

the CAMPAIGN for the FAIR
SENTENCING of YOUTH 

BILL: House Bill 521

SHORT TITLE: Under 18-indefinite/life sentence-special parole eligibility

DATE: Wednesday, November 30, 2016

POSITION: **INTERESTED PARTY**

COMMITTEE: Senate Criminal Justice Committee

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Chair Eklund, Vice Chair Hughes, Ranking Member Thomas, and Criminal Justice Committee members:

The Campaign for the Fair Sentencing of Youth respectfully submits this testimony for the official record as an **Interested Party** regarding **House Bill 521**. We are grateful to Representative Manning for his leadership in introducing this bill and appreciate the Ohio Legislature's commitment to addressing this important constitutional and human rights issue concerning children. We urge the General Assembly to enact legislation holding youth accountable for their actions in an age-appropriate manner while providing them the opportunity for parole eligibility.

The Campaign is a national coalition and clearinghouse that coordinates, develops, and supports efforts to implement age-appropriate alternatives to the extreme sentencing of America's youth with a focus on abolishing life-without-parole sentences for all children. We collaborate with policymakers, national and community organizations, and individuals directly impacted by these policies to develop solutions that keep communities safe while providing opportunities for children to reintegrate into society after demonstrated rehabilitation.

Ohio should enact legislation to both hold youth accountable for serious crimes while recognizing the capacity all children have for growth and change. The introduced version of HB 521 ensured that all children would receive parole eligibility—for most, after serving 15 years, and for those in the most extreme cases, at age 40. It also requires the parole board to provide youth with “a meaningful opportunity to obtain release” and to consider youth-related mitigating factors at the time of review. After a House amendment, HB 521 still ensures all children received parole eligibility, but does so in a tiered fashion where individuals receive parole review after serving between 15 and 35 years, based on the underlying sentences they received. ***While the current version is a strong first step toward reform, the Senate should amend the bill to give youth an age-appropriate incentive toward rehabilitation while protecting the community.***

Suggested Compromise Amendment

In its current form, HB 521 is a significant first step toward reform, yet a further amendment is needed to ensure that youth do not spend the majority of their life in prison without review. First,

HB 521 ensures that all youth receive parole eligibility after they have served no more than 35 years. While life with parole eligibility after serving 35 years is certainly an improvement over a life-without-parole sentence, it does not provide youth with a meaningful opportunity to reintegrate into the community. Most youthful offenders would be at least 50 years old before their first opportunity to appear before the parole board, an age that would make their transition to the community far more challenging than in their early-to-mid 30s as the bill was originally written by the Ohio Sentencing Commission.

Second, HB 521 in its current form has the potential to produce fundamentally unfair outcomes for youth. HB 521 establishes time frames for parole eligibility based on the length of a youth's underlying sentence. In doing so, however, it fails to account for the seriousness of the youth's offense. For example, a youth sentenced to 20 years for a homicide crime would be parole eligible after 15 years, while a youth sentenced to consecutive terms over 30 years for several burglaries would not be parole eligible until serving 30 years, even though no life was lost. Given geographic, racial, and ethnic biases inherent to criminal sentencing, HB 521 in its current form creates a concern that certain youth may receive harsher sentences for less severe offenses and would encourage the contradictory outcomes that HB 521 was intended to prevent as envisioned by the Ohio Sentencing Commission.

The Campaign suggests a compromise amendment that adopts a position such as Nevada Assembly Bill 267. In 2015, Nevada passed legislation abolishing life-without-parole sentences for children.¹ Assembly Bill 267 established parole eligibility for youth after serving 15 years for non-homicide crimes and after serving 20 years for crimes where a victim was killed.² This ensured that youth who committed more serious offenses, those causing the death of another person, would serve more time before parole eligibility than those youth who commit less serious non-homicide offenses. Additionally, by establishing parole eligibility no later than after serving 20 years, it ensured individuals received a meaningful opportunity to rejoin the community. With a compromise amendment comparable to Assembly Bill 267 in Nevada, the Campaign would strongly endorse HB 521.

United States Supreme Court Decisions

Throughout the last decade, the United States Supreme Court has repeatedly concluded that children are constitutionally different from adults for the purpose of criminal sentencing. In *Roper v. Simmons* (2005), the Court struck down the death penalty for children, finding that it violated the 8th Amendment's prohibition against cruel and unusual punishment.³ The Court emphasized empirical research demonstrating that children are developmentally different than adults and have a unique capacity to grow and change as they mature.⁴ In *Graham v. Florida* (2010), the Court struck down life without parole sentences for non-homicide offenses, holding that states must give children a "realistic opportunity to obtain release."⁵ In *Miller v. Alabama* (2012), the Court struck down mandatory life without parole sentences for homicide offenses, and ruled that sentencing courts must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" any time a child faces a potential life-without-parole sentence.⁶

This January, the Supreme Court ruled in *Montgomery v. Louisiana* that the *Miller* decision applies retroactively to individuals serving mandatory life without parole for crimes they committed while under age eighteen. As the Court explains in *Montgomery*, the *Miller* decision “did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; it established that the penological justifications for life without parole collapse in ‘light of the distinctive attributes of youth.’”⁷ The Court held that “[e]ven if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects “unfortunate yet transient immaturity.””⁸ For the vast majority of children, life without parole is an unconstitutional sentence. The Court notes that “*Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility...*Miller*’s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.”⁹ By preserving life-without-parole sentences for children, states regularly expose themselves to *Miller* and *Montgomery* violations. Based on juvenile brain science and the demonstrated potential all children have for rehabilitation, the Campaign believes it is impossible for courts to accurately predict which children are “irreparably corrupt.”

