

# Restore Justice Foundation

## Criminal Justice Issues and Prisoners' Rights

<https://restorejustice.org/learn/juvenile-life-without-parole/>

### Policy Issue Resources

Juvenile life without parole (JLWOP) is a sentence of life in prison, without the possibility of parole (LWOP), imposed on a child under the age of 18. When imposing a sentence of LWOP, a judge effectively makes the decision that the juvenile is beyond rehabilitation and should never be released into society under any circumstances. Young people sentenced to LWOP will never have an opportunity to demonstrate that they have been rehabilitated.

**Mandatory LWOP sentences** are required by law for convictions of certain offenses, as designated by a legislature. Mandatory sentences must be imposed regardless of a judge's opinion or, in many states, regardless of the age of the defendant. In 2012, the US Supreme Court deemed mandatory JLWOP sentences unconstitutional. Before 2012, judges often went on record noting they legally had to impose LWOP, but thought the juvenile deserved a lesser sentence. Before sentencing a 15-year-old accomplice to a murder case, Cook County Associate Judge Thomas Dywer said:

*And on the verdict of guilty of first degree murder I sentence you to a term of natural life in the Illinois Department of Corrections That is the sentence that I am mandated by law to impose. If I had my discretion, I would impose another sentence, but that is mandated by law.* ([Illinois Coalition for the Fair Sentencing of Children, 2006.](#))

In abolishing mandatory LWOP sentences for juveniles in [Miller v. Alabama](#), (2012), the United States Supreme Court held that:

*Children are constitutionally different from adults for sentencing purposes. Their lack of maturity and underdeveloped sense of responsibility lead to recklessness, impulsivity, and heedless risk-taking. They are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings. because a child's character is not as well formed as an adult's, his traits are less fixed and his actions are less likely to be evidence of irretrievable depravity.*

**Discretionary LWOP sentences** are those in which a judge chooses LWOP for a defendant after considering mitigating factors, the role in the crime, and potential for rehabilitation. The [Miller](#) decision pertains to juveniles charged with LWOP, or JLWOP.

In *Montgomery*, the Court concluded that LWOP sentences should be uncommon and reserved only for those rare children whose crimes reflect irreparable corruption. ([Montgomery v. Louisiana](#), 2015).

The United States is the only country in the world that continues to sentence children to die in prison. In 2005, there were more than 2,500 people in the United States serving LWOP for crimes they were convicted of committing as children. Since then, this number has declined dramatically due to a series of Supreme Court rulings. The Court has repeatedly emphasized that children are *categorically less culpable* than adults, and that their sentences must factor in age. The Court has established that children lack maturity and have an underdeveloped sense of responsibility that makes them more reckless, impulsive, and risk-prone than adults, but also more susceptible to rehabilitation. These Supreme Court cases have greatly limited states' ability to sentence children to die in prison. Today, JLWOP is prohibited in 27 states and the District of Columbia. Nevertheless, as of December 2018, approximately 1,100 people sentenced as children are still serving LWOP around the country.

In 2008, approximately 100 people were serving terms of LWOP in Illinois for offenses they were convicted of committing as youth. Of these people, roughly 80 had been sentenced to mandatory life without parole, and 20 had been given discretionary LWOP sentences.

As of October 2019, 65 of these people had been resentenced as a result of [Miller v. Alabama](#), with more resentencing hearings scheduled. Of the 65 people who have received new sentences, 16 completed their sentences and have been released on [Mandatory Supervised Release \(MSR\)](#) and four have been resentenced to discretionary JLWOP. Six people have been exonerated and released.

The Illinois Constitution requires all penalties be determined both according to the seriousness of the offense *and with the objective of restoring offenders to useful citizenship* ([Article 1, Section 11, Illinois Constitution](#), 1970). (Emphasis added.)

Both mandatory and discretionary JLWOP sentences classify the children as irredeemable and remove any opportunity to become positive and productive members of society.

Moreover, the US Supreme Court has repeatedly held that children are *constitutionally different than adults*. Children are uniquely capable of rehabilitation and deserve *some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation*. ([Graham v. Florida](#), 2009).

