Juvenile Life Without Parole: An Overview

Twenty-three states and the District of Columbia have banned life sentences without the possibility of parole for juveniles; in a handful of other states, no one is serving the sentence.

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.[1]

Following the 2012 U.S. Supreme Court ruling in *Miller v. Alabama*,[2] states and the federal government are required to consider the unique circumstances of each juvenile defendant in determining an individualized sentence. *Montgomery v. Louisiana,*[3] a 2016 decision, ensures that the decision applies retroactively. For juveniles, a mandatory life sentence without the possibility of parole, is unconstitutional.

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 – Justice Kennedy called it what "any parent knows"[4] – was central to four recent Supreme Court decisions excluding juveniles from the harshest sentencing practices. The most recent, *Montgomery*, emphasized that the use of life without parole (mandatorily or not) should only be reserved for those juveniles whose offenses reflected "irreparable corruption,"[5] a ruling that Justice Scalia (in dissent) wrote may eventually "eliminat[e] life without parole for juvenile offenders."[6]

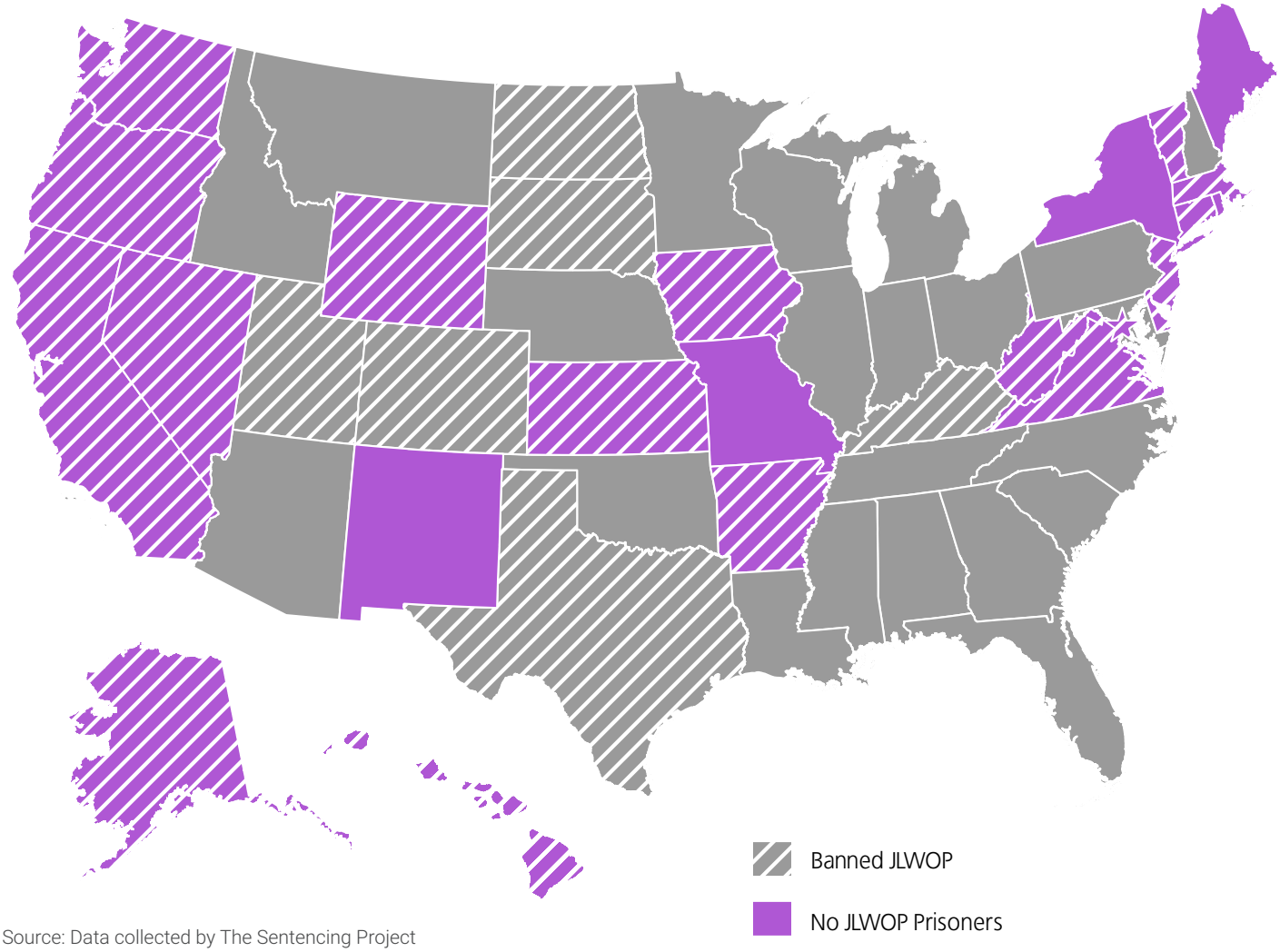
SUPREME COURT RULINGS

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 offenders, banned the use of mandatory life without parole, and applied the decision retroactively. In 2012, the Court ruled that judges must consider the unique circumstances of each juvenile offender, banning mandatory sentences of life without parole for all juveniles; in 2016, this decision was made retroactive to those sentenced prior to 2012.

ROPER V. SIMMONS, 543 U.S. 551 (2005)

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. Lastly, their heightened capacity for reform means that they are entitled to a separate set of punishments. The court also held that the nation's "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 juvenile offenders.[7] The *Roper* ruling affected 72 juveniles on death row in 12 states.[8] Between 1976 and the Roper decision, 22 defendants were executed for crimes committed as juveniles.[9]

States that have banned or limited the use of juvenile life without parole sentences, 2020



Source: Data collected by The Sentencing Project

GRAHAM V. FLORIDA, 130 S. CT. 2011 (2010)

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.[10] As in *Roper*, the Court pointed to the rare imposition of a particular punishment to prove that the punishment is unusual.[11]

Court precedent recognizes that non-homicide offenses do not warrant the most serious punishment available.[12] "The concept of proportionality is central to the Eighth Amendment," wrote Justice Kennedy.[13] Thus, having defined the maximum punishment for all juvenile offenders (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."[14] Limiting the use of life without parole did not guarantee such individuals would be released; it guaranteed a "meaningful opportunity" for release.

MILLER V. ALABAMA AND JACKSON V. HOBBS, 132 S. CT. 2455 (2012)

Following *Roper*'s exclusion of the death penalty for juveniles and *Graham*'s limitation on the use of life without parole, approximately 2,500 offenders were

serving sentences of life without parole for crimes committed as juveniles, all of whom were convicted of homicide-related offenses.

