

# The Sentencing Project

## Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/juvenile-life-without-parole/>

## Campaign and Advocacy

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The Sentencing Project, in its national survey of life and virtual life sentences in the United States found 1,465 people serving JLWOP sentences at the start of 2020. This number reflects a 38% drop in the population of people serving JLWOP since our 2016 count and a 44% drop since the peak count of JLWOP figures in 2012.<sup>1)</sup>Nellis, A. (2021, Feb. 17). [No End In Sight: Americas Enduring Reliance on Life Imprisonment](#). The Sentencing Project. Additional notes available on file. This count continues to decline as more states eliminate JLWOP.

In five decisions *Roper v. Simmons* (2005), *Graham v. Florida* (2010), *Miller v. Alabama* (2012), *Montgomery v. Louisiana* (2016), and *Jones v. Mississippi* (2021) the Supreme Court of the United States establishes and upholds the fact that children are constitutionally different from adults in their levels of culpability<sup>2)</sup>*Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016). when it comes to sentencing. Differences in maturity and accountability informs the protections of the Eighth Amendments prohibition on cruel and unusual punishment that limits sentencing a child to die in prison.

Research on adolescent brain development confirms the commonsense understanding that children are different from adults in ways that are critical to identifying age-appropriate criminal sentences. This understanding Supreme Court Justice Anthony Kennedy called it what any parent knows<sup>3)</sup>*Roper v. Simmons*, 543 U.S. 551, 569 (2005). was central to the recent Supreme Court decisions excluding people under 18 from the harshest sentencing practices.

Starting in 2005, *Roper* struck down the death penalty for people under 18. In 2010, *Graham* invalidated life without parole sentences for people under 18 convicted of non-homicide crimes. Two years later in *Miller*, the Court recognized the need to protect nearly all youth from life-without-parole sentences, regardless of the crime of conviction. Life without parole, as a mandatory minimum sentence for anyone under age 18 was found unconstitutional. *Montgomery*, in 2016, clarified that *Miller* applied retroactively. *Jones* reaffirmed both *Montgomery* and *Miller* but held that a specific factual finding of permanent incorrigibility at the time of sentencing is not required for the imposition of a juvenile life without parole sentence.

Henceforth, few youth will be sentenced to life without the possibility of parole. Moreover, youth sentenced to parole-ineligible life sentences in 28 states where the sentence was mandatory and the federal government are in the process of having their original sentences reviewed or have been granted a new sentence, including hundreds of individuals who have been released from prison.

Since 2005, Supreme Court rulings have accepted adolescent brain science and banned the use of capital punishment for juveniles, limited life without parole sentences to homicide offenses, banned the use of mandatory life without parole, and applied the decision retroactively.

The Supreme Court ruled that juveniles cannot be sentenced to death, writing that the death penalty is a disproportionate punishment for the young; immaturity diminishes their culpability, as does their susceptibility to outside pressures and influences. Their heightened capacity for reform means that they are entitled to a separate set of punishments. The court also held that the nations evolving standards of decency showed the death penalty for juveniles to be cruel and unusual: 12 states banned the death penalty in all circumstances, and 18 more banned it for people under 18.<sup>4)</sup>*Roper* at 560. The *Roper* ruling affected 72 juveniles on death row in 12 states.<sup>5)</sup>Death Penalty Information Center. U. S. Supreme Court: [Roper v. Simmons, No. 03-633](#) Between 1976 and the *Roper* decision, 22 defendants were executed for crimes committed before age 18.<sup>6)</sup>Death Penalty Information Center. [Facts About the Death Penalty](#).

Having banned the use of the death penalty for juveniles in *Roper*, the Court left the sentence of life without parole as the harshest sentence available for offenses committed by people under 18. In *Graham v. Florida*, the Court banned the use of life without parole for juveniles not convicted of homicide. The ruling applied to at least 123 prisoners 77 of whom had been sentenced in Florida, the

remainder in 10 other states.<sup>7)</sup>*Graham* at 2024. As in *Roper*, the Court pointed to the rare imposition of a particular punishment to prove that the punishment is unusual.<sup>8)</sup>In *Graham* and *Roper*, the Court also pointed to the overwhelming international consensus against the harshest punishments.

U.S. Supreme Court precedent recognizes that non-homicide offenses do not warrant the most serious punishment available.<sup>9)</sup>*Kennedy v. Louisiana*, 554 U.S. 407 (2008). The concept of proportionality is central to the Eighth Amendment, wrote Justice Kennedy.<sup>10)</sup>*Graham* at 2021. Thus, having denied the maximum punishment for all people under 18 (life without parole), the Court ruled that the harshest punishment must be limited to the most serious category of crimes (i.e., those involving homicide).

The Court called life without parole an especially harsh punishment for a juvenile A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.<sup>11)</sup>*Graham* at 2028. Limiting the use of life without parole did not guarantee such individuals would be released; it guaranteed a meaningful opportunity for release.

Following *Ropers* exclusion of the death penalty for juveniles and *Grahams* limitation on the use of life without parole, approximately 2,500 people were serving sentences of life without parole for crimes committed as juveniles, all of whom were convicted of homicide.<sup>12)</sup>Nellis, A. (2017, May 3). [Still life: Americas increasing use of life and long-term sentences](#). The Sentencing Project. p. 17.

In 2012, deciding *Miller* and *Jackson* jointly, the U.S. Supreme Court held that, for people under 18, mandatory life without parole sentences violate the Eighth Amendment. Writing for the majority, Justice Kagan emphasized that judges must be able to consider the characteristics of young defendants in order to issue a fair and individualized sentence. Adolescence is marked by transient rashness, proclivity for risk, and inability to assess consequences, all factors that should mitigate the punishment received by juvenile defendants.<sup>13)</sup>*Miller* at 2465.

Adolescence is marked by rashness, proclivity for risk, and inability to assess consequences.

The *Miller* ruling affected mandatory sentencing laws in 28 states and the federal government. States inconsistently interpreted *Millers* retroactivity. Supreme Courts in fourteen states ruled that *Miller* applied retroactively<sup>14)</sup>Arkansas, Connecticut, Florida, Illinois, Iowa,Massachusetts, Mississippi, Nebraska, New Hampshire, New Jersey, Ohio, South Carolina, Texas, and Wyoming. while those of seven other states ruled that *Miller* was not retroactive.<sup>15)</sup>Alabama, Colorado, Louisiana, Michigan, Minnesota, Montana, and Pennsylvania. In addition, California, Delaware, Nebraska, Nevada, North Carolina, and Wyoming passed sentencing legislation for people under 18 that applied retroactively as of 2014.<sup>16)</sup>Rovner, J. (2014, June 14). [Slow to act: State responses to 2012 Supreme Court mandate on life without parole](#). The Sentencing Project.

The question was settled by the U.S. Supreme Court in the case of 68-year old Henry Montgomery<sup>17)</sup>*Montgomery v. Louisiana*, petition 14-280., who had been imprisoned in Louisiana with no chance of parole since 1963 and called a model member of the prison community.<sup>18)</sup>*Montgomery* at 738. Justice Kennedy, writing for a 6-3 majority, noted that the Court in *Roper*, *Graham*, and *Miller* found that children are constitutionally different from adults in their level of culpability.<sup>19)</sup>*Montgomery* at 733. Moreover, the severest punishment must be reserved for the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.<sup>20)</sup>*Montgomery* at 734.

States can remedy the unconstitutionality of mandatory juvenile life without parole sentences by permitting parole hearings rather than resentencing the approximately 2,100 people whose life sentences were issued mandatorily.<sup>21)</sup>*Montgomery* at 736.,<sup>22)</sup>Gately, G. (2015, March 23). Supreme Court Agrees to Hear Miller Retroactivity Issue. Juvenile Justice Information Exchange, citing the Juvenile Law Center.

Brett Jones is among the thousands of people who were eligible to apply for a new sentence following *Miller* and *Montgomery*. Despite the progress he had attained while imprisoned,<sup>23)</sup>See Brief of Petitioner, *Jones v. Mississippi*, No. 18-1259 (June 5, 2020). the state of Mississippi reissued his life-with-parole sentence in 2015, which *Jones* challenged because there had been no finding of permanent incorrigibility. Writing on behalf of a 6-3 majority, Associate Justice Brett Kavanaugh upheld *Miller* and *Montgomerys* requirement that youth matters in sentencing (as such, mandatory life without parole sentences remain unconstitutional for youth), but also held that a separate and specific factual finding of permanent incorrigibility was not required to sentence a person who was under 18 at the time of their offense to life without parole.<sup>24)</sup>*Jones*, slip. op. at 6.

