

# Equal Justice Initiative

## Criminal Justice Issues and Prisoners' Rights

<https://eji.org/issues/children-in-prison/>

## Policy Issue Resources

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Children threatened by abuse, neglect, violence, racial bias, and poverty are usually ignored unless they do something violent.

In hundreds of ways ranging from mandatory school attendance to harsher penalties for crimes involving minors, the law recognizes that children are different from adults—they're more vulnerable, emotional, and impulsive, and they can't get themselves out of unsafe homes or communities, but they're also more likely to change as they grow up. And so we pass laws to protect kids from their own poor decisions and from adults who would harm or take advantage of them.

But until recently, these legal protections didn't apply to children accused of committing violent crimes. Children were executed in the U.S. until 2005, and only in the last decade has the Supreme Court limited [death-in-prison sentences](#) for children. Kids as young as eight can still be [charged as an adult](#), held in an adult jail, and sentenced to extreme sentences in an [adult prison](#). EJI is working to protect children from abusive treatment in the adult criminal justice system.

### Related Report

EJI's report documents the practice of sentencing 13- and 14-year-old children to die in prison.

Before the Supreme Court banned the death penalty for juveniles in 2005, 366 people were executed for juvenile offenses.<sup>1</sup> Victor L. Streib, [The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973–February 28, 2005](#), Death Penalty Information Center (Oct. 7, 2005). That ban allowed EJI to focus on some 3000 people who were sentenced to life imprisonment without parole for offenses committed when they were 17 or younger. Children as young as 13 were among those condemned to die in prison.

Most of these sentences were mandatory—the sentencing judge was not allowed to consider the child's age or life history. Some children were sentenced for crimes where no one was killed or even injured, and many were convicted even though older teens or adults were primarily responsible for the crime. Seventy percent of those 14 or younger who were sentenced to die in prison were children of color.

EJI launched a litigation campaign in 2006 to challenge death-in-prison sentences imposed on children. Three years later, we argued in the Supreme Court that the Constitution forbids sentencing children to die in prison. On May 17, 2010, the Court in [Graham v. Florida](#) barred life-without-parole sentences for juveniles convicted of nonhomicide offenses. The Court recognized that the ways in which children are different from adults have to be considered in sentencing. Since 2010, we have successfully represented children across the country to obtain new sentences.

We went back to the Supreme Court after *Graham* to argue that sentencing kids to die in prison is unconstitutional regardless of the offense. In 2012, the Court in [Miller v. Alabama](#) struck down mandatory life-without-parole sentences for all children 17 or younger. The ruling affected thousands of people whose sentencers did not consider their age, the details of the offense, or any other mitigating factors. The Court did not ban all juvenile life-without-parole sentences, but held that requiring sentencers to consider children's diminished culpability, and heightened capacity for change should make such sentences uncommon.

Some states refused to apply *Miller* to older cases. On January 25, 2016, the Supreme Court held in [Montgomery v. Louisiana](#) that *Miller* applies retroactively and requires new sentencing hearings for everyone serving a mandatory life-without-parole sentence for an offense when they were under 18. *Montgomery* reaffirmed that life-without-parole sentences are unconstitutional for all but the rare juvenile for whom rehabilitation is impossible.

Over a thousand people who were automatically condemned to die in prison for juvenile offenses have been resentenced because of *Miller*, and hundreds have been released.

### Related Report

EJI documents the abusive treatment of children in the adult criminal justice system.

Some 4,500 children are housed in adult jails and prisons on any given day in America.<sup>2</sup> Office of Juvenile Justice and Delinquency Prevention, [Statistical Briefing Book](#) (1993-2017) and [Statistical Briefing Book](#) (2000-2017).

Children housed in an adult jail or prison are up to 9 times more likely to commit suicide than those in juvenile facilities.

Every state in America has capacity to house juveniles separate from adults but many refuse to do so.<sup>3</sup> Sarah Hockenberry & Anthony Sladky, [Juvenile Residential Facility Census, 2016: Selected Findings](#) Office of Juvenile Justice and Delinquency Prevention (Dec. 2016).

Many children prosecuted as adults suffer from untreated mental illness. Unlike adults with mental illness, children have very limited experience managing their disabilities, anxieties, fear, and trauma. They often act impulsively, recklessly, and irresponsibly. In an adult jail or prison, this behavior results in more aggressive punishment which can worsen a child's mental health problems.<sup>4</sup> Campaign for Youth Justice, [Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America](#) (Nov. 2007).

Many kids who are transferred to adult court for criminal prosecution are automatically placed in adult jails and prisons.<sup>5</sup> Patrick Griffin et al, [Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting](#) Office of Juvenile Justice and Delinquency Prevention (Sept. 2011). Some states strictly prohibit placing children in adult jails or prisons, but a majority still allow children to be incarcerated in adult prisons and jails, where they are at the highest risk of being [sexually assaulted](#). Thousands of young people have been assaulted, raped, and traumatized as a result.<sup>6</sup> National Prison Rape Elimination Commission, [National Prison Rape Elimination Commission Report](#) (2009).

Some statutes require sight and sound separation of children in adult facilities to shield them from physical and sexual violence. But in practice, this often means kids are put in solitary confinement, where they're at risk of significant psychological trauma from isolation.

## Related Case

Joe Sullivan was just 13 years old when he was charged as an adult with sexual assault and sentenced to die in prison.

The law protects children younger than 14 because their brains are still developing—they have less judgment, maturity, and knowledge than adults, and kids under 14 are even less responsible and more vulnerable than older teens. But when a young child is accused of a crime, these legal protections vanish, allowing kids under 14 to be prosecuted in adult court and sentenced to adult prison, even for life.

Kids' low social status compared to adult interrogators, beliefs about the need to obey authority, greater dependence on adults, and vulnerability to intimidation makes them uniquely susceptible to coercive psychological interrogation techniques designed for adults, leading to false confessions and undermining the reliability of the fact-finding process. Young children clearly can't defend themselves in adult court, but the rules created to shield adults who aren't competent to stand trial don't take kids' unique characteristics into account. Their diminished understanding of rights, confusion about trial processes, limited language skills, and inadequate decision-making abilities puts them at great risk in the adult criminal justice system.

Thirteen states have no minimum age for trying children as adults: Alaska, Delaware, Florida, Hawaii, Idaho, Maine, Maryland, Michigan, Pennsylvania, Rhode Island, South Carolina, Tennessee, and West Virginia. Some states allow children to be prosecuted as adults at 10, 12, or 13 years old. Children as young as eight have been prosecuted as adults.

Each year, judges [transfer](#) dozens of children under 14 to adult court. Prosecutors charge other young kids directly in adult court. More than half of the children under 14 transferred to adult court each year are African American or Latino.<sup>7</sup> Office of Juvenile Justice and Delinquency Prevention, [Easy Access to Juvenile Court Statistics, Delinquency Cases Waived 2008-2017](#) (2008-2017).

EJI challenges abusive treatment of children by providing direct legal representation to hundreds of people across the country. We advocate for clients in parole hearings, provide re-entry services designed for people incarcerated as children, and educate policymakers, decision makers, and the public about the treatment of children in the justice system.

EJI's litigation campaign to challenge death-in-prison sentences imposed on children led to the historic ruling in *Miller v. Alabama*.

Most Americans don't know that an eight-year-old can be prosecuted as an adult, held in an adult jail or prison, and sentenced to die in prison. We're working to change that.

PREP is a long term supervised release program concentrating on the unique needs of formerly incarcerated people who entered prison as children.

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