Deserting One's Pa-Role: How Contemporary Sentencing Schemes Clash with Traditional Conceptions of Parole Transparency

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Parole procedures are used in many states to create indeterminate sentences, where an offender sentenced to a lengthy term can be released early if they are found to be a good candidate and ready to rejoin society. Some states use these in conjunction with life sentences, creating a framework wherein an offender must stay in prison until the parole board determines they should be released. When a state creates a sentencing scheme under which a juvenile offender is mandatorily sentenced to life in prison until they are paroled, the state implicates a liberty interest protected under the Eighth Amendment to the United States Constitution. Procedural safeguards must be instituted to protect this liberty interest, but such safeguards are woefully missing from many states. This Note argues that the best procedural safeguard to put forward, to both preserve the rights of the juvenile offender and the rehabilitative interest of the states, is to require parole boards to issue final appealable orders.

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I. INTRODUCTION

In 2010, an Ohio jury convicted Gudonavon Taylor for murder.[1] The Montgomery, Ohio Court of Common Pleas sentenced him to an aggregate term of 41 years to life.[2] At the time of the murder, he was seventeen years old.[3] The sentencing court only had discretion as permitted by law; that is to say very little. In fact, the Ohio sentencing statutes require all convicted murderers be sentenced to life in prison, no matter the circumstances of the murder.[4] The only difference in sentencing is the amount of time the offender must serve before becoming eligible for parole.[5] For aggravated murder, an offender over the age of eighteen must serve life without the possibility of parole or be sentenced to death.[6] Recent state legislation modified the sentencing for juvenile offenders,

[1] State v. Taylor, 2013-Ohio-186, ¶ 5 (2d Dist.).

[2] *Id.*

[3] Although the opinion from Taylor's direct appeal states he was eighteen years old at the time of the shooting, *id.* at ¶ 6, this was in clerical error. He was initially brought to stand trial in juvenile court, but was transferred to the court of common pleas with a finding that he was seventeen years old at the time of the offense. Taylor v. Harris, 2019-Ohio-2098, ¶ 13 (11th Dist.) ("'*[T]his Court finds that the above child is more than fourteen years of age, to wit: seventeen years of age, his date of birth being May 21;[sic] 1990 . . . .*'") (emphasis in original).

[4] OHIO REV. CODE ANN. § 2929.02(B) (West, Westlaw through 135th Gen. Assemb.).

[5] *Id.* The statute allows parole eligibility after thirty years for murders where the victim was less than thirteen and there was a sexual motivation, or for murders where the offender was under eighteen but is a sexually violent sexual predator with a sexual motivation. It requires an offender serve life without possibility of parole if he is over the age of eighteen and is a sexually violent predator. All other offenders are eligible for parole after serving fifteen years in prison.

[6] *Id.* § 2929.02(A).

but only by lowering the amount of time the individual must serve before becoming eligible for parole.[7]

These legislative changes would better ensure the efficient release of appropriate juvenile offenders if the Ohio parole procedures had some degree of reliability or transparency. But procedurally speaking, they do not. In 2024, only 12.6 percent of parole-eligible inmates in Ohio were paroled.[8] No administrative regulation controlling Ohio's Adult Parole Authority requires it to explain or justify its decisions, or authorize any judicial review of them. Ohio courts recently reaffirmed their inability to review parole proceedings.[9] One administrative agency of Ohio is paroling less than thirteen percent of its eligible population, is under no obligation to explain why, and suffers no oversight other than public election. This problem is compounded by the requirement that sentencing courts punish all murder and aggravated murder offenses with a mandatory life sentence.[10]

However, this problem is not unique to Ohio. Parole-eligible inmates throughout the country have no legal right—not even a qualified right—to be paroled because of United States Supreme Court precedent on parole boards as administrative agencies.[11] The legislatures of their various states are instead empowered to make any rules they desire regarding parole. Twenty-six of those legislatures also have created sentencing schemes, like Ohio's, which require life in prison for murder offenses, with the only variance being the time until an offender is eligible for parole.[12]

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[7] OHIO REV. CODE ANN. § 2967.132(C) (West, Westlaw through File 25 of the 136th General Assembly (2025-2026) and 2025 Statewide Issue 2 (May election)(2024 H.J.R. No. 8)).

[8] OHIO DEP'T OF REHAB. & CORR., 2024 ANNUAL REPORT 40 (2024). 113 of 898 parole-eligible inmates were granted parole.

[9] Crane v. Ohio Adult Parole Auth., 2023-Ohio-3031, ¶¶ 20–24, 223 N.E.3d 1002, 1008–09 (10th Dist.) (holding that the trial court could not exercise subject-matter jurisdiction over an inmate's denial of parole because it was a decision by a state agency), *appeal denied*, 2023-Ohio-4640, 224 N.E.3d 57. In federal court, this issue is inappropriate for analysis, because it would be a review of a state court's interpretation of its own law or procedure. Crane v. Warden, Madison Corr. Inst., No. 2:24-cv-4170, 2025 WL 296335, at *3 (S.D. Ohio Jan. 24, 2025); *see also* Linger v. State Adult Parole Auth., No. 97APE04-482, 1997 WL 638411, at *2 (Ohio Ct. App. Oct. 14, 1997) (explaining that while statutory authorization could allow review of the parole authority, "it is clear it does not apply to decisions pertaining to parole").

[10] *See supra* note 6.

[11] *See generally* Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1 (1979).

[12] *See* ALA. CODE § 13A-6-2(c) (West, Westlaw through Act 2025-19 of the 2025 Reg. Sess.); ARIZ. REV. STAT. ANN. §§ 13-1105(D); 13-751(A)(2) (West, Westlaw through 2d Reg. Sess. Of the 56th Leg.); ARK. CODE ANN. § 5-10-101(c)(1)(A)(ii) (West, Westlaw through acts effective Feb. 20, 2025 of the 2025 Reg. Sess. of the 95th Gen. Assemb.); COLO. REV. STAT. ANN. §§ 18-3-102(3); 18-1.3-401(1)(a)(V.5)(A); 17-22.5-104(2)(c)(IV) (West, Westlaw through Mar. 7, 2025 of the First Reg. Sess., 75th Gen. Assemb.); GA. CODE ANN.

This Note argues that the simultaneous presence of an unaccountable parole board and a parole-dependent mandatory life sentence applied to a juvenile violates the Eighth Amendment protection against cruel and unusual punishment because juveniles cannot be sentenced to mandatory life without the possibility of parole.[13] Whereas a typical analysis of parole release procedures for juveniles revolves around the substantive aspect of the claim, this Note examines the previously neglected standpoint of procedural due process. In other words, this Note examines whether the systems in place are adequate to protect every similarly situated inmate's possibility of being paroled. Part II will explain the current parole landscape, including Supreme Court guidance in Part II.A., developments in parole litigation in Part II.B., and a survey of mandatory life sentences and their associated parole procedures in Part II.C. Part III will discuss the Constitutional failure of parole-sentencing schemes like Ohio's and recommend they be fixed by procedural safeguards and judicial review of parole proceedings.

