



## LEGISLATIVE ISSUE BRIEF

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

Approximately 2,500 people in the United States have been sentenced to life without parole for crimes they committed as children.<sup>1</sup> Momentum to abolish extreme sentences for youth has swept the country. In the last six years, the number of states banning life-without-parole sentences for children has quadrupled.<sup>2</sup>

#### Adolescent Development Research

Flawed research in the 1990s theorized that a new class of “super-predator” children had emerged who were more violent, remorseless, and radical than ever before.<sup>3</sup> As a result, states passed a barrage of laws creating extreme and, in some cases, unconstitutional criminal penalties for children, which condemned many of them to die in prison.<sup>4</sup> This research has since been debunked and its authors expressed regret and remorse for the impact it had in encouraging states to pass draconian laws to punish children.<sup>5</sup> Recent scientific studies have shown that adolescents’ brains are not fully developed.<sup>6</sup> Children are less capable than adults in long-term planning, the regulation of emotion, impulse control, and the evaluation of risk and reward.<sup>7</sup> They are also more vulnerable, more susceptible to peer pressure, and heavily influenced by their surrounding environment, which is rarely in their control.<sup>8</sup> Current behavioral and brain development research demonstrates that children who commit crimes are more likely to reform their behavior and be rehabilitated.<sup>9</sup>

#### The U.S. Supreme Court

In 2016, in *Montgomery v. Louisiana*, the U.S. Supreme Court ruled that “the sentence of life without parole is disproportionate for the vast majority of juvenile offenders” convicted of homicide offenses.<sup>10</sup> 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.”<sup>11</sup> Under *Montgomery*, all life-without-parole sentences for children under 18 are constitutionally suspect. The Court reiterated that “[e]ven if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects ‘unfortunate yet transient immaturity.’”<sup>12</sup>

*Montgomery* joins the Court’s previous decisions in *Roper v. Simmons* (2005) (banning the death penalty for children),<sup>13</sup> *Grabam v. Florida* (2010) (banning life-without-parole sentences for children convicted of non-homicide offenses),<sup>14</sup> and *Miller v. Alabama* (2012) (banning mandatory life-without-parole sentences for children).<sup>15</sup> All of these cases are grounded in the Eighth Amendment’s prohibition against cruel and unusual punishment. Central to the Court’s rulings was the proposition that children are “constitutionally different” from adults and that sentencing laws must treat them differently.<sup>16</sup> Because children have diminished culpability and greater prospects for reform than adults who commits the same crimes, “they are less deserving of the most severe punishments.”<sup>17</sup>

#### 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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

#### 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.”<sup>25</sup> The American Correctional Association and American Probation and Parole Association have passed similar resolutions.<sup>26</sup> 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, inhuman or degrading treatment or punishment,” including the use of “capital punishment and life without the possibility of release.”<sup>27</sup>

### **Fiscal Burden on States**

It costs approximately \$2.5 million to incarcerate a child for life in the United States.<sup>21</sup> In contrast, a productive, tax-paying, college-educated adult contributes over \$1 million to society over their lifetimes.<sup>22</sup> 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.<sup>23</sup> Formerly incarcerated children who obtain a college degree will contribute \$706,560 in tax revenue.<sup>24</sup>

### **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-without-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, Iowa, Kansas, Kentucky, Massachusetts, Nevada, New Jersey, North Dakota, South Dakota, Texas, Utah, Vermont, West Virginia, and Wyoming** all prohibit life without parole as a sentencing option for children.<sup>28</sup> 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. **West Virginia, Connecticut, and Nevada** have enacted laws requiring judges to consider similar factors prior to sentencing children in adult court.<sup>29</sup>

**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) ability to appreciate the risks and consequences of the conduct, (6) intellectual capacity, (7) role in the offense, (8) efforts made toward rehabilitation, and (9) any other mitigating factors or circumstances, including evidence submitted by the individual's counsel. **Arkansas, West Virginia, Nevada, and the District of Columbia** have recently passed laws allowing children to seek meaningful, periodic parole review or judicial re-sentencing hearings.<sup>31</sup>