HB 521 ensures that Ohio fulfills the letter of the recent U.S. Supreme Court rulings by ensuring all children have the opportunity for parole eligibility, but violates the spirit of these cases by making some youth serve what is basically a life-equivalent sentence before receiving parole eligibility. With an amendment comparable to Nevada’s Assembly Bill 267, as described previously, the passage of HB 521 would ensure that Ohio complies with both the letter and the spirit of the recent U.S. Supreme Court cases.

Demographics of Youth Serving Life Without Parole

By sentencing youth under eighteen to life in prison without parole, we as a society are sentencing children to die in prison. We condemn them for life for their worst adolescent acts rather than allowing them to demonstrate their capacity to grow and change. These children are regularly victims themselves long before becoming perpetrators of violence. Nationally, almost 80% of these youth witnessed violence in their homes and over half experienced violence weekly in their own neighborhoods.¹⁰ Half were physically abused and 20% were sexually abused.¹¹ In addition to failing to protect these children before they commit crimes, the criminal justice system also fails to treat these children fairly at sentencing. Nationally, African American youth are sentenced to life in prison without parole at a per capita rate of ten times that of their White counterparts for the same crime.¹² While most expect that the harshest penalty is reserved for the most severe offenders, almost two-thirds of youth sentenced to life in prison without parole were involved in the criminal justice system for the first time.¹³ A quarter of those serving this sentence were convicted of felony murder, in which they had no intention to kill anyone.¹⁴

Adolescent Developmental Research

Empirical research has demonstrated that adolescent brains are not fully developed. As many parents and educators could verify from personal experience, the adolescent brain does not fully mature until the mid to late twenties. Compared to adults, youth are less capable than adults in

long-term planning, regulating emotion, impulse control, and the evaluation of risk and reward.¹⁵ Additionally, youth as a whole are more vulnerable, more susceptible to peer pressure, and heavily influenced by their surrounding environment, which they rarely can control.¹⁶ The majority of our laws reflect adolescents' diminished decision-making capacity, including limiting children's right to vote, prohibiting them from purchasing alcohol or tobacco, and preventing them from entering into contracts, yet our criminal laws uniquely treat them as adults.

Because the adolescent brain is still developing, children possess a unique capacity for change. The majority of children who commit crimes outgrow their delinquency behavior,¹⁷ which means long prison sentences without parole eligibility prematurely gives up hope for many youth who would likely grow to be contributing members of society. Many individuals who were sentenced to lengthy prison terms as youth currently contribute meaningfully to society, including by mentoring at-risk youth and helping individuals transition back to society after incarceration. CFSY's Incarcerated Children's Advocacy Network was created by and is composed of formerly incarcerated youth that are living testimonies of young people's capacity for change.¹⁸

National and International Perspective

Ohio currently has the opportunity to join the growing number of states who have banned the practice of sentencing children to die in prison and are committed to giving youth a second chance. In the last four years, states as diverse as Texas,¹⁹ West Virginia,²⁰ Hawaii,²¹ Wyoming,²² Delaware,²³ Massachusetts,²⁴ Connecticut,²⁵ Vermont,²⁶ Nevada,²⁷ and Iowa²⁸ have eliminated the practice of sentencing children to die in prison. They join states such as Alaska,²⁹ Colorado,³⁰ Kansas,³¹ Kentucky,³² and Montana³³ who had previously eliminated this sentence. Just this session, Utah³⁴ and South Dakota³⁵ passed legislation banning the practice of sentencing children to die in prison. Ohio should look to neighboring West Virginia and Kentucky as examples of how to hold youth accountable for serious crimes while acknowledging youth's potential to change.

National organizations have expressed strong opposition to life-without-parole sentences for juveniles. The American Bar Association passed a resolution calling for states to eliminate life without parole as a sentencing option for youth, both prospectively and retroactively, and to "provide youthful offenders with meaningful periodic opportunities for release based on demonstrated maturity and rehabilitation."³⁶ The American Correctional Association, American Probation and Parole Association, and the National Association of Counties have passed similar resolutions.³⁷ Organizations including the American Psychological Association, the National Association of School Psychologists, the National Association of Social Workers, and the National Parent Teacher Association support ending life without parole for juveniles.³⁸

Costs to Society and Victims

In addition to the human rights and constitutional concerns for Ohio to enact reform, the state must also consider the financial impact and loss of human capital. In the United States, it costs approximately \$2.5 million to incarcerate a child for the duration of his or her life.³⁹ In contrast, a child with a high school education who is paroled after serving ten years could potentially contribute \$218,560 in tax revenue.⁴⁰ A formerly incarcerated child who obtains a college degree

can potentially contribute \$706,560 in tax revenue over his or her lifetime.⁴¹ These estimates do not include the contributions that these individuals will make to the local economy, support for their families, and the impact they can have on future generations as role models for at-risk youth. Criminal justice reform is sound policy that protects public safety while allowing formerly incarcerated youth to tangibly repay society with positive contributions.