In 2012, deciding *Miller* and *Jackson* jointly, the U.S. Supreme Court held that, for juveniles, 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 juvenile 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.[15]

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MONTGOMERY V. LOUISIANA 136 S. CT. 718 (2016)

The *Miller* ruling affected mandatory sentencing laws in 28 states and the federal government. States inconsistently interpreted *Miller's* retroactivity. Supreme Courts in fourteen states[16] ruled that *Miller* applied retroactively while those of seven other states[17] ruled that *Miller* was not retroactive. In addition, California, Delaware, Nebraska, Nevada, North Carolina, and Wyoming passed juvenile sentencing legislation that applied retroactivity.[18]

The question was settled by the U.S. Supreme Court in the case of 68-year old Henry Montgomery,[19] who has been imprisoned in Louisiana with no chance of parole since 1963, a "model member of the prison community."[20] 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."[21] Moreover, the severest punishment must be reserved "for the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility."[22]

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.[23, 24]

LEGISLATIVE RESPONSES TO MILLER

Since 2012, 29 states and the District of Columbia have changed their laws for juvenile offenders convicted of homicide (including felony murder). All but four had previously required life without parole in these 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 Texas and Nebraska). Twenty-nine states still allow life without parole as a sentencing option for juveniles. In most states, the question of virtual life without parole has yet to be addressed.

PEOPLE SERVING JUVENILE LIFE WITHOUT PAROLE SENTENCES

Twenty-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. Thus, while 28 states allow the sentence, just three – Pennsylvania, Michigan, and Louisiana – account for about two-thirds of JLWOP sentences.

CHILDHOOD EXPERIENCES

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 the *Miller* ruling, ruled that Alabama and Arkansas erred because a mandatory sentencing structure does not "tak[e] into account the family and home environment."[25] The petitioners in the 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.[26] Kuntrell Jackson's family life was "immers[ed] in violence: Both his mother and his grandmother had previously shot other individuals."[27] His mother and a brother were sent to prison. The

defendant in Graham, Terrance Graham, had parents who were addicted to crack cocaine.[28]

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 atypical.[29]

• 79% witnessed violence in their homes regularly

• 32% grew up in public housing

• 40% had been enrolled in special education classes

• Fewer than half were attending school at the time of their offense

• 47% were physically abused

• 80% of girls reported histories of physical abuse and 77% of girls reported histories of sexual abuse

RACIAL DISPARITIES

Racial disparities plague the imposition of JLWOP sentences.[30] While 23.2% of juvenile arrests for murder involve an African American suspected of killing a white person, 42.4% 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 JWLOP sentence as their proportion of arrests for killing an African American (6.4%).

