th presenter will be Marty Ryan who will bring us up to date on the 2014 legislative session.

Bring your lunch. The place and time are consistent throughout the year. The meetings are always held on the third Tuesday of the month, and always held from noon to 1:00 pm at Wesley

United Methodist Church located at 800 East 12th Street in Des Moines. The location is a block west of East High School. Please contact [Vi](#) for more information.

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Justice Reform Consortium member organizations: Iowa CURE & Iowa Coalition 4 Juvenile Justice; Friends of Iowa Women Prisoners; Trinity United Methodist Church; Methodist Federation for Social Action; Voices to be Heard; ACLU of Iowa; Social Action Committee, Des Moines Presbytery; Des Moines Chapter of WILPF; American Friends Service Committee; Plymouth Congregational Church, Board of Christian Social Action; Iowa Annual Conference, UMC; Iowa NOW and Des Moines NOW; National Association of Social Workers; Beacon of Life; Citizens for Undoing Racism-War on Drugs Task Force.

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