

YOUTH SENTENCED TO LIFE IMPRISONMENT

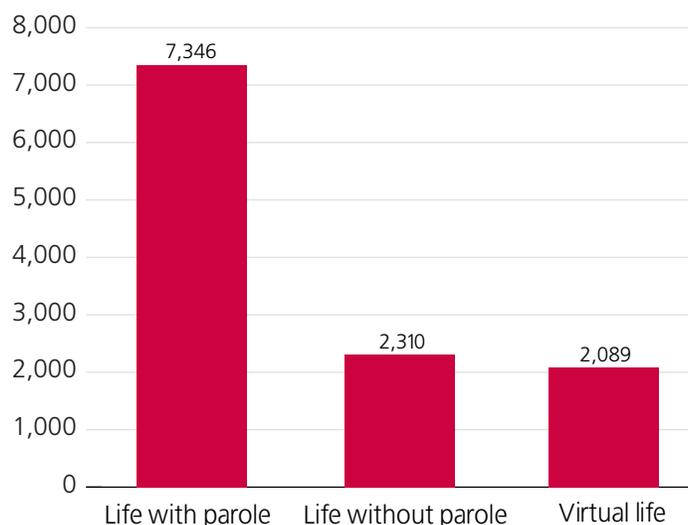
Sentencing youth to potentially lifelong imprisonment is virtually nonexistent anywhere else in the world. Despite evidence that adolescent brain development should mitigate the culpability of youth, all states allow juveniles to be sentenced to life imprisonment, and all but two states¹ have persons serving a life or “virtual life” sentence for a crime committed as a juvenile.

In the United States, nearly 12,000 people are serving a life sentence for a crime they committed under the age of 18. This fact sheet uses data obtained from state departments of corrections at yearend 2016 and includes details about people serving sentences of life without parole (LWOP), life with parole (LWP), and virtual life imprisonment sentences that extend to 50 years or more.²

LIFE WITHOUT PAROLE

There were 2,310 people serving life-without-parole sentences for crimes committed as juveniles (known as JLWOP) at yearend 2016. In its 2017 ruling in *Montgomery v. Louisiana*, the Supreme Court invalidated all existing JLWOP sentences that had been imposed by mandatory statute. As a result, youth sentenced to parole-ineligible life sentences in 29 states and the federal government are now in the process of having their original sentences reviewed or have been granted a new sentence. In a small fraction of cases, individuals have been released from prison. The post-*Montgomery* years have surely included a decline in the juvenile life without parole population, though there is not exact count as of yet. Pennsylvania, Louisiana,

