

# the CAMPAIGN for the FAIR SENTENCING of YOUTH

Submission to the Inter-American Commission on Human Rights regarding life-without-parole sentences for children in the United States

## **Introduction**

The United States remains the only country in the world known to sentence our children to life in prison without the possibility of parole—a sentence to die in prison. In recent years, the United States Supreme Court, in its holdings in *Graham v. Florida* and *Miller v. Alabama*, has scaled back the use of juvenile life without parole (JLWOP) sentences. Several state legislatures and courts have also reduced or abolished JLWOP. Generally, the recent trend is to move away from the use of JLWOP, however it remains a sentencing option as do other “de facto life” sentences, which both undermine the guidance from the U.S. Supreme Court and violate international human rights law. We have included a summary of the current landscape of JLWOP sentences as well as other extreme sentences imposed on children that disregard the unique characteristics of children. We conclude with our recommendations for reform to U.S. policies to properly ensure that young people are held responsible for harm they have caused in age-appropriate ways with a focus on rehabilitation and reintegration into society.

## **I. Prevalence of JLWOP in Statute and Practice**

Below is a list of states sorted by the number of people they have serving JLWOP. It is important to note that in states designated as having applied *Miller* retroactively or passed legislation scaling back or abolishing JLWOP those previously sentenced to JLWOP are now eligible for resentencing or parole.

### **a. No one serving JLWOP we are aware of**

Alaska - (eliminated JLWOP through legislation),

District of Columbia,

Maine,

New Mexico

New York,

Vermont,

West Virginia.

**b. 1-20 people serving JLWOP**

Connecticut,

Delaware – (passed legislation that IS retroactive and effectively eliminated JLWOP by allowing all children to petition for sentence modification hearings),

Georgia,

Hawaii,

Idaho,

Indiana,

Kansas - (eliminated JLWOP through legislation),

Kentucky - (eliminated JLWOP through legislation),

Maryland,

Minnesota - (State Supreme Court has ruled Miller DOES NOT apply retroactively),

Montana - (eliminated JLWOP through legislation),

Nevada,

New Hampshire,

North Dakota,

Ohio,

Oregon,

Rhode Island,

South Dakota - (Passed legislation that IS NOT retroactive and allows JLWOP in some cases),

Tennessee,

Texas - (eliminated JLWOP through legislation),

Utah - (Passed legislation that IS NOT retroactive and allows JLWOP in some cases),

Wisconsin,

Wyoming - (eliminated JLWOP through legislation and IS retroactive).

**c. 21-50 people serving JLWOP**

Arizona,

Colorado - (eliminated JLWOP through legislation),

Iowa - (State Supreme Court has ruled *Miller* applies retroactively),

Mississippi – (State Supreme Court has ruled *Miller* applies retroactively),

Nebraska - (passed legislation that IS retroactive, but allows JLWOP in some cases, and State Supreme Court has ruled *Miller* applies retroactively),

New Jersey,

North Carolina - (passed legislation that IS retroactive, but allows JLWOP as an option for first degree murder, abolished JLWOP for felony murder),

Oklahoma,

South Carolina,

Virginia,

Washington – (Retroactivity case is currently pending before the State Supreme Court).

**d. 51-150 people serving JLWOP**

Alabama,

Arkansas – (Passed legislation that IS NOT retroactive and allows JLWOP in some cases),

Illinois – (Retroactivity case is currently pending before the State Supreme Court),

Massachusetts - (eliminated JLWOP in *GREGORY DIATCHENKO vs. DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT & others.*, 466 Mass. 655 (2013) and applied *Miller* retroactively),

Missouri.

**e. More than 150 people serving JLWOP**

Florida – (Retroactivity case is currently pending before the State Supreme Court),

Louisiana – (State Supreme Court has ruled *Miller* DOES NOT apply retroactively & passed legislation that IS NOT retroactive),

Michigan – (State Appellate Court has ruled *Miller* DOES NOT apply retroactively, but case is currently pending before the State Supreme Court & the Legislature has passed legislation that IS NOT retroactive, unless State Supreme Court or U.S. Supreme Court find *Miller* to be retroactive and allows JLWOP in some cases),

Pennsylvania - (State Supreme Court has ruled *Miller* DOES NOT apply retroactively & passed legislation that IS NOT retroactive, allows JLWOP in some cases, abolished JLWOP for felony murder),

California – (passed legislation that IS retroactive and most children now have access to sentence modification and parole eligibility through the passage of SB 260 and SB 9, however JLWOP remains for small class of juvenile offenders).

## II. **Post-Miller JLWOP Reform Statutes that don't Consider Child Status:**

**Arkansas (passed HB 1993 in 2013)** – In attempting to pass *Miller* compliance legislation, Arkansas amended the statutory options for courts while preserving JLWOP, but did not direct the courts to consider the child status of the defendant as required by *Miller v. Alabama*.

**Louisiana (passed HB 152 in 2013)** – Similar to Arkansas, Louisiana tried to comply with *Miller* by passing legislation that gave judges additional sentencing options, but did not direct courts to focus in on the unique characteristics of youth that were so critical to the Supreme Court's reasoning. Instead, the legislature directed courts to consider the aggravating and mitigating circumstances, including the circumstances of the crime, the child's criminal history, and the child's social history and family support.

**South Dakota (passed SB 39 in 2013)** – This bill also did not focus on the unique child status of the defendant and sought only to comply narrowly with *Miller* by providing sentencing options and requiring the court to conduct a hearing on the aggravating and mitigating circumstances prior to sentencing a child.

**Wyoming (passed HB 23 in 2013)** – Although Wyoming abolished JLWOP by passing this legislation, the bill did not speak to children subject to other extreme sentences and the importance of judges considering the mitigating factors of a child's age/youth for ANY crime committed prior to imposing a sentence.

**Texas (passed SB 2 in 2013)** – While Texas had abolished JLWOP for most children prior to *Miller v. Alabama*, it still remained a viable sentencing option for 17 year olds in the state. Governor Perry announced the bill as a priority during a Special Session, which eliminated JLWOP as a sentencing option and replaced it with a mandatory minimum sentence of 40 years. While Texas took a step in the right direction, the high mandatory minimum and lack of focus on child status misses the point of the Supreme Court's decision in how children are different.

### **III. De Facto Life Sentences for Children in Adult Court:**

- a. Since many states don't require judges to consider factors relevant to the child's age at the time of sentencing, many permit judges to impose concurrent sentences, even for non-homicide offenses, that result in de facto life sentences. Perhaps the best example of a non-homicide offense that resulted in a life without parole sentence, in clear violation of Graham, was the case of Travion Blount, a 15 year old child from **Virginia** who was given 118 years and 6 life sentences in 2008 for the armed robbery of a Norfolk house party where no one was injured. After a judge found him guilty of 49 counts of armed robbery and abduction, he was given a sentence that in no way accounted for his status as a child, because the Virginia code doesn't require it, and as a result received what is believed to be the harshest punishment ever given to a child for a non-homicide offense. In 2013, prior to leaving office, Governor McDonnell commuted Travion's 6 life sentences to 40 years, 30 years more than what his two adult co-defendants got in the case.
- b. In many states that have mandatory minimums for certain crimes or that subscribe to Truth-in-Sentencing statutes, a child can be given a de facto life sentence for homicide as well as non-homicide offenses.
- c. Even in states that have abolished JLWOP post-Miller, like Wyoming for example, a child could still receive a de facto life without parole sentence. If in addition to a murder or multiple murders, a child was engaged in a robbery and kidnapping, the child would have to serve the mandatory minimum on each count, if the judge required the sentences to run concurrently, before being eligible for parole, creating a de facto life sentence without consideration of child status.

### **IV. Solutions**

- a. First and foremost, we have to recognize that children are constitutionally and developmentally different from adults, which is why they should never be tried and sentenced in a system designed for adults. All children should be subject to the jurisdiction of juvenile courts where judges are better equipped to handle cases involving children.
- b. Absent handling children who have committed serious crimes in juvenile court, we have to be sure to engage in comprehensive reform efforts in the adult criminal system when children have been transferred. Specifically, states need to do the following:
  - i. Abolish JLWOP for children;
  - ii. Eliminate De Facto Life Sentences for children, similar to West Virginia, by mandating that all children come up for review no later than 15 years regardless of any offense or multiple offenses they commit;
  - iii. Requiring judges to consider the Miller factors at sentencing for ANY offense or multiple offenses a child has committed; and
  - iv. Ensure meaningful periodic review every three years for children before a parole or review panel comprised of child brain and behavior development experts that are required to take into consideration the growth and maturity of the person since incarceration with a focus squarely on whether the person has been rehabilitated and not the nature of the crime itself. This should also include procedural safe guards, including, but not limited to:

1. Right to counsel;
  2. Requirement that the review/parole board state their reasons on the record for granting or denying parole;
  3. Right to participate in hearing;
  4. Right to appear before the review/parole board;
  5. Right to introduce evidence of remorse and/or rehabilitation;
  6. Presumption in support of parole where the individual has completed a rehabilitation/therapy program;
- v. Required training for criminal justice staff including judges, prosecutors, and defense attorneys on the unique characteristics of youth and why they are different from adults;
  - vi. Establish a Bill of Rights for children convicted and sentenced in adult court that safeguards their right to not be placed in solitary confinement, to live free of fear of bodily harm and integrity, right to regularly visit their parents and/or loved ones, right to secondary education, and right to adequately staffed and funded rehabilitative programs; and
  - vii. Develop alternatives to life and de facto life sentences that focus on rehabilitation through behavioral and mental health treatment that have been shown to significantly reduce recidivism and give youth the best possible chance at living a full, healthy, and productive life.