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; 20 states plus the District of Columbia ban the sentence in 2018. 3 Clyde Haberman, *When Youth Violence Spurred 'Superpredator' Fear*, N.Y. Times, Apr. 6, 2014. 4 *Id.* 5 Brief for Jeffrey Fagan, et al., as Amicus Curiae, p. 18-19, *Miller v. Alabama*, 132 S.Ct. 2455 (2012). 6 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). 7 Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, Laurence Steinberg & Elizabeth Scott, *American Psychologist*, December, 2003. 8 *Id.* 9 Steinberg & Scott, *supra* at 6. 10 *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016). 11 *Id.* at 734. 12 *Id.* 13 *Roper v. Simmons*, 543 U.S. 551 (2005). 14 *Graham v. Florida*, 130 S. Ct. 2011 (2010). 15 *Miller v. Alabama*, 132 S. Ct. 2455 (2012). 16 *Montgomery*, 136 S. Ct. at 736. 17 *Miller*, 132 S. Ct. at 2464. 18 Ashley Nellis, *The Lives of Juvenile Lifers*, The Sentencing Project (2012). [sentencingproject.org/doc/publications/jl\\_The\\_Lives\\_of\\_Juvenile\\_Lifers.pdf](http://sentencingproject.org/doc/publications/jl_The_Lives_of_Juvenile_Lifers.pdf) 19 *Id.* 20 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-021](http://hrw.org/en/reports/2008/02/06/submission-committee-elimination-racial-discrimination-021) 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](http://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);20-22. [bos.frb.org/economic/neppe/wp/2007/neppewp0702.pdf](http://bos.frb.org/economic/neppe/wp/2007/neppewp0702.pdf) 23 Khatiwada 1. et al (2007). The Fiscal Consequences of Adult Educational Attainment, National Commission on Adult Literacy. [nationalcommissiononadultliteracy.org/content/fiscalimpact.pdf](http://nationalcommissiononadultliteracy.org/content/fiscalimpact.pdf) 24 *Id.* 25 Resolution 107C, American Bar Association (Feb. 2015). [fairsentencingofyouth.org/resolutions-against-life-without-parole/](http://fairsentencingofyouth.org/resolutions-against-life-without-parole/) 26 Resolution 2014-1, Amer. Correctional Assoc. (Aug. 2014); Resolution, Amer. Probation & Parole Assoc. (Feb. 2015). [fairsentencingofyouth.org/resolutions-against-life-without-parole/](http://fairsentencingofyouth.org/resolutions-against-life-without-parole/) 27 U.N. Convention on the Rights of the Child, [ohchr.org/en/professionalinterest/pages/crc.aspx](http://ohchr.org/en/professionalinterest/pages/crc.aspx) 28 Ak. Stat. § 33.16.010(a); S.B. 294, 91st Leg. (Ark. 2017); Ca. S.B. 394, 2017-2018 Reg. Sess. (Ca. 2017); Colo. Rev. Stat. § 18-1.3-401(4)(b)(I) (West 2012); S.B. 796, 2015 Reg. Sess. (Conn. 2015); S.B. 9, 147th Gen. Assemb., Reg. Sess. (Del. 2013); B. 21-568, Period 21 (D.C. 2016); H.B. 2116, 27th Leg. (Hawaii 2014); *Iowa v. Sweet*, No. 14-0455 (Iowa May 27, 2016); Kan. Crim. Code § 21-4622; Ky. Rev. Stat. §640.040 H 4307, 188th Gen. Court (Mass. 2014); A.B. 373, 217th Gen. Sess. (N.J. 2017); A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015); H.B. 1194, 65th Leg. (N.D. 2017); S.B. 140 2016 Reg. Sess. (SD. 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. 23, 62nd Leg., Gen. Sess. (Wv. 2013); 29 HB 4210, 81st Legislature, 1st Sess. (W. Virg. 2013); S.B. 796, 2015 Reg. Sess. (Conn. 2015); A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015). 31 HB 4210, 81st Legislature, 1st Sess. (W. Virg. 2013); A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015); S.B. 260 (Cal. 2013); S.B. 9, 147th Gen. Assemb., Reg. Sess. (Del. 2013); B. 21-568, Period 21 (D.C. 2016).