COST OF LIFE SENTENCES

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 $34,135 per year to house an average prisoner. This cost roughly doubles when that prisoner is over 50.[31] Therefore, a 50-year sentence for a 16-year old will cost approximately $2.25 million.

WHAT MAKES YOUTH DIFFERENT?

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 adolescent's ability to make sound judgments. Justice Kagan cited *Graham* and *J. D. B. v. North Carolina*[32] 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[33] in large part due to state prison policies that prohibit their participation or limited program availability. They typically receive fewer rehabilitative services than other prisoners.[34]

MOMENTUM FOR REFORM

Eliminating juvenile life without parole does not suggest guaranteed release of these offenders. Rather, it would provide that an opportunity for review be granted after a reasonable period of incarceration, one that takes into consideration the unique circumstances of each defendant. 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."[35]

In many other countries the period before a mandated review is 10 to 15 years.[36] If adequate rehabilitation has not occurred during these years in prison, as decided by experts, the individual may remain in prison and his/her case be reviewed again in another few years. Nor is it appropriate to eliminate life sentences in name only, replacing them with excessively lengthy prison terms that can reasonably expected to last for an offender's entire life. There is mounting support for such reform in select states. Motivated by the *Miller* decision, the state of California (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.

ENDNOTES

1 An estimated 2,100 people serving mandatory juvenile life without parole sentences became eligible for a sentencing review after the *Montgomery* decision.
2 *Miller v. Alabama*, 132 S. Ct. 2455 (2012).
3 577 U.S. ___2016 (2016)
4 *Roper v. Simmons*, 543 U.S. 551, 569 (2005).
5 *Roper* at 560.
6 *Montgomery*. Dissent of Justice Scalia (slip op.) at 15.
7 *Roper* at 560.
8 Death Penalty Information Center. U. S. Supreme Court: Roper v. Simmons, No. 03-633. http://www.deathpenaltyinfo.org/u-s-supreme-court-roper-v-simmons-no-03-633.
9 Death Penalty Information Center. Facts About the Death Penalty. http://www.deathpenaltyinfo.org/documents/FactSheet.pdf.
10 *Graham* at 2024.
11 In *Graham* and *Roper*, the Court also pointed to the overwhelming international consensus against the harshest punishments.
12 *Kennedy v. Louisiana*, 554 U.S. 407 (2008).
13 *Graham* at 2021.
14 *Graham* at 2028.
15 *Miller* at 2465.
16 Arkansas, Connecticut, Florida, Illinois, Iowa, Massachusetts, Mississippi, Nebraska, New Hampshire, New Jersey, Ohio, South Carolina, Texas, and Wyoming.
17 Alabama, Colorado, Louisiana, Michigan, Minnesota, Montana, and Pennsylvania.
18 Rovner, J. (2014). Slow To Act: State Responses to 2012 Supreme Court Mandate on Life Without Parole. Washington, DC: The Sentencing Project.
19 *Montgomery v. Louisiana*, petition 14-280.
20 *Montgomery* Slip Op. at 21.
21 *Montgomery* Slip Op. at 22.
22 *Montgomery* Slip Op. at 17.
23 *Montgomery* Slip Op. at 21.
24 Gately, G. (2015, March 23). Supreme Court Agrees to Hear Miller *Retroactivity Issue. Juvenile Justice Information Exchange*.
25 *Miller* at 2468.
26 *Miller* at 2462.
27 *Miller* at 2468.
28 *Graham* at 2018.
29 Nellis, A. (2012). The lives of juvenile lifers: Findings from a national survey. Washington, D.C.: The Sentencing Project.
30 Nellis, A. (2012).
31 ACLU (2012, June 13). "At America's Expense: The Mass Incarceration of the Elderly." Available at https://www.aclu.org/criminal-law-reform/report-americas-expense-mass-incarceration-elderly
32 131 S.Ct. 2394 (2011)
33 Nellis, A. (2012).
34 Boone, B. (2015). Treating adults like children: Resentencing adult juvenile lifers after *Miller v. Alabama*. *Minnesota Law Review*, 99(3), 1159-1194.
35 *Montgomery* Slip Op. at 21.
36 American Law Institute (2010). Model penal code: Sentencing: Council draft No. 3. Philadelphia, American Law Institute.

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Updated February 2020.

The Sentencing Project works for a fair and effective U.S. justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.