



# State v. Link, 297 Or App 126

Oregon Court of Appeals

April 17, 2019

## SB 1008

SB 1008 would correct the constitutional problems identified in *Link* by requiring the court to consider the qualities of youth identified in *Roper*, *Graham*, and *Miller* prior to imposition of the most severe sentence for aggravated murder on a child. **First**, the juvenile court must evaluate whether the youth offender charged with aggravated murder should be prosecuted as an adult based on individualized consideration of the youth's sophistication and maturity and amenability to treatment. **Second**, if waived to the adult system, the sentencer must consider specific youth-based factors before imposing sentence. **Third**, any juvenile sentenced to a lengthy term of imprisonment is eligible for release onto parole or post-prison supervision after having served 15 years. At that time, the Board of Parole is required to consider the age and immaturity at the time of the offense and the person's behavior thereafter, to determine if the person has demonstrated maturity and rehabilitation.

SB 1008 guarantees that Oregon's most severe penalties are imposed only after the sentencer take into consideration the qualities of youth. SB 1008 also guarantees that all youth subject to those penalties have a meaningful opportunity to obtain release after a reasonable period of time.

## THE CASE

The Oregon Court of Appeals held in *State v. Link*, 297 Or App 126 (2019) that the imposition of life imprisonment for the crime of aggravated murder, under ORS 163.105, on juvenile offenders without individualized considerations of youth by the sentencing court is unconstitutional under the Eighth Amendment to the United States Constitution as articulated in *Miller v. Alabama*, 567 US 460 (2012). In reaching this conclusion, the court explained that in evaluating whether the principles of *Roper v. Simmons*, 543 US 551 (2005), *Graham v. Florida*, 560 US 48 (2010), and *Miller* apply at juvenile sentencing two questions must be affirmatively answered. First, does the case involve the imposition of the state's most severe penalties against a juvenile defendant? Second, when the sentence is among the most severe, whether the statutory sentencing scheme for a juvenile offender fulfills the constitutional duty to fully consider youth in sentencing?

The court concluded that the three sentences for aggravated murder under ORS 163.105 are the most severe punishments available in the state and, as such, are the category of penalties to which the principles set forth in *Roper*, *Graham*, and *Miller* apply. In addition, the court concluded that ORS 163.105 is a mandatory sentencing scheme that does not provide consideration of the qualities of youth by the sentencing court. On that point, the court observed that the intent of Oregon's Measure 11 was to eliminate any ability of a sentencer to differentiate between adults and juveniles, as evinced by uniform adult sentences, by the elimination of discretionary waiver proceedings for juveniles, and by the elimination of second look hearing eligibility.

The court rejected the state's argument that the murder review hearing under ORS 163.105 provided an adequate opportunity for the consideration of the qualities of youth sufficient to comply with *Miller*. The court first noted that *Graham* and *Miller* identified the sentencer as the proper actor to consider the qualities of youth. The court then observed that even if the parole board could be considered a sentencer for purposes of *Miller*, the delay of 30 years before that consideration would occur well beyond when a youth's transient qualities should be considered. Lastly, the court found that the murder review hearing gave no weight to the youthful characteristics at the time of the youth's crime, as required by *Miller*.