The stated rationale for JLWOP sentences is deterrence. However, we found no research that demonstrates JLWOP has a deterring effect on other children or on the violent crime rate of youths. In fact, studies suggest that increasing the severity of punishment may increase recidivism among youth (Listenbee et al., 2015).

LWOP disproportionately affects children of color who come from lower socioeconomic backgrounds. Seventy percent of all children sentenced to LWOP in the United States are people of color. This disparate racial impact is greater in Illinois, where, as of 2017, 82

percent of the children serving LWOP were either Black (72 percent) or Latinx (10 percent). Only 18 percent were White.

Three groups are still at risk of being sentenced to what amounts to JLWOP:

That brain science has established children are physically and developmentally different than adults and should not be treated the same, especially in the criminal justice system. Specifically, these studies have concluded:

For these reasons, children should not be tried or punished as adults.

The US Supreme Court has relied on this brain science in its rulings regarding the lessened culpability of juveniles. In a series of decisions, the Court has limited states use of LWOP for those under the age of 18 at the time of the crime. Since 2010, the Court has held that *children are constitutionally different than adults*.

[\*Roper v. Simmons\* \(2005\)](#)

[\*Graham v. Florida\* \(2010\)](#)

[\*Miller v. Alabama\* \(2012\)](#)

[\*Montgomery v. Louisiana\* \(2016\)](#)

The practice of sentencing children to LWOP contravenes international laws and standards governing the treatment and protection of children, standards the US has refused to adopt. Specifically, this practice violates Article 37 of the [Convention on the Rights of the Child](#) (CRC), which was adopted by the United Nations in 1989, and created an international legal framework for the protection and fulfillment of childrens rights. As of 2019, 181 Countries have ratified the CRC, the most widely ratified human rights treaty in history. Unfortunately, the [US is the only country in the world](#) that has not ratified it.

Article 37 requires countries to ensure:

*No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age*

The driving principles behind the adoption of the CRC are *that children are not just objects who belong to their parents and for whom decisions are made, or adults in training. Rather, they are human beings and individuals with their own rights. The Convention says childhood is separate from adulthood, and lasts until 18; it is a special, protected time, in which children must be allowed to grow, learn, play, develop and flourish with dignity.*

HB531 was signed into law by Governor Pritzker on April 1, 2019. The bill (now [Public Act 100-1182](#)) is the first step in modernizing our states system of providing meaningful opportunities for rehabilitation and release. It creates new opportunities for parole for young people facing extreme sentences, but it does not apply to those sentenced to LWOP. Illinois remains an outlier when it comes to parole; the state hasnt had a full parole system since 1978, one of only 16 states without such a system.

The law aligns with multiple US Supreme Court decisions that charge states with viewing youthful offenders as categorically less culpable for their crimes. The Court has established those convicted in their youth should have meaningful opportunities for release.

The Youthful Parole law creates mid-sentence parole consideration for those 20 or under when the crime occurred.

The law does not apply to (a) those sentenced to LWOP, (b) those that committed predatory criminal sexual assault, or (c) those who murdered police officers (or other peace officers). It applies prospectively only, meaning, no one currently incarcerated is eligible.

Because of these limitations, it is still possible for juveniles to be sentenced to LWOP in Illinois. This is why a complete ban on discretionary LWOP for juveniles is needed.

Illinois can join the 27 States and the District of Columbia that prohibit discretionary LWOP for juveniles. Then, there are a number of things that can be done to prevent children from receiving extremely long sentences that deny them the opportunity to become rehabilitated and that do nothing to make our communities safer. These include:

Nearly 2,000 people are serving sentences of 40 years or longer in Illinois for things they were convicted of doing before their brains matured. By banning discretionary LWOP and amending our states laws to restrict extreme sentencing, we can help send more of these people home.

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Restore Justice Foundation  
PO Box 101099  
Chicago, IL 60610

First Name

Last Name

Email address:

Street Address

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United States

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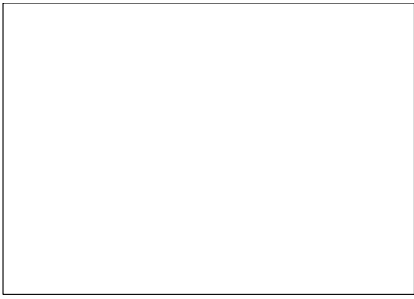
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