Figure 1. Juveniles Serving Life Sentences, 2016

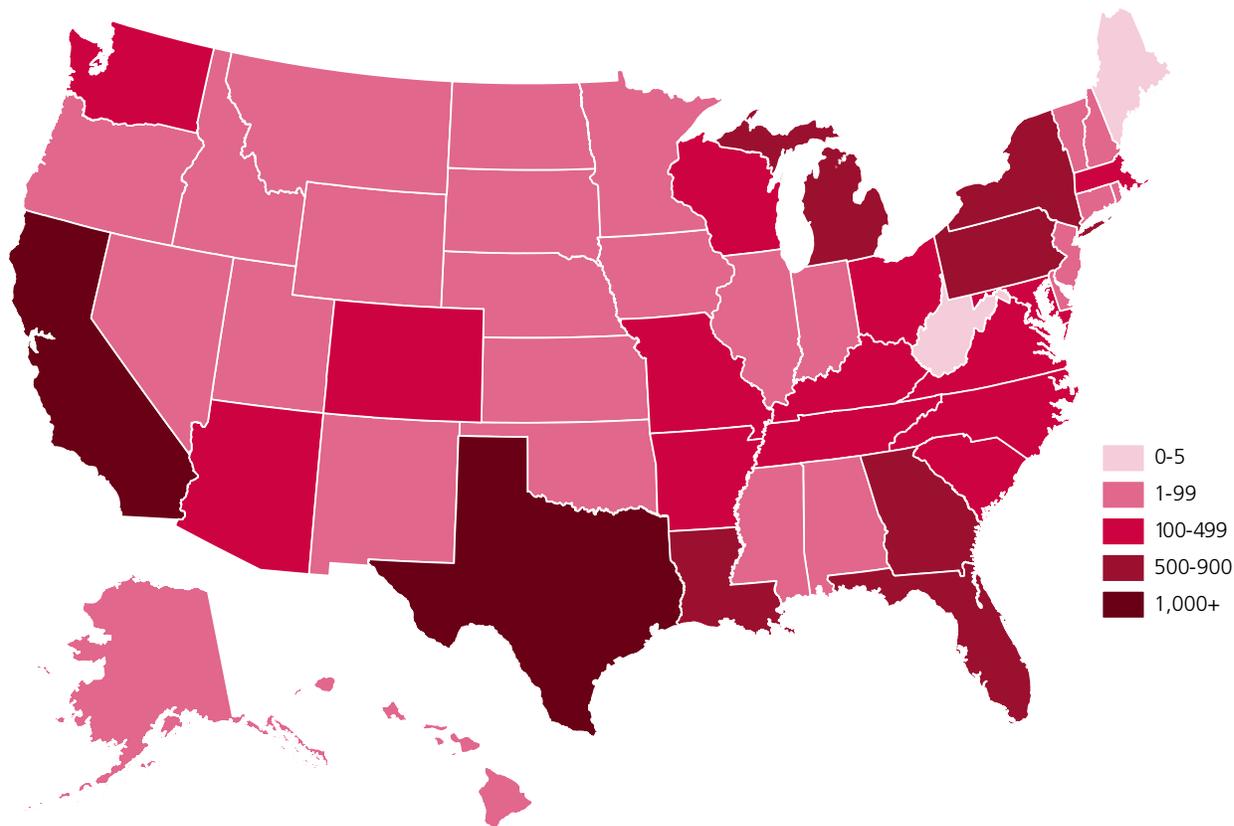


and Michigan hold the greatest number of people serving JLWOP, comprising half of the national total. Twenty-three states and the District of Columbia no longer allow juvenile life without parole.³

LIFE WITH PAROLE

As of 2016, 7,346 people were serving life sentences with the possibility of parole (LWP) for crimes committed under the age of 18. These sentences do not guarantee release on parole but allow for

Figure 2. People Serving Life without Parole, Life with Parole, and Virtual Life Sentences for Crimes Committed as Minors, 2016



a parole review at certain intervals. Typically, an initial wait period of 25 years is required before a first review by the parole board, but states have extended this minimum as far as 51 years, as in the case of Tennessee.

States with the highest population of people serving LWP for crimes committed as minors are California, Georgia, New York, and Texas. Combined, these four states hold more than 60 percent of the national total. Life-with-parole sentences for juveniles were not reported in five states.

In 2012 the U.S. Supreme Court, in *Miller v. Alabama*, vacated the mandatorily-imposed LWOP sentences for approximately 2,000 individuals who were under 18 at the time of their crime. As states implement reforms to comply with this decision, some have commuted these sentences to life with parole, thus granting parole boards the authority to consider factors related to youth at the time of the crime in

assessing readiness for release. Beyond this, most states have not required that parole boards develop official procedures for incorporating youth at the time of offense as an integral consideration during the parole hearing. California and Missouri are two exceptions.

California has taken steps to ensure that its parole board considers various age-related factors through creation of its Youth Offender Hearings.⁴ Specifically, "...the board is required to give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the inmate. Moreover, if the hearing panel relies on a risk assessment in assessing a youth offender's growth and maturity, the risk assessment must take into consideration these factors."⁵

Missouri is under a federal court order to implement new protocols for the parole review process for lifers

Table 1. Racial Composition of Juveniles and Adults Serving Life and Virtual Life Sentences, 2016

	Percent black			Percent nonwhite		
	Life with parole	Life without parole	Virtual life	Life with parole	Life without parole	Virtual life
Juvenile	50	63	64	82	77	79
Adult	43	55	51	67	68	65

sentenced as juveniles because the overwhelming majority of parole applicants were denied a release date due to their underlying offense. The order authorizes individuals to have full access to their prison records, ensures the right to bring multiple witnesses to hearings, including an expert witness, and provides a right to counsel. When parole is denied, the Board must specify the reason(s) for denial along with supporting evidence. Risk assessment tools, when used, must account for youthfulness at the time of the crime. Additionally, people serving life sentences cannot be excluded from some programming simply because of their life sentence. Finally, the board is prohibited from denying parole based solely on the nature of the crime.

VIRTUAL LIFE SENTENCES

In 2016, 2,089 people were serving virtual life sentences for crimes committed while under age 18. A virtual life sentence applies when the sentence length exceeds typical life expectancy. Virtual life sentences can be with or without parole. Eight state supreme courts have ruled that de facto life sentences violate the *Graham and Miller* rulings, which respectively barred life without parole for non-homicide offenses and barred its imposition as part of a mandatory statute.⁶ There remains debate in the legal community about how the Court's directive of allowing for a "meaningful opportunity for release"⁷ should be defined.

States with the highest figures of virtual life sentences for juvenile crimes are Indiana, Louisiana, Pennsylvania, and Texas, which together comprise 60 percent of the national total. Twelve states reported having no juveniles serving virtual life sentences.

RACIAL AND ETHNIC DISPARITIES

Racial and ethnic disparities plague the criminal justice system from the point of arrest through the point of imprisonment. This is no different when it comes to life sentences and the problem may be even worse for juveniles. The disproportionate presence of black youth among the life-sentenced population is staggering. Eighty percent of youth serving life sentences are youth of color and more than 50% are African American. In the Southern states of Alabama, Louisiana, Mississippi, and Virginia, over 80% of the youth life-sentenced population is African American. Ethnic disparities are also overwhelming: California, New York, and Texas each report having more than 100 Latino youth serving life sentences. When compared with adults serving life sentences the disproportionality is even more distinct.

CONCLUSION

Changes in crime policy following a period of rising violence during the 1980s led to today's proliferation of life sentences for juveniles. Policymakers enabled prosecutors to transfer youth out of the

juvenile court system into adult court more easily. Additionally, mandatory minimum sentences for certain offenses were set by statute and thereby limited judicial discretion. Consequently, the adult court system increased harsh punishment for youth without accounting for age.

In the years since, the practice of waiving minors into adult courts has drawn wide criticism. States have changed course regarding adjudication of juveniles since the 1990s and most have placed limits on the ability to charge a young person as if he or she was an adult.

The U.S. Supreme Court's decisions to limit life-without-parole sentences for juveniles has allowed approximately 2,000 people to be considered for a sentence review. This development has come about because of the established science showing the importance of brain development on decisionmaking. For the young people sentenced to life with the possibility of parole, and the young people serving de facto or virtual life sentences, their future is yet undecided, as the appropriateness of a "second look" for these two classes of life-sentenced individuals has not been addressed directly.

1. Maine and West Virginia.
2. Though the federal government allows life sentences without parole and virtual life sentences for juveniles, the population of those serving such sentences has not been made available. The federal system does not allow parole for life sentences
3. For more information on juvenile life without parole, see Rovner, Josh. (2019). *Juvenile Life Without Parole: An Overview*. Washington, DC: The Sentencing Project. Available here: <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>.
4. For more information on California's approach, see here. <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/>. Note that not all youthful offenders qualify under this law.
5. <https://www.cdcr.ca.gov/bph/youth-offender-hearings-overview/>
6. Hoesterey, A. R. (2017). Confusion in *Montgomery's* Wake: State Responses, the Mandates of *Montgomery*, and Why a Complete Categorical Ban on Life Without Parole for Juveniles is the Only Constitutional Option. *Fordham Urban Law Journal* Vol XLV 149-199.
7. See *Graham v. Florida* 560 U.S. at 75 (2010).