Finally, the Campaign has great concern for those who bear the greatest costs of any criminal justice policy—the loved ones of victims who have died due to violence. Our hearts go out to those who have been hurt by youth and we work closely with victims’ family members who engage in restorative justice efforts to promote healing. We recognize that in many communities, families may have both loved ones hurt by violence and loved ones incarcerated for committing violent acts. We strongly encourage that the costs saved be redirected to improve support services for victims and their families and improve violence prevention programs.

Closing

Our criminal justice system serves complementary functions of protecting the community from safety threats, ensuring justice for victims, and rehabilitating offenders to rejoin society as productive contributors. ***While HB 521 in its current form is a significant first step, an amendment is necessary to truly achieve all three of these goals.*** Youth should be held responsible for their actions, especially for serious crimes, and the parole board should ensure that they are fully rehabilitated before being eligible for release. However, no single act as a teenager should destine a person to die in prison with no opportunity for reviews. We ask you to give these youth a meaningful opportunity to demonstrate they can change for the better.

Thank you,

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¹ A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015).

² *Id.*

³ *Roper v. Simmons*, 543 U.S. 551 (2005).

⁴ *Id.*

⁵ *Graham v. Florida*, 130 S. Ct. 2011 (2010).

⁶ *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

⁷ *Montgomery v. Louisiana*, No. 14-280, slip op. at 16 (2016), http://www.supremecourt.gov/opinions/15pdf/14-280_4h25.pdf

⁸ *Id.* at 16-17.

⁹ *Id.* at 20.

¹⁰ Ashley Nellis, The Sentencing Project (2012). *The Lives of Juvenile Lifers*. Available at http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf

¹¹ *Id.*

¹² Human Rights Watch (2008). Submission to the Committee on the Elimination of Racial Discrimination. <http://www.hrw.org/en/reports/2008/02/06/submission-committee-elimination-racial-discrimination-0>

¹³ Amnesty International & Human Rights Watch (2005), *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*. Available at <http://www.hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf>

¹⁴ *Id.*

¹⁵ *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, Laurence Steinberg and Elizabeth Scott, *American Psychologist*, December, 2003.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Incarcerated Children’s Advocacy Network, <http://fairsentencingofyouth.org/incarcerated-childrens-advocacy-network/>

¹⁹ S.B. 2, 83rd Leg., Special Sess. (Texas 2013).

²⁰ HB. 4210, 81st Legislature, 1st Sess. (W. Virg. 2013).

²¹ H.B. 2116, 27th Leg. (Hawaii 2014).

²² H.B. 23, 62nd Leg., Gen. Sess. (Wy. 2013).

²³ S.B. 9, 147th Gen. Assemb., Reg. Sess. (Del. 2013).

²⁴ H 4307, 188th Gen. Court (Mass. 2014).

²⁵ S.B. 796, 2015 Reg. Sess. (Conn. 2015).

²⁶ H. 62, 2015 Reg. Sess. (Vt. 2015).

²⁷ A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015).

²⁸ *Iowa v. Sweet*, No. 14-0455 (Iowa May 27, 2016).

²⁹ AK. STAT. § 33.16.010(a)

³⁰ COLO. REV. STAT. § 18-1.3-401(4)(b)(I) (West 2012).

³¹ KAN. CRIM. CODE. § 21-4622.

³² KY. REV. STAT. §640.040

³³ MONT. CODE § 46-18-222(1) (2007).

³⁴ H.B. 405, 61st Leg., Gen. Sess. (Ut. 2016).

³⁵ S.B. 140 2016 Reg. Sess. (SD. 2016).

³⁶ Resolution 107C, American Bar Association (Feb. 2015). Available at

<http://fairsentencingofyouth.org/resolutions-against-life-without-parole/>

³⁷ Resolution 2014-1, American Correctional Association (Aug. 2014); Resolution, National Association of Counties (July 2014); Resolution, American Probation and Parole Association (Feb. 2015). All available at

<http://fairsentencingofyouth.org/resolutions-against-life-without-parole/>

³⁸ Official Supporters to the Statement of Principles for the Campaign for the Fair Sentencing of Youth. Available at

<http://fairsentencingofyouth.org/about/who-we-are/>

³⁹ *The Mass Incarceration of the Elderly*, ACLU, June 2012. Available at:

https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf

⁴⁰ *The Fiscal Consequences of Adult Educational Attainment*, National Commission on Adult Literacy. Retrieved from: <http://www.nationalcommissiononadulthoodliteracy.org/content/fiