



The **CAMPAIGN** for the
FAIR SENTENCING
of **YOUTH**

2023 LEGISLATIVE ISSUE BRIEF

CREATING FAIR AND AGE-APPROPRIATE SENTENCES FOR CHILDREN WHO COMMIT SERIOUS CRIMES

Approximately 2,800 people in the United States have been sentenced to life without parole for crimes they committed as children.¹ Momentum to abolish extreme sentences for youth has swept the country. Since 2012, the number of states banning life-without-parole sentences for children has quintupled, from five to twenty-six.²

Adolescent Development Research. Well-established scientific studies have shown that adolescents' brains are not fully developed.³ Children are less capable than adults in long-term planning, the regulation of emotion, impulse control, and the evaluation of risk and reward.⁴ They are also more vulnerable, more susceptible to peer pressure, and heavily influenced by their surrounding environment, which is rarely in their control.⁵ Well-established behavioral and brain development research demonstrates that children who commit crimes are more likely than adults to reform their behavior and be rehabilitated.⁶

The U.S. Supreme Court. Based on adolescent brain research, the United States Supreme Court has, over the past decade, repeatedly recognized that children are constitutionally different from adults for the purpose of criminal sentencing, and our policies must take these fundamental differences into account. In *Roper v. Simmons* (2005), the Court struck down the death penalty for children, finding that it violated the Eighth Amendment's prohibition against cruel and unusual punishment.⁷ The Court emphasized empirical research demonstrating that children are developmentally different than adults and have a unique capacity to grow and change as they mature. In *Graham v. Florida* (2010), the Court struck down life-without-parole sentences for non-homicide offenses, holding that states must give children a "realistic opportunity to obtain release."⁸ In *Miller v. Alabama* (2012), the Court struck down life-without-parole sentences for most homicide offenses, and ruled that sentencing courts must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" any time a child faces a potential life-without-parole sentence.⁹ In 2016, the Supreme Court ruled in *Montgomery v. Louisiana* that its decision in *Miller v. Alabama* had established a new substantive rule prohibiting the imposition of life without parole for most juvenile offenders, thereby retroactively invalidating all such sentences that had been mandated by statute.¹⁰ The Court stated, "the sentence of life without parole is disproportionate for the vast majority of juvenile offenders" convicted of homicide offenses.¹¹ Because adolescents' brains are still developing and these individuals have a greater capacity for rehabilitation, "the penological justifications for life without

parole collapse in 'light of the distinctive attributes of youth.'"¹²

Most recently, in *Jones v. Mississippi* (2021), the Court was asked to decide whether a court must make a finding of permanent incorrigibility before sentencing a child to life without parole.¹³ The Court affirmed its prior decisions in *Miller* and *Montgomery*, requiring sentencing judges to consider youth and its attendant mitigating factors before sentencing a child to life without parole, and it declined to require a sentencing judge to make a specific factual finding of permanent incorrigibility.

The Court also explicitly acknowledged the trend among the states to abolish life without parole for children entirely. The Court noted in *Jones* that it was in no way limiting the right of states to enact protections for their children. The opinion notes: "The States, not the federal courts, make . . . broad moral and policy judgments in the first instance when enacting their sentencing laws."¹⁴ Based on juvenile brain science and the demonstrated potential all children have for rehabilitation, the moral trend is clearly away from life without parole for children. In just the past three years, Oregon, Virginia, Ohio, Maryland, and Illinois have all abolished life without parole as a sentencing option for children. As the list of states that have abandoned life without parole for kids has grown to the point that they now constitute the majority, the states that have not yet taken this critical step should feel emboldened to follow their example and act in accord with our best values that every young person is more than the worst thing they have done and no child should ever be denied hope.

Disproportionate Impact on Vulnerable Children. Extreme sentences disproportionately impact the most vulnerable members of society. Nearly 80 percent of juvenile lifers reported witnessing violence in their homes; more than half witnessed weekly violence in their neighborhoods.¹⁵ In addition, half of all children sentenced to life in prison without the possibility of parole have been physically abused and 20 percent have been sexually abused during their life.¹⁶ Children of color are disproportionately sentenced to die in prison, with Black children serving life without parole at a per capita rate that is 10 times that of white children convicted of the same offense.¹⁷

National and International Opposition. The American Bar Association passed a resolution calling for states to eliminate life without parole as a sentencing option for youth, both prospectively and retroactively, and to "provide youthful offenders with meaningful periodic opportunities for release based on demonstrated maturity and rehabilitation."¹⁸ The American Correctional Association and American Probation and Parole Association have passed similar resolutions.¹⁹ Sentencing children to life without parole stands in direct contradiction to Article 37 of the United Nations Convention on the Rights of the Child, which prohibits children from being subject to "torture or other cruel, inhumane or degrading treatment or punishment," including the use of "capital punishment and life without the possibility of release."²⁰

Fiscal Burden on States. It costs approximately \$2.5 million to incarcerate a child for life in the United States.²¹ In contrast, a productive, tax-paying, college-educated adult contributes over \$1 million to society over their lifetimes.²² If paroled after serving 10 years after being incarcerated at age 16, a child with only a high school education could potentially contribute \$218,560 in tax revenue if they work until age 66.²³ Formerly incarcerated children who obtain a college degree will contribute \$706,560 in tax revenue.²⁴

Legislative Recommendations

Instead of condemning them to die in prison, children should be held accountable in an age-appropriate manner that comports with Constitutional and human rights standards for sentencing children. Any legislation seeking to address the extreme sentencing of children convicted of serious crimes should:

1. End the imposition of extreme sentences, including eliminating life without parole as a sentencing option for children.

By enacting legislation that abolishes life-with-parole sentences for children, states can align local policy with current scientific research. National trends are moving away from this harsh approach and focusing instead on rehabilitation and possible reintegration into society. **Alaska, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Nevada, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming** all prohibit life without parole as a sentencing option for children.²⁵ In addition to prohibiting the harshest of penalties, states should enact reforms that create age-appropriate, trauma-informed sentencing alternatives for children who commit serious crimes and are transferred to adult courts.

2. Ensure that child status and other youthful characteristics are considered at sentencing.

Legislatures should adopt sentencing procedures that require trial courts to consider the key factors articulated by the U.S. Supreme Court before sentencing a child in adult court, including: (1) the child's age and his or her youthful features including immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the child's family and home environment; (3) the circumstances of the offense, including the child's role and the way familial and peer pressures may have affected his or her behavior; (4) the child's lack of sophistication in dealing with a criminal justice system that is designed for adults; (5) intellectual capacity; (6) history of trauma and involvement in the child welfare system; (7) the possibility of rehabilitation; and (8) any other mitigating factor or circumstance. States as diverse as **Connecticut, Maryland, Nevada, and West Virginia** have enacted laws requiring judges to consider similar factors prior to sentencing children in adult court.²⁶

3. Create meaningful periodic opportunities for release for all children sentenced for serious crimes.

Legislative reform should ensure a parole board or sentencing judge periodically evaluates the sentences of youthful offenders by considering: (1) a review of educational and court documents, (2) participation in rehabilitative and educational programs while in prison, (3)

age at the time of offense, (4) immaturity, (5) the diminished culpability of a juvenile including a corresponding inability to appreciate the risks and consequences of the conduct, (6) intellectual capacity, (7) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system, (8) the extent of the individual's role in the offense, and whether and to what extent an adult was involved, (9) efforts made toward rehabilitation, and (10) any other mitigating factors or circumstances, including evidence submitted by the individual's counsel. **Arkansas, the District of Columbia, Maryland, Nevada, Ohio, Oregon, Virginia, and West Virginia** have all passed laws allowing children to seek meaningful, periodic parole review or judicial re-sentencing hearings.²⁷

1 Human Rights Watch, *The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008*. 2 Five states banned life without parole for children in 2012; 26 states plus the District of Columbia ban the sentence in 2021. 3 Laurence Steinberg, Elizabeth Cauffman, & Kathryn C. Monahan. *Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders*. Juvenile Justice Bulletin, U.S. Dep't of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. (Mar. 2015). 4 Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty. Laurence Steinberg & Elizabeth Scott, *American Psychologist*, December, 2003. 5 *Id.* 6 Steinberg & Scott, *supra* at 6. 7 *Roper v. Simmons*, 543 U.S. 551 (2005). 8 *Graham v. Florida*, 130 S. Ct. 2011 (2010). 9. *Miller v. Alabama*, 132 S. Ct. 2455 (2012). 10. *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). 11 *Id.* at 736. 12. *Id.* at 734. 13. *Jones v. Mississippi*, 593 U.S. ___, No. 18-1259 (2021). 14 *Id.*, slip op. at 21. 15 Ashley Nellis, *The Lives of Juvenile Lifers*, The Sentencing Project (2012). sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf. 16 *Id.* 17 Human Rights Watch (2008). Submission to the Committee on the Elimination of Racial Discrimination. hrw.org/en/reports/2008/02/06/submission-committee-elimination-racial-discrimination-0. 18 Resolution 107C, American Bar Association (Feb. 2015). fairsentencingofyouth.org/resolutions-against-life-without-parole/. 19 Resolution 2014-1, Amer. Correctional Assoc. (Aug. 2014); Resolution, Amer. Probation & Parole Assoc. (Feb. 2015). fairsentencingofyouth.org/resolutions-against-life-without-parole/. 20 U.N. Convention on the Rights of the Child, ohchr.org/en/professionalinterest/pages/crc.aspx. 21 Calculation = ((Average cost per year per inmate to incarcerate before age 50 x 34) + (National estimate for annual cost for inmate care after age 50 x 21)) x 2,500; At America's Expense: The Mass Incarceration of the Elderly, ACLU, June 2012. aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf. 22 Philip A. Trostel, "The Fiscal Impacts of College Attainment," New England Public Policy Center at the Federal Reserve Bank of Boston Working Paper (2007): 23-24 bos.frb.org/economic/neppc/wp/2007/neppcwp0702.pdf; The Fiscal Consequences of Adult Educational Attainment, National Commission on Adult Literacy, nationalcommissiononadultliteracy.org/content/fiscalimpact.pdf 25 Ak. Stat. § 33.16.010(a); S.B. 294, 91st Leg. (Ark. 2017); S.B. 394, 2017-2018 Reg. Sess. (Ca. 2017); S.B. 16-180, 70th Gen. Assemb., 2d Reg. Sess. (Colo. 2016); S.B. 796, 2015 Reg. Sess. (Conn. 2015); S.B. 9, 147th Gen. Assemb., Reg. Sess. (Del. 2013); DC Bill 21-683 (D.C. 2015), DC Bill 22-255 (D.C. 2018); H.B. 2116, 27th Leg. (Hawaii 2014); H.B. 1064, 102nd General Assembly (Ill. 2022); *Iowa v. Sweet*, No. 14-0455 (Iowa May 27, 2016); Kan. Crim. Code § 21-4622; Ky. Rev. Stat. §640.040; S.B. 494, 2021 Reg. Sess. (Md. 2021); H 4307, 188th Gen. Court (Mass. 2014); A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015); A.B. 373, 217th Gen. Sess. (N.J. 2017); H.B. 1195, 65th Leg. (N.D. 2017); S.B. 256, 133rd Gen. Assemb. (Oh. 2020); S.B. 1008, 80th Leg. Assemb., Reg. Sess. (Or. 2019); S.B. 140 2016 Reg. Sess. (S.D. 2016); S.B. 2, 83rd Leg., Special Sess. (Texas 2013); H.B. 405, 61st Leg., Gen. Sess. (Ut. 2016); H. 62, 2015 Reg. Sess. (Vt. 2015); H.B. 35, 2020 Reg. Sess. (Va. 2020); *Washington v. Bassett*, 2018 Wash. LEXIS 704 (Wash. 2018); HB 4210, 81st Legislature, 1st Sess. (W. Virg. 2014); H.B. 23, 62nd Leg., Gen. Sess. (Wy. 2013). 26 S.B. 796, 2015 Reg. Sess. (Conn. 2015); S.B. 494, 2021 Reg. Sess. (Md. 2021); A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015); HB 4210, 81st Legislature, 1st Sess. (W. Virg. 2014). 27 Ak. Stat. § 33.16.010(a); S.B. 294, 91st Leg. (Ark. 2017); DC Bill 21-683 (D.C. 2015), DC Bill 22-255 (D.C. 2018); S.B. 494, 2021 Reg. Sess. (Md. 2021); A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015); S.B. 256, 133rd Gen. Assemb. (Oh. 2020); S.B. 1008, 80th Leg. Assemb., Reg. Sess. (Or. 2019); H.B. 35, 2020 Reg. Sess. (Va. 2020); HB 4210, 81st Legislature, 1st Sess. (W. Virg. 2014).

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