Since 2012, 32 states and the District of Columbia have changed their laws for people under 18 convicted of homicide, mostly by banning life without parole for people under 18, but also eliminating life without parole for felony murder or re-writing penalties that were struck down by *Graham*. Twenty-five of the 32 reforms, plus that of the District of Columbia, banned life without parole for people under 18; the other seven states limited its application. All but five of the states that banned life without parole for people under 18 had previously required it in the same circumstances.

These new laws provide mandatory minimums ranging from a chance of parole after 15 years (as in Nevada and West Virginia) to 40 years (as in Nebraska). Twenty-five states still allow life without parole as a sentencing option for juveniles.

In most states, the question of virtual life sentences a term of years that exceeds life expectancy but not life without parole has yet to be addressed. There are 1,716 people serving such lengthy terms, such as Bobby Bostic of Missouri, hypothetically parole-eligible at age 112 for offenses committed at age 16.<sup>25)</sup>Bostic, B. (2020, April 30). [A Juvenile Lifer Finds Peace in the Prison Garden](#). The Marshall Project.

Thirty-one states and the District of Columbia do not have any prisoners serving life without parole for crimes committed as juveniles, either due to laws prohibiting the sentence or because there are no individuals serving the sentence at this time.

The life experiences of those sentenced to life as juveniles varies, but they are often marked by very difficult upbringings with frequent exposure to violence; they were often victims of abuse themselves. Justice Kagan, in *Miller*, ruled that Alabama and Arkansas erred because a mandatory sentencing structure does not tak[e] into account the family and home environment.<sup>26)</sup>*Miller* at 2468. The petitioners in those cases, Kuntrell Jackson and Evan Miller, both 14 at the time of their crimes, grew up in highly unstable homes. Evan Miller was a troubled child; he attempted suicide four times, starting at age 6.<sup>27)</sup>*Miller* at 2462. Kuntrell Jackson's family life was immers[ed] in violence: Both his mother and his grandmother had previously shot other individuals.<sup>28)</sup>*Miller* at 2468. His mother and a brother were sent to prison. The defendant in *Graham*, Terrance Graham, had parents who were addicted to crack cocaine.<sup>29)</sup>*Graham* at 2018. Similarly, in *Jones*, Justice Sotomayor's dissent noted that Brett Jones was the victim of violence and neglect that he was too young to escape.<sup>30)</sup>*Jones v. Mississippi*, 593 U.S. \_\_, \_\_ (2021) (Sotomayor, dissenting) (slip op. at 18).

In 2012, The Sentencing Project released findings from a survey of people sentenced to life in prison as juveniles and found the defendants in the above cases were not unusual.<sup>31)</sup>Nellis, A. (2012). *The lives of juvenile lifers: Findings from a national survey*. The Sentencing Project.

Racial disparities plague the imposition of JLWOP sentences. Sixty-two percent of people serving JLWOP, among those for whom racial data are available, are African American. While 23% of juvenile arrests for murder involve an African American suspected of killing a white person, 42% of JLWOP sentences are for an African American convicted of this crime. White juvenile offenders with African American victims are only about half as likely (3.6%) to receive a JLWOP sentence as their proportion of arrests for killing an African American (6.4%).<sup>32)</sup>Nellis, A. (2012).

Aside from important justice considerations, the financial cost of JLWOP sentences is significant. A life sentence issued to a juvenile is designed to last longer than a life sentence issued to an older defendant.

Housing juveniles for a life sentence requires decades of public expenditures. Nationally, it costs over \$33,000 per year to house an average prisoner. This cost roughly doubles when that person is over 50.<sup>33)</sup>Mai, C. and Subramanian, R. (2017). [\*The price of prisons: Examining state spending trends, 2010-2015\*](#). Vera Institute of Justice. Therefore, a 50-year sentence for a 16-year old will cost upwards of \$2.25 million.