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§ 16-5-1(e)(1) (West, Westlaw through 2024 Reg. Sess. of the Ga. Gen. Assemb.); HAW. REV. STAT. ANN §§ 706-656(1)–(2) (West, Westlaw through the 2024 Reg. and 1st Spec. Sess.); IOWA CODE ANN. §§ 707.2(2), 902.1(1) (West, Westlaw through legislation effective Nov. 5, 2024 from the 2024 Reg. Sess. and the Nov. 5, 2024 Gen. Election); KAN. STAT. ANN. §§ 21-6617, 21-6618, 21-6620(b)(1) (West, Westlaw through 2024 Reg. and 1st Spec. Sesss. Of the Kan. Leg. effective on or before Jan. 1, 2025); LA. STAT. ANN. §§ 14:30(C); 14:30.1(B); 574.4(D)(1) (West, Westlaw through 2024 1st Extraordinary, 2d Extraordinary, Reg., and 3d Extraordinary Sesss.); MD. CODE ANN., CRIM. LAW § 2-201(b)(1)(i)-(ii) (West, Westlaw through 2024 Reg. Sess. of the Gen. Assemb.); MASS. GEN. LAWS ANN. ch. 265 § 2(a) (West, Westlaw through Ch. 284 of the 2024 2d Ann. Sess.); MINN. STAT. ANN. §§ 609.185(a), 244.05(4b) (West, Westlaw through 2024 Reg. Sess.); N.M. STAT. ANN. §§ 30-2-1(A), 31-18-14, 31-18-15.3(D) (West, Westlaw through July 1, 2024 of the 2024 2d Reg. Sess. of the 56th Leg.); N.C. GEN. STAT. ANN. §§ 14-17(a), 15A01340.19B(a) (West, Westlaw through 2024 Reg. Sess. of the Gen. Assemb.); OHIO REV. CODE ANN. § 2929.02 (West, Westlaw through 135th Gen. Assemb.); OKLA STAT. ANN. tit. 21 §§ 701.9(A), 13.1(1) (West, Westlaw through 2d Reg. Sess. of the 59th Gen. Leg.); OR. REV. STAT. § 163.105(1)(a) (West, Westlaw through 2024 Reg. Sess. of the 82d Leg. Assemb.); 11 R.I. GEN. LAWS ANN. §§ 11-23-2, 11-23-2.2 (West, Westlaw through Ch. 457 of the 2024 Reg. Sess. of the R.I. Leg.); TENN. CODE ANN. § 39-13-202(c) (West, Westlaw through 2025 1st Extraordinary Sess. of the 114th Tenn. Gen. Assemb.); TEX. PENAL CODE ANN. §§ 19.03(b), 12.31(a) (West, Westlaw through 2023 Reg., 2d, 3d, and 4th Called Sesss. of the 88th Leg.); UTAH CODE ANN. §§ 76-5-202, -3-206(2), -3-207.7(2), -5-203(3)(a) (West, Westlaw through 2024 4th Spec. Sess.); VA. CODE ANN. §§ 18.2-31(A), -10(a) (West, Westlaw through 2024 Reg. Sess. and 2024 Spec. Sess. I); WASH. REV. CODE ANN. §§ 9A.32.040, 9.94A.540(1)(a) (West, Westlaw through 2024 Reg. Sess. of the Wash. Leg.); W. VA. CODE §§ 62-3-15, 61-11-23(a) (West, Westlaw through 2024 Reg. Sess. approved through Feb. 26, 2025); WIS. STAT. ANN. §§ 940.01(1)(a), 939.50(3)(a), 973.014(1g)(a) (West, Westlaw through 2023 Act 272, published Apr. 10, 2024); WYO. STAT. ANN. §§ 6-2-101(b), -10-301(c) (West, Westlaw through 2024 Budget Sess. of the Wyo. Leg.).

[13] *See* Miller v. Alabama, 567 U.S. 460, 465 (2012).

II. THE DUE PROCESS RIGHT AND HOW STATES ARE HANDLING IT

A. *Conflicting United States Supreme Court Guidance Creates a Liberty Interest Protected by Procedural Due Process*

The Supreme Court of the United States has not been silent on the rights guaranteed to both parole-eligible inmates and juvenile inmates. On one hand, an inmate has no legal right to be paroled, or even have their parole decision explained.[14] The parole board of a typical state is part of that state's executive branch, and the Supreme Court stated in *Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex* that "[d]ecisions of the Executive Branch, however serious their impact, do not automatically invoke due process protection; there is simply no constitutional guarantee that all executive decisionmaking must comply with standards to assure error-free determinations."[15] Put simply, *Greenholtz* tells us a parole-eligible prisoner neither has a legal right to be granted parole, nor a legal right to be assured the parole board has meaningfully considered them for it.[16] This is, oddly enough, contradictory to the case-specific holding of *Greenholtz*, that the statutory construction of the Nebraska parole-determination statute at issue created a constitutionally protected liberty interest.[17] The liberty interest in parole determination is therefore conditioned on the language of the establishing statutes for parole. The *Greenholtz* Court emphasized the Nebraska statute had "unique structure and language and thus whether any other state statute provides a protectible entitlement must be decided on a case-by-case basis."[18]

While the *Greenholtz* holding is still good law, the Court has provided some minimal guidelines for parole when a juvenile offender's liberty is implicated. In the 2012 case *Miller v. Alabama*, the Court interpreted the Eighth Amendment to prohibit states from sentencing juveniles to mandatory life without parole.[19] However, the Court did not go as far as detailing what a meaningful opportunity at parole actually requires.[20] This places the precedent

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[14] *See Greenholtz* at 7.

[15] *Id.* at 7 (citing Meachum v. Fano, 427 U.S. 215, 224 (1976); Montayne v. Haymes, 427 U.S. 236, 236 (1976); Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976)). At the time of its release, *Greenholtz* was the latest in a line of decisions lessening judicial oversight over government benefits. *See* Mathews v. Eldridge, 424 U.S. 319, 349 (1976) (disability benefits); Goldberg v. Kelly, 397 U.S. 254, 264 (1970) (welfare); Arnett v. Kennedy, 416 U.S. 134, 157 (1974) (federal employment).

[16] *Greenholtz*, 442 U.S. at 7.

[17] *Id.* at 12 ("We can accept the respondents' view that the expectancy of release provided in this statute is entitled to some measure of constitutional protection.").

[18] *Id.*

[19] *Miller*, 567 U.S. at 465 (2012).

[20] *Id.* at 479 ("'A State is not required to guarantee eventual freedom,' but must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and

in a dangerous position: a juvenile offender is required to have a meaningful chance at parole, but parole boards under *Greenholtz* are not subject to oversight by way of the Courts or any other appellate procedure. What, then, is the extent of the juvenile offender's qualified right to parole? It must be more than pretext—clearly it violates *Miller* for a parole board to hear from an applicant, and without consideration of the factors of the applicant's chance of success in parole, deny them. This brings us to the problem with *Greenholtz*: In such a case, a parole-eligible person is left with no recourse whatsoever.

1. *Procedural Due Process for Juvenile Parolees*

To answer the extent of a juvenile offender's qualified right to parole, we look to the Supreme Court's guidance on procedural due process. Specifically, the Constitution requires procedural due process when a state threatens to deprive an individual of a constitutionally protected liberty or property interest.[21] For the needs of procedural due process to arise, there must be (1) state action, (2) a liberty or property interest cognizable under the clause, and (3) the threat of deprivation.[22] The first and third prongs of this analysis are easily filled in examinations of parole. The decision of whether to grant parole is obviously a state action—it is a state agency deciding whether the state will continue to actively restrict the liberty of an incarcerated person.[23] Assuming the second prong is satisfied, the third prong obviously is. When the parole authority fails to grant parole where appropriate, it deprives the incarcerated person of a liberty interest. The only question remains, is the grant of parole a liberty interest cognizable under the Fourth Amendment? Supreme Court precedent indicates under some circumstances it is.

The *Greenholtz* Court held that the Nebraska state legislature created a liberty interest for a parole-eligible inmate because the statute defining his parole eligibility stated the parole board "shall" grant parole if the conditions were satisfied.[24] Although *Greenholtz* is typically interpreted to allow the

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rehabilitation.'") (quoting Graham v. Florida, 560 U.S. 48, 75 (2010)). *Graham* was a Supreme Court decision prohibiting trial courts from sentencing juvenile offenders to determinate sentences longer than their natural lifespans, because they "guarantee[] [they] will die in prison without any meaningful opportunity to obtain release." *Graham*, 560 U.S. at 79.

[21] The Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972). In *Roth*, the Supreme Court held a professor who was not tenured did not have an enforceable liberty or property interest in being rehired, despite the petitioner being a state university. *Id.* at 576 (distinguishing from Flemming v. Nestor, 363 U.S. 603 (1960), which held a welfare recipient had an interest implicating due process).

[22] *See Roth*, 408 U.S. at 569.

[23] *See* Osborne v. Folmar, 735 F.2d 1316, 1317 (11th Cir. 1984) (allowing the District Court below to analyze an equal protections claim on the basis of parole being a government decision).

[24] Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 12 (1979).

legislature to create such a liberty interest,[25] an entitlement to parole could also be created by the judiciary's interpretation of the Constitution.

The theoretical entitlement to parole becomes actual when examined in the context of the inmate's need and the seriousness of the right. In *Mathews v. Eldridge*, the United States Supreme Court developed a balancing test for what procedural processes might be appropriate when certain liberty interests are implicated.[26] "The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action to assure fairness."[27] Administrative agencies intentionally have lesser procedural protections than courts—it would limit their utility, their intended effect, and simulate a branch of government different than their own for administrative proceedings to be governed by the same rules, trial, and review judicial proceedings are.[28] Even though *Mathews* analyzed a property claim under the Fifth and Fourteenth Amendment,[29] its framework is illuminating for understanding the requirements for a liberty claim under the same. The very minimum requirement of a liberty or property interest is some form of hearing is required before the deprivation of it.[30] However, beyond that, the specific dictates of due process generally require consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[31]

2. *Applying Procedural Due Process to Juvenile Parole*

The first matter to be addressed is whether there is a private interest, and whether that private interest is deprived when parole is denied. Under a *Greenholtz* analysis, no private parole interest exists except where created by mandatory language in the drafting of the parole enabling statute.[32] However, *Miller* creates a similar, yet nonstatutory, liberty interest: A prison sentence must provide a juvenile offender with some meaningful opportunity at release.[33] This requirement of the Eighth Amendment forms a cognizable liberty interest, and is something owed to the juvenile offender, especially in states like Ohio

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[25] Board of Pardons v. Allen, 482 U.S. 369, 371 (1987).

[26] Mathews v. Eldridge, 424 U.S. 319, 348 (1976).

[27] *Id.*

[28] *Id.*

[29] *Id.* at 323.

[30] *Id.* at 333. Although parole release decisions implicate a liberty interest rather than a property interest, the same principle applies.

[31] *Id.* at 335.

[32] Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 12 (1979).

[33] Miller v. Alabama, 567 U.S. 460, 479 (2012).

where murder carries a mandatory life tail. Without the opportunity at parole, the entire sentencing scheme becomes unconstitutional under the Eighth Amendment as applied to juvenile offenders.[34]

i. *The Private Interest Implicated by Parole Decisions Is Weighty*

With the preliminary matter of whether there is a liberty interest satisfied, the analysis turns to the three factors of *Mathews*. The private interest affected by the official action is significant and great; it is whether the incarcerated individual is able to leave the prison or not. The very essence of liberty, i.e., whether one is free to live their life without interference on their physical ability to move, their ability to associate with others, even their ability to have a family, is implicated in the decision to grant or deny parole.[35] It is hard to imagine a private interest which forms a greater need for procedural protection. Combined with the fact that parole release becomes something almost expected under an indefinite sentencing scheme, the private interest becomes greater.[36]

ii. *The Risk of Erroneous Deprivation from Current Procedures Is Probably High*

The second prong is the risk of erroneous deprivation through the use of the procedures prescribed. The exact risk of erroneous decision is difficult to assess in the case of parole release. For one, the task of a parole board is essentially reading a crystal ball. The board must make a prediction about how the inmate will fare under the system of parole and whether they still form a risk to society.[37] "Erroneous decision" in those circumstances is ill-defined, as only an ad hoc analysis can determine if the parole board's predictions were true.[38]

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[34] *See id.* at 479–80. The only difference between a mandatory life tail and mandatory life without the possibility of parole is the possibility of parole.

[35] Meyer v. Nebraska, 262 U.S. 390, 399 (1923); *see also* Allgeyer v. Louisiana, 165 U.S. 578, 589 (1897) (describing the liberty mentioned by the Fourteenth Amendment to encompass the right "to live and work where he will," "to pursue any livelihood or avocation," and "to enter into contracts").

[36] JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY 62 (2009 ed. 2003) ("[T]he use of parole release grew, and instead of using it as a special privilege to be extended to exceptional prisoners, it began to be used as a standard mode of release from prison, routinely considered upon completion of a minimum term of confinement."). Although the statutory language of parole enabling statutes may not grant a truly presumptive right, it is still true that prisoners, families, and the public alike might expect parole to be granted. The public takes that belief into account when expressing its opinion about new laws and to some extent that belief is integrated into the sentencing framework.

[37] *See* Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 13 (1979).

[38] Parole consideration is fundamentally a "predictive judgment" whether a particular person is likely to reoffend. *Id*. at 8. One only knows if their prediction was correct or incorrect after the released person either reoffends or passes away without having reoffended.

Furthermore, it is more difficult to perform this ad hoc analysis on the prisoners denied parole than those granted parole.[39] With that in mind, however, the Ohio Adult Parole Authority only paroles 12.6 percent of its parole-eligible population.[40] This is a shockingly low number that implies some sort of defect in the process of granting parole release. In addition, part of the lack of information on how many decisions might be made erroneously is directly due to the lack of appellate safeguards surrounding parole—there is no body which would declare the decision erroneous. *Greenholtz* created a legal scheme under which a state legislature may choose to have its parole release decisions become unreviewable by higher courts.[41] In states like Ohio, the judiciary has declined to accept jurisdiction over parole release decisions.[42] Without this function in place, there is nobody to say whether the parole board has been correct or incorrect in its assessment of whether an incarcerated person should be released.

iii. *The Strength of the Government's Interest is Low*

The last prong of the *Mathews* analysis is the government's interest, including the functions involved and the fiscal and administrative burdens the additional requirements would entail.[43] There are both government interests supporting greater parole procedures and government interests that counteract them. The government interest supporting greater parole procedures, in a state like Ohio, is that the entire sentencing scheme is rendered unconstitutional without a meaningful opportunity at release. The integrity of its convictions is dependent on the integrity of its parole procedures, and the government needs it to be robust and reliable to defend its procedures against an Eighth Amendment challenge.[44] The government's interest to that end is great. On the other hand, review of parole decisions by judicial officers, even with a deference to the findings of the parole board, has some expense associated with it.[45] Over eight hundred incarcerated people are evaluated each year by the Ohio Parole

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[39] The prisoners granted parole will either return to the penal system or they will not. However, the prisoners denied parole are denied the opportunity to see how they would fare outside of prison.

[40] OHIO DEP'T OF REHAB. & CORR., *supra* note 8, at 40.

[41] *Greenholtz*, 442 U.S. at 12 (discussing how although Nebraska's parole enabling statute used mandatory language creating a cognizable liberty interest, other states may not and therefore could not be reviewed under the same test).

[42] Crane v. Ohio Adult Parole Auth., 2023-Ohio-3031, ¶¶ 20-24, 223 N.E.3d 1002, 1008–09 (10th Dist.).

[43] Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

[44] If no parole procedures were available, then the mandatory life sentences for juveniles would be unconstitutional. *See supra* note 34. When parole procedures are inadequate, the state may offer an insufficiently "meaningful opportunity to obtain release" to meet the constitutional requirements. Miller v. Alabama, 567 U.S. 460, 479 (2012).

[45] This expense is potentially offset by the reduction of incarcerated people that might result from parole. Some describe mass incarceration as "a vast fiscal dark hole." TODD R. CLEAR & NATASHA A. FROST, THE PUNISHMENT IMPERATIVE 157 (2014).

Authority.[46] Although that is a high number, parole applicants are spread throughout the state, and a deferential review of the Parole Authority would not be overly burdensome on the state's numerous judges.

B. *Litigation in State Courts Attempts to Tackle the Substantive Due Process Right in Parole*

In recent years, criminal defense attorneys in some states have begun litigating what a meaningful chance at parole looks like through the lens of substantive due process. This has been a focus of litigation particularly in Illinois, with two illustrative cases coming before the Illinois intermediate appellate court. The first of these, *People v. Carrasquillo*, concerns a juvenile offender who was convicted of shooting and killing a Chicago police officer.[47] As part of the challenge to his sentence, he contended "that his eligibility for parole [was] 'illusory' because he has repeatedly been denied parole for more than 20 years despite ample evidence of his significant rehabilitation since his incarceration."[48] The *Carrasquillo* Court held he was denied a meaningful opportunity for release because his sentenced ranged up from two hundred years and because parole boards would, substantively speaking, not release someone convicted of killing a police officer.[49] Because the claim in *Carasquillo* was made pointing toward substantive, rather than procedural due process, the remedy was fashioned substantively as well.[50] The Court of Appeals remanded Carasquillo's case to the trial court to conduct a new sentencing hearing that delivered on the meaningful opportunity for parole.[51]

People v. Cavazos had a similar procedural background, concerning a juvenile offender convicted for "two counts of first degree murder, attempted first degree murder, unlawful possession of a stolen motor vehicle, and aggravated discharge of a firearm."[52] Cavasos, unlike Carasquillo above, was sentenced to an aggregate of fifty years.[53] The Court of Appeals declined to vacate his sentence and remand for resentencing, arguing that recent

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[46] OHIO DEP'T OF REHAB. & CORR., *supra* note 8, at 40.

[47] People v. Carrasquillo, 2023 IL App (1st) 211241, ¶ 5, 227 N.E.3d 763, 767.

[48] *Id.* at ¶ 3.

[49] *Id.* at ¶ 51, 227 N.E.3d at 778 ("It is clear that, although Mr. Carrasquillo has had the apparent opportunity for release, because of his sentence and the offense for which he was convicted, such opportunity will never be 'meaningful' despite his demonstrated maturity and rehabilitation.").

[50] *See id.* The challenge was to Mr. Carrasquillo's particular sentence and opportunity for meaningful release, not to the general system of parole release in Illinois. It raised only a substantive claim, not a procedural one.

[51] *Id.* at ¶ 61, 227 N.E.3d at 780.

[52] People v. Cavazos, 2023 IL App (2d) 220066, ¶ 1, 232 N.E.3d 80, 84 (citations omitted).

[53] *Id.* at ¶ 26, 232 N.E.3d at 88.

amendments to the Illinois parole statute provided him a meaningful opportunity of parole and thus did not constitute a de facto life sentence.[54]

Although this litigation pushes the needle forward on the rights for parole-eligible convicts, it addresses only the issue of what substantive decisions should be made in a case with a practical life sentence. Illinois, unlike Ohio, does not have a mandatory life tail for murder sentences.[55] This is what enabled the *Carrasquillo* court to remand the case for new sentencing. However, in states like Ohio with a mandatory life tail, such remedies are not available. Even if an Ohio appellate court found there was a violation of a parole-eligible murder convict's substantive due process rights, the trial court is not statutorily authorized to impose any sentence not carrying a life tail.[56] The only remedy outside of legislative change is for the state high courts of mandatory life-sentence states to impose a meaningful opportunity of release by way of procedural due process in parole.

C. *Parole Procedures in the Several States and Their Adequacy in Light of the Miller Interest*

The problem of mandatory life tails is not small or relegated to a particular region of the country. Instead, this Note has identified twenty-six different states that punish some homicide offense with a mandatory life tail.[57] It is a difficult process to evaluate the parole release procedures of each state—a process which is beyond the scope of this Note. However, some research has surveyed the parole-release procedure of several states and come to differing conclusions. The Prison Policy Initiative gives a bleak view of parole-release, giving all states a grade below B.[58] Some of those states, like Ohio, have absolute discretion in their parole procedures which may not be appealed.[59] Some states, such as Massachusetts, only allow representation at parole hearings for inmates serving a life sentence.[60] However, some of those states have more robust procedural protections which may mitigate the difficulties provided by mandatory life tails

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[54] *Id.* at ¶ 46, 232 N.E.3d at 95.

[55] "A sentence with a 'life tail' is a sentence that is indefinite in length, beginning with the mandatory minimum term the trial court imposes and extending up to a maximum term of life in prison." State v. Henderson, 2020-Ohio-4784, ¶ 2 n.1, 162 N.E.3d 776, 779 n.1.

[56] *See supra* note 5 and accompanying text.

[57] *See supra* note 12.

[58] Jorge Renaud, *Grading the Parole Release Systems of all 50 States*, PRISON POL'Y INST. (Feb. 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html [https://perma.cc/6P8G-TV3M]. See also Kristen Bell, *The Forgotten Jurisprudence of Parole and State Constitutional Doctrines of Vagueness*, 44 CARDOZO L. REV. 1953, 2014 (2023) for a 50-state survey on state parole statutes.

[59] *See supra* note 10.

[60] ALEXIS LEE WATTS, EDWARD E. RHINE & CATHERINE MCDONOUGH, PROFILES IN PAROLE RELEASE AND REVOCATION: EXAMINING THE LEGAL FRAMEWORK IN THE UNITED STATES: MASSACHUSETTS 7 (2018).

for juvenile offenders. Wyoming, as the Prison Policy Institute notes, is an excellent example of this. Wyoming has implemented many of the procedural protections missing from other States' systems.[61] For example, in Wyoming, inmates know the information the parole board considers upon request and are provided with the scores used to assess their eligibility.[62] Even further, the inmates may review specific questions used to compute the scores for factual accuracy.[63]

Some states, such as Florida, have eliminated parole entirely.[64] Florida, by allowing discretionary definite terms, does not run into a procedural due process problem under *Miller*.[65] Thus, despite Florida's complete lack of parole protections, it is not required to make any further procedural changes in order to keep abreast of the *Miller* liberty interest. Still other states, such as Alaska, have some parole procedures, but are not beholden to them in order to constitutionally punish juvenile offenders. In Alaska, only a definite sentence is available to punish the crime of murder.[66] Alaska has little to no procedural protections in its parole-release decisions. Although an inmate may be represented by counsel at the hearing, no attorney may be appointed, and an indigent offender will not be represented at all.[67] The parole board in Alaska may release an inmate upon a finding they have a "reasonable probability" the inmate will satisfy the release criteria; however, if the board declines to grant parole, it must only notice issue to the inmate.[68] Alaska is permitted to have such minimal procedural protections because it does not rely as severely on the institution of parole to render its sentencing scheme constitutional.

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[61] The Prison Policy Institute has graded Wyoming with a B- for its parole release system, the highest in the country. Renaud, *supra* note 58.

[62] ALEXIS LEE WATTS, NI ZHANG & EDWARD E. RHINE, PROFILES IN PAROLE RELEASE AND REVOCATION: EXAMINING THE LEGAL FRAMEWORK IN THE UNITED STATES: WYOMING 6 (2017).

[63] *Id.*

[64] Bridget M. Dennis, Student Work, *Pa-Rolling Out a New Solution: How Florida Should Address its Broken Parole System*, 50 STETSON L. REV. 631, 631–32 (2021) ("Florida is currently functioning without a parole system for nearly all inmates sentenced for crimes committed on or after October 1, 1983.") (citing FLA. COMM'N ON OFFENDER REV., ANNUAL REPORT 4 (Dec. 2017)).

[65] *See* FLA. STAT. ANN. §§ 775.082(1)(b)–(3)(c) (West, Westlaw through 2024 2d Reg. Sess.). Juvenile offenders may, at the trial court's discretion, be sentenced to a definite term. Therefore, no juvenile offender will be sentenced to a mandatory life sentence, either with or without the possibility of parole, which is what *Miller* protects against. 567 U.S. at 479.

[66] *See* ALASKA STAT. ANN. § 12.55.125(b) (West, Westlaw through Ch. 61, Exec. Ords. 125, 133–135, Ballot Measure 1 of the 2024 2d Reg. Sess. of the 33d Leg.).

[67] ALEXIS LEE WATTS, KEVIN R. REITZ & BRENDAN GLEASON, PROFILES IN PAROLE RELEASE & REVOCATION: EXAMINING THE LEGAL FRAMEWORK IN THE UNITED STATES: ALASKA 7 (2017).

[68] *Id.* at 8.

III. NECESSARY FIXES

In the context of *Miller*, the chance for a juvenile offender to have a meaningful opportunity at parole is a constitutionally guaranteed liberty interest.[69] Procedural due process is required when the interests of liberty and property in the Fourteenth Amendment are implicated.[70] States like Ohio deal with the direct implications of *Miller* by guaranteeing some opportunity of parole to juvenile offenders; they cannot be sentenced to life without parole at all.[71] However, looking at the deeper implications of *Miller* and *Roth*, that chance at parole must include procedural protections.[72] If there are mandatory life tails for juveniles, then there must be procedures to protect the juvenile offenders' constitutional liberty interest. A state which is in violation of this principle, simultaneously having a mandatory life tail for juveniles but no procedural protections, has two potential remedies. The first is that they remove the mandatory life tail and add an option of determinate sentencing, eliminating reliance on parole.[73] Some states, in fact, offer determinate sentences to only juvenile offenders for certain homicide offenses.[74] The other option is for the state to strengthen its parole procedures, thus complying with the seriousness of the liberty interest implicated by mandatory life tails for juvenile offenders.[75]

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[69] Miller v. Alabama, 567 U.S. 460, 465 (2012).

[70] The Board of Regents of State Colleges v. Roth, 408 U.S. 564, 569–70 (1972).

[71] OHIO REV. CODE ANN. § 2929.02(A) (West, Westlaw through 135th Gen. Assemb.) ("[N]o person who is not found to have been eighteen years of age or older at the time of the commission of the [murder] shall be imprisoned for life without parole.").

[72] *See supra* note 20 and accompanying text, discussing how the *Miller* right to parole must be "meaningful."

[73] A determinate sentence will offer a "meaningful opportunity to obtain release" without reliance on procedurally robust parole systems. *See* Graham v. Florida, 560 U.S. 48, 75 (2011).

[74] *See* DEL. CODE ANN. tit. 11, §§ 636(b), 4209, 4209A (West, Westlaw through Ch. 3 of the 153d Gen. Assemb.); FLA. STAT. ANN. §§ 775.082(1)(b)–(3)(c) (West, Westlaw through 2024 2d Reg. Sess.); MICH. COMP. LAWS ANN. §§ 750.316(1), 769.25 (West, Westlaw through P.A.2025, No. 2, of thee 2025 Reg. Sess., 103d Leg.); MISS. CODE ANN. §§ 97-3-21(2)(b)–(c) (West, Westlaw through 2024 Reg., 1st, and 2d Extraordinary Sessions effective through July 1, 2024); MO. REV. STAT. § 565.033 (West, Westlaw through 2024 2d Reg. Sess. of the 102d Gen. Assemb.); NEB. REV. STAT. ANN. § 28-105.02(1) (West, Westlwa through Feb. 26, 2025, of the 1st Reg. Sess. of the 109th Leg.); State v. Dingman, No. 2018-0662, 2021 WL 1549778, at *1 (N.H. Apr. 20, 2021); N.Y. PENAL LAW §§ 125.26–27 (McKinney, Westlaw through L.2025 Chs. 1–49, 61–100); 18 PA. STAT. AND CONS. STAT. ANN. § 1102.1(a) (West, Westlaw through Act 2 of the 2025 Reg. Sess.); S.D. CODIFIED LAWS §§ 22-6-1, 22-6-1.3 (West, Westlaw through 2025 Reg. Sess. effective Mar. 10, 2025).

[75] Such strengthening would remove the due process problem implicated by a mandatory life tail. *See supra* Part II.A.

A. *Removing Indeterminate Sentencing Prevents the Need for Procedural Protections*

Some states do not utilize mandatory indeterminate sentences at all. Kevin R. Reitz, a leading scholar, has described the states as having "wildly dissimilar mechanisms . . . to determine when people sentenced to prison will be released."[76] In Georgia's system, "parole boards [have] authority to release after a prisoner has served 33% of the maximum judicial sentence."[77] A system like Georgia's is reliant on there being a maximum judicial sentence in the first place.[78] So although Georgia's "parole board's release-denial decisions are 'discretionary' in an almost unencumbered sense of the term,"[79] the State does not have an issue with whether it is in violation of *Miller* or *Graham*. If an appellate court ever holds that a sentence does not provide a meaningful opportunity for a juvenile offender to one day be released, the sentence may be vacated, and the offender may be imprisoned for a lesser sentence. This is the same procedure followed to resolve a successful substantive due process challenge in Illinois state court.[80]

Some states go even further in their nonreliance on parole procedures. In Colorado, "an offender enters prison with no possibility but to serve the full judicial maximum sentence—unless something changes."[81] States like Colorado provide the least sentencing flexibility, and therefore the easiest compliance with *Miller*.[82] However, this lack of flexibility makes for a less

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[76] Kevin R. Reitz, *Prison-Release Reform and American Decarceration*, 104 MINN. L. REV. 2741, 2741 (2020).

[77] *Id.* at 2755.

[78] Although this is Georgia's general parole-release rule, the state applies a different standard to serious violent felonies. Someone convicted of a serious violent felony, some of which have mandatory life sentences, may be paroled after a minimum of thirty years, if it is their first such conviction. *See* GA. CODE ANN. § 17-10-6.1(c)(1) (West, Westlaw through Laws 2014, Act 669, § 17, eff. April 29, 2014). Although Georgia's parole-release system does not strictly comply with the above-stated "33 percent" rule in all situations, it still demonstrates the use of percentages as a category for parole-release dependent on definite sentences.

[79] Reitz, *supra* note 76, at 2756.

[80] People v. Carrasquillo, 2023 IL App (1st) 211241, ¶ 1, 227 N.E.3d 763, 766.

[81] Reitz, *supra* note 76, at 2759–60. Although this is Colorado's general parole-release rule, the state does have some felonies with mandatory life sentences, for which an offender becomes parole eligible after a certain number of years. *See* COLO. REV. STAT. ANN. §§ 18-3-102(3), 18-1.3-401(1)(a)(V.5)(A), 17-22.5-104(2)(c)(IV) (West, Westlaw through legislation effective Mar. 7, 2025 of the 1st Reg. Sess., 75th Gen. Assemb.). However, the general rule still demonstrates the category of states which do not allow for parole release and therefore would require definite sentences for all juvenile offenders. Florida is one example of a state which fits that category for every offense. *See supra* note 74.

[82] If juvenile offenders are not sentenced to life sentences at all, or any indeterminate sentence, then their right to a meaningful opportunity for release is not impacted as significantly by issues in parole procedure.

effective fix than would be provided by procedural reform. Parole systems were instituted in the first place to provide states with greater discretion over the who and how of sentencing and release for prisoners.[83] Furthermore, the government and the taxpayer both have valuable incentives in the success of parole procedures. Mass incarceration presents serious risks for the community and the government alike.

> It has been a vast fiscal dark hole, guaranteeing that for generations public money must be moved from public goods such as schools, health care, and infrastructure to instead support and maintain a quasi-permanent, separate community of the incarcerated and controlled. And it has been empirically wrong, doing shockingly little about the crime problem it was originally designed to address.[84]

The path towards dismantling this oppressive and ineffective structure revolves around "reduc[ing] either the number of people who go to prison, how long they stay, or (for maximum effect) both."[85] To achieve this goal, it is not sufficient only to make sentences definite. Definite sentences are imposed by judges at a sentencing hearing. Although evidentiary factors go into sentencing determinations, judges are not always in a position to assess how the offender might react to the prison environment, and whether they might need a shorter or longer sentence to become fit to reenter society.[86] Parole boards, on the other hand, "represent one of the most rapid levers that can be used to reduce length of stay."[87] The problem currently facing parole, however, is that not enough people are paroled, and parole boards are not subject to enough oversight.[88] This reveals the more appropriate solution: procedural safeguards.

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[83] In the 1960's, states were interested in reforming prisoners but had difficulty predicting at the time of sentencing which prisoners were more capable of reform through the prison system. PETERSILIA, *supra* note 36, at 61. Parole boards and procedures assessed eligibility for release once some rehabilitative measures had already taken place. *Frequently Asked Questions*, U.S. PAROLE COMM'N, https://www.justice.gov/uspc/frequently-asked-questions [https://perma.cc/K73C-JM7Z] ("[P]arole prevents needless imprisonment of those who are not likely to commit further crime and who meet the criteria for parole."). In fact, the holding in *Greenholtz*, providing the parole boards with greater discretion, was in part based on the early stage of parole implementation. Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 8 (1979).

[84] CLEAR & FROST, *supra* note 45, at 157.

[85] *Id.* at 160.

[86] The process of parole release "differs from the traditional mold of judicial decisionmaking in that the choice involves a synthesis of record facts and personal observation filtered through the experience of the decisionmaker and leading to a predictive judgment as to what is best both for the individual inmate and for the community." *Greenholtz*, 442 U.S. at 8.

[87] CLEAR & FROST, *supra* note 45, at 169.

[88] *See* OHIO DEP'T OF REHAB. & CORR., *supra* note 8, at 40 (showing that the rate of parole is 12.6 percent); Crane v. Adult Parole Auth., 2023-Ohio-3031, ¶ 29 223 N.E.3d 1002,

B. *Institutional Safeguards Prevent Unconstitutional Punishments from Continuing*

Some states have already begun instituting procedural safeguards for the administrative process of parole-release. In years past, California parole procedures formed a liberty interest cognizable under the Fourteenth Amendment and demanding the protections of substantive due process.[89] However, in 2010, the Ninth Circuit changed its tune, deciding the denial of parole was a matter of state law, and could be justified off of minimal evidence.[90] The history of appellate review in California parole decisions has created a more robust and procedurally complex system, which sometimes provides a presumption of parole to the incarcerated. California has the governor and the parole board work in tandem to determine parole-release. The parole board, when acting contrary to the governor's recommendation, must affirmatively point to some fact supporting its finding that the convict does not fit the parole-release guidelines.[91] Some other scholars have recommended greater reporting from the parole authorities, in defiance of *Greenholtz*.[92] In order to preserve the right in *Miller* to meaningful parole, there must be some level of procedural due process in the associated proceedings.[93] Only one question remains: What degree is appropriate?

1. *Mandatory Hearings*

The Ohio system, for all the faults identified herein, has appropriately reacted to some cries for fairness. A new scheme of juvenile sentencing known as SB 256 was passed in 2021, effectively banning life without the possibility of parole for sentences committed as a juvenile.[94] SB 256 also mandated that

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1009 (10th Dist.) (holding that an Ohio trial court did not have jurisdiction to review a parole release decision by the Ohio Adult Parole Authority).

[89] Roger S. Hanson, *The Convolutions, Evolutions, and Revolutions of the California State Parole Process*, 32 WHITTIER L. REV. 273, 306–309 (2011). This article discusses two cases when federal courts examined California parole for challenges to their procedural validity. In *McQuillion v. Duncan*, 306 F.3d 895, 902 (9th Cir. 2002), the Court of Appeals held that the statutory scheme created the presumption that parole would be granted. Then again in *Biggs v. Terhune*, 334 F.3d 910, 914 (9th Cir. 2003), the Court of Appeals reaffirmed *McQuillion* based on the statute using mandatory language, referencing back to *Greenholtz*.

[90] Hayward v. Marshall, 603 F.3d 546, 562–563 (9th Cir. 2010).

[91] *See generally* Hanson, *supra* note 89.

[92] Edward E. Rhine, Joan Petersilia & Kevin R. Reitz, *Improving Parole Release in America*, 28 FED. SENT'G REP. 96, 97 (2015) (recommending parole boards give grounds for release decisions against a presumption of eligibility).

[93] Board of Regents of State Colleges v. Roth, 408 U.S. 564, 571 (1972).

[94] Karmah Elmusa, *Ohio Passes SB 256, Banning Life Without Parole for Children in the State*, CAMPAIGN FOR FAIR SENT'G OF YOUTH, https://cfsy.org/ohio-passes-sb-256-

juvenile offenders, with any conviction lesser than the murder of three people, be eligible for parole after eighteen years (no murder victim), twenty-five years (one victim), or thirty years (two victims).[95] To the State's credit, these are exactly the changes some scholarship has called for.[96] Additionally, in Ohio, "[i]f parole is not recommended at either the institution hearing or a Full Board hearing, and the recommendation is not a continuance to the expiration of the maximum sentence, the Board shall set a continued hearing date, not to exceed 10 years from the current hearing date."[97] This too parallels some recommended reforms.[98] However, these reforms do not create any accountability for the parole board or provide for any opportunity to review the board's determination. Instead, they bring parole eligible prisoners in front of the parole board more quickly and frequently. However, a parole board such as Ohio's, which has low parole percentages, will not see the same rate of prisoner release as one might expect from a State who considers parole more actively. The procedural safeguards guaranteeing juvenile offenders a meaningful opportunity at release must similarly come with oversight.

2. *Right to Counsel*

Many parole-granting institutions do not assign counsel to parole-eligible prisoners.[99] Instead, many of them require prisoners who are not legally trained

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banning-life-without-parole-for-children-in-the-state/ [https://perma.cc/3LQN-52LC]; *see also* OHIO REV. CODE ANN. § 2967.132 (West, Westlaw through File 25 of the 136th General Assembly (2025-2026) and 2025 Statewide Issue 2 (May election)(2024 H.J.R. No. 8)).

[95] OHIO REV. CODE ANN. § 2967.132(C)(1)–(3) (West, Westlaw through File 25 of the 136th General Assembly (2025-2026) and 2025 Statewide Issue 2 (May election)(2024 H.J.R. No. 8)).

[96] Brianna Weiss, Comment, *Meaningful Opportunity for Release: Parole Board Standards for Juveniles Under* Graham*,* Miller*, and the Eighth Amendment*, 52 TEX. TECH L. REV. 411, 413 (2020); *see also* Rebecca Lowry, Note, *The Constitutionality of Lengthy Term-of-Years Sentences for Juvenile Non-Homicide Offenders*, 88 ST. JOHN'S L. REV. 881, 904 (2014) (discussing non-homicide offenders only).

[97] OHIO DEP'T OF REHAB. AND CORR., PAROLE BOARD HANDBOOK 24 (2024).

[98] Weiss, *supra* note 96, at 413. This author claims a ten-year requirement "provides flexibility to the parole board, and at the same time, ensures that the juvenile can show growth." *Id.* at 427 (citing Sarah French Russell, *Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment*, 89 IND. L.J. 373, 410 (2014)).

[99] Michell Lewin & Nora Carroll, *Collaborating Across the Walls: A Community Approach to Parole Justice*, 20 CUNY L. REV. 249, 266 (2017) (commenting on the state of parole in New York) ("There is also no right to counsel at parole interviews, nor is counsel permitted in the room during the proceeding."); Edward E. Rhine, Joan Petersilia & Kevin R. Reitz, *The Future of Parole Release*, 46 CRIME & JUST. 279, 313 (2017) ("Only a handful of states provide counsel for indigent prisoners at state expense."); OFF. OF THE OHIO PUB. DEF., OHIO PAROLE TOOLKIT: A COMPREHENSIVE SET OF TOOLS FOR NAVIGATING THE PAROLE BOARD REVIEW PROCESS 7 (2022) (explaining that in Ohio, a prisoner must represent themselves at their "Panel Hearing," but may be provided with counsel at a "Full

to represent themselves. Although it is true that while incarcerated, some prisoners may learn how to navigate the law and legal systems, there are always significant drawbacks to representing oneself, especially without formal training.[100] A right to counsel is a step forward towards procedural justice in parole proceedings. It gives the incarcerated a valuable resource to effectively make their case for parole to the board—an attorney can effectively package and deliver their client's situation to the parole-granting authority. However, this right still does not satisfy the standards of due process, because there is no oversight or even a statement of decision from the parole granting authority.

Part of what makes the court system in the United States reliable is the system of appeals. Intermediate appellate courts "primarily provide an appeal of right."[101] Oversight is necessary for the simple matter that when applying the law, even well trained and politically independent judges are capable of making mistakes. They are capable of misapplying relevant law, abusing their discretion, and ultimately depriving people of their legal rights. They are capable of making decisions contradictory to one another, or contradictory to other similar situations. Courts of Appeals help provide uniformity and stability in the law.

Ultimately, *Greenholtz* establishes that under the right conditions, an inmate can have a legal right to parole.[102] As a result, the Supreme Court allowed itself to review an appeal with Nevada state prisoners as a party, alleging the unconstitutional denial of a legal right.[103] An attorney at a parole board hearing can only do so much. The attorney can present evidence that a prisoner might be a good prospect for parole, that she might do well and be reintegrated into functioning society. But without any system of appeal, an attorney is incapable of proving that the inmate should be granted parole. The attorney is unable to show the evidence to a higher authority and work further toward release for their client. The system of appeal could ensure uniformity and reliability throughout the parole granting process.

Board Hearing"). For a complete overview of the parole release procedures in all 50 states, including their respective rights to counsel and burdens of persuasions, see *Profiles in Parole Release and Revocation: Examining the Legal Framework in the United States*, UNIV. OF MINN. ROBINA INST. OF CRIM. L. & CRIM. JUST., https://robinainstitute.umn.edu/publications/profiles-parole-release-and-revocation-examining-legal-framework-united-states [https://perma.cc/6TXY-2GYT].

[100] Lewin & Carroll, *supra* note 99, at 271–72.

[101] COUNCIL OF CHIEF JUDGES OF THE STATE CTS. OF APPEAL & NAT'L CTR. FOR STATE CTS., THE ROLE OF STATE INTERMEDIATE APPELLATE COURTS 1 (2012).

[102] Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 12 (1979) (describing how Nevada set up its parole enabling statute using language creating an enforceable legal right).

[103] *Id.* at 3–4.

3. *Final Appealable Orders and Limited Discretion*

During the decline of parole towards the end of the twentieth century, political actors expressed unrest and discomfort with the amount of discretion which parole authorities were afforded. "The political Left was concerned about excessive discretion that permitted vastly different sentences in presumably similar cases, and the political Right was concerned about the leniency of parole boards."[104] Both of these criticisms rest on the discretion of the parole boards. Indeed, even the criticism promoted by this Note, that the Ohio Parole Board simply releases too few parole-eligible prisoners, is a challenge to the Parole Board's use of discretion. The key focus of procedural due process, as applied to parole release programs, should be to limit the discretion of parole boards as much as is feasible, while still maintaining the ability to quickly and effectively deal with parole decisions. The second portion is necessary to achieve the goals of parole, including the ability to reduce the prison population size and the associated financial burden.[105]

Limiting discretion is synonymous with creating uniformity in law—the less discretion parole boards have, the more similarly situated cases will be decided similarly, and vice versa.[106] Therefore, the intended result of limiting discretion can be achieved by creating uniformity in parole release decisions. Uniformity would also shore up questions about due process. It is easy to claim a system is procedurally defunct if it comes to different conclusions when faced with the same situation, but difficult when it does not.[107]

Appellate review is widely regarded as an effective way of ensuring uniformity of law.[108] This goal is commonly known as error-correction.[109]

> The idea of error seems intuitive. The role of the trial judge is to adjudicate a dispute in a manner consistent with applicable legal standards. We might therefore think of error as arising whenever the trial court fails to implement governing law correctly. On this view, fulfillment of the institutional error-correction function

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[104] PETERSILIA, *supra* note 36, at 65.

[105] *See supra* note 45 and accompanying text.

[106] Rhys Hester, *Uniformity and Discretion: Lessons on Reform from a Failed Sentencing Guidelines Effort*, 8 CORR. 485, 487 (2023) (discussing how in sentencing, greater judicial "discretion meant that two virtually identical cases could result in drastically different, life-altering outcomes depending on arbitrary factors").

[107] *See id.* at 499.

[108] *See* Mucha v. King, 792 F.2d 602, 605–06 (7th Cir. 1986); Evan Tsen Lee, *Principled Decision Making and the Proper Role of Federal Appellate Courts: The Mixed Questions Conflict*, 64 S. CAL. L. REV. 235, 248 (1991) ("Clearly this is a goal of appellate review . . . to achieve such uniformity in their rulings.").

[109] Steven Shavell, *The Appeals Process as a Means of Error Correction*, 24 J. LEGAL STUD. 379, 381 (1995) ("The social justification for the appeals process to be investigated here concerns correction of error.").

> would seemingly require reversal whenever the trial court made such an error.[110]

Error can appear anywhere, not just in parole release decisions. In fact, the very basis of appellate review is the notion that even judges, who are elected or appointed on the basis of their ability to correctly interpret law, can make errors in their legal rulings. Ohio Parole Board members, despite being appointed by the Director of the Department of Rehabilitation and Correction and having to meet mandatory educational or experiential requirements, may grant or deny parole in error as well.[111] Because they can act in error, and because they have such discretion afforded to them, it can be difficult as an incarcerated person to find recourse after being denied parole.[112] Although typically under a *Greenholtz* analysis the denial would not form a cognizable liberty interest,[113] a juvenile offender who is sentenced to mandatory life in prison has a constitutional right to a meaningful chance at release.[114]

Importantly, parole boards operate in a quasi-judicial capacity when making parole release determinations. Sentencing is traditionally a power assigned to the judicial branch.[115] In administering a parole board, the executive branch takes on part of that sentencing power. Although the parole board does not actually create the sentence for a criminal, the possibility of parole is weaved into the term that a judge may sentence and therefore folds the parole determination into the sentence. As seen in *Miller*, the chance at parole can make even an unconstitutional sentencing scheme, e.g., mandatory life in prison for a juvenile offender, constitutional.[116] The state relies on the possibility of parole being part of the sentence when it is time to defend the sentence against an Eighth Amendment challenge. The state similarly must consider the parole decision part of the sentence when it is time to institute procedural safeguards.

There are two main reasons why final appealable orders and the availability of appellate review are the appropriate vehicles to fix sentencing schemes requiring mandatory life in prison sentences for juvenile offenders. The first is

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[110] Chad M. Oldfather, *Error Correction*, 85 IND. L.J. 49, 55 (2010). Oldfather goes on to discuss how although this appears to be the purview of appellate courts, it has more complexity, with improperly preserved objections and "harmless" error not constituting grounds for reversal. However, neither of those particular exceptions are of particular relevance in the category of parole release decisions.

[111] *Ohio Parole Board*, OHIO DEP'T OF REHAB. & CORR., https://drc.ohio.gov/systems-and-services/1-parole/ohio-parole-board [https://perma.cc/UN6K-RZPK].

[112] Ohio and many other states do not allow judicial review of parole board decisions. *See supra* note 9.

[113] Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 7 (1979).

[114] Miller v. Alabama, 567 U.S. 460, 465 (2012).

[115] Trial court judges typically design sentences within the boundaries prescribed by legislation, and even sentencing commissions are agencies within the judicial branches of government. *See, e.g.*, 28 U.S.C. § 991(a) (establishing an independent United States Sentencing Commission within the judicial branch of the United States).

[116] *See Miller*, 567 U.S. at 479.

it creates a uniformity in law, which helps to limit the discretion of the parole authorities. The second is the parole authorities take on a quasi-judicial role by choosing to continue or terminate a sentence. When sentencing schemes are explicitly reliant on parole provisions, these reasons increase in their seriousness. Importantly, the logic of final appealable orders is not lost on other administrative agencies. In Ohio, "[a]ny party adversely affected by any order of an agency issued pursuant to an adjudication may appeal from the order of the agency to the court of common pleas."[117] However, the Ohio Court of Appeals has held that the aforementioned portion of the Ohio Administrative Procedures Act is not applicable to the decisions of the Adult Parole Authority, citing *Greenholtz* in support.[118] Any good reason to specifically exempt the decisions of the parole board, despite their unparalleled impact as a state agency on a citizen's liberty, is mitigated in the light of the cognizable liberty interest created by *Miller*. Decisions of the parole authority, as applied to juvenile offenders sentenced to a mandatory life tail term, should be appealable.

IV. CONCLUSION

Parole boards throughout the United States operate with broad discretionary powers.[119] As administrative agencies, their decisions are subject to lesser procedural review than a court's decisions would be.[120] However, some states have begun to overly rely on the discretionary and unreviewable nature of parole boards, and have crafted "mandatory life-tail" sentencing schemes.[121] These sentences would be unconstitutional if they did not come with the possibility of parole.[122] The possibility of parole in cases such as those implicates serious liberty interests. Without a meaningful chance at release, juvenile offenders may never have the chance to experience the world as adults. Because that interest is so great, and is constitutionally necessary, some level of procedural due process is necessary to protect the incarcerated juvenile's liberty interest. This includes a right to counsel but is best protected by mandating parole release determinations become appealable. It would help ensure uniformity of the law and would properly recognize parole's position as a quasi-judicial proceeding taking on some sentencing power from the courts.

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[117] OHIO REV. CODE ANN. § 119.12 (West, Westlaw through File 25 of the 136th General Assembly (2025-2026) and 2025 Statewide Issue 2 (May election)(2024 H.J.R. No. 8)).

[118] Linger v. Ohio Adult Parole Auth., No. 97APE04-482, 1997 WL 638411, at *2–3 (Ohio Ct. App. Oct. 14, 1997).

[119] *See generally* Rhine, Petersilia, & Reitz, *supra* note 92.

[120] *See* Mathews v. Eldridge, 424 U.S. 319, 348 (1976).

[121] *See supra* note 12.

[122] *See* Miller v. Alabama, 567 U.S. 460, 465 (2012).