In *amici* briefs written on behalf of the defendants in *Roper*, *Graham*, *Miller*, and *Montgomery* organizations representing health professionals, such as the American Academy of Child Adolescent Psychiatry and the American Psychological Association, explained current research on immature brains. In *Miller*, Justice Kagan noted that adolescence is marked by immaturity, impetuosity, and failure to appreciate risks and consequences, all factors that limit an adolescents ability to make sound judgments. Justice Kagan cited *Graham* and *J. D. B. v. North Carolina*<sup>34)</sup>*J. D. B. v. North Carolina*, 131 S.Ct. 2394 (2011). in noting that juvenile defendants are at a substantial disadvantage in criminal proceedings; they are less able than adults to assist in their own defenses (working constructively with counsel) and they are likely to respond poorly to the high pressures of interrogation.

Even before *Roper*, states routinely recognized differences between juveniles and adults in other contexts. Almost every state prohibits juveniles from voting, buying cigarettes and alcohol, serving on juries, and getting married without parental consent. Teenagers drivers licenses are typically restricted through age 18. The *Graham* decision emphasized the importance of giving juvenile offenders a chance to become rehabilitated. These individuals have a substantial capacity for rehabilitation, but many states deny this opportunity: approximately 62% of people sentenced to life without parole as juveniles reported not participating in prison programs<sup>35)</sup>Nellis, A. (2012). in large part due to state prison policies that prohibit their participation or limited program availability. They typically receive fewer rehabilitative services than others in prison.<sup>36)</sup>Boone, B. (2015). Treating adults like children: Resentencing adult juvenile lifers after *Miller v. Alabama*. *Minnesota Law Review*, 99(3), 1159-1194.

Under current Supreme Court precedent, curbs on juvenile life without parole sentences do not guarantee release. Rather, Supreme court holdings and the reforms passed in response to those holdings by state legislatures provide an opportunity for individualized review before a parole board or a judge for a new sentence, taking into consideration the unique circumstances of each defendant.

The Sentencing Project supports a 20-year maximum sentence for nearly all individuals convicted of crimes.<sup>37)</sup>See Nellis, A. (2021), p. 5-6. This recommendation recognizes that the age of mass incarceration in America led to extreme and overly harsh sentences that are often unjust and counterproductive to public safety. It applies to all people in prison, not only those sentenced in their youth. Some recent reforms are beginning to align with this recommendation as states recognize that extreme sentences are outdated, unnecessary and inhumane. For example, both West Virginia<sup>38)</sup>West Virginia, HB 4210 (2014). and the District of Columbia<sup>39)</sup>District of Columbia, B22-255, later amended to include youth under the age of 25. offer opportunities for release after 15 years with a parole hearing or a chance to apply to a court for a new sentence, respectively. Maryland, Nevada, New Jersey, and Virginia allow for the possibility of release after 20 years. All incarceration should further the goals of rehabilitation and reintegration.

In *Montgomery*, the Court ruled that allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity and who have since matured will not be forced to serve a disproportionate sentence in violation of the 8th Amendment.<sup>40)</sup>*Montgomery* at 736.

The District of Columbia<sup>41)</sup>District of Columbia (2021). Omnibus Public Safety and Justice Amendment Act of 2020. (Previously B23-127.) and Washington State<sup>42)</sup>In the Matter of the Personal Restraint of Kuris William Monschke. (2021, March 11). Washington State. have extended *Miller's* guidance to people under age 25 and 21, respectively, with the understanding that older and younger adolescents alike should not be sentenced to die in prison. Additional legislation for people under 21 has progressed elsewhere.

In many other countries the period before a mandated sentencing review is 10 to 15 years, and 10 years prior to a second look is recommended by the American Law Institutes Model Penal Code.<sup>43)</sup>American Law Institute (2017). Model penal code: Sentencing: Final Draft. 6.11A If adequate rehabilitation has not occurred during these years in prison, as decided by experts, the individual may

remain in prison and their case should be reviewed again in another few years.

Nor is it appropriate to eliminate life sentences in name only, such as replacing them with excessively lengthy prison terms that can reasonably be expected to last for an offenders entire life. There is mounting support for such reform in select states. Motivated by the *Miller* decision, the state of California (previously home to one of the largest populations of JLWOP defendants) now affords prisoners a meaningful chance at parole after 15 to 25 years if their crime occurred when they were a juvenile. Reforms are underway in other states as well. Sentences that close the door on rehabilitation and second chances are cruel and misguided.

Footnotes[+]

Increase in number of women incarcerated in the U.S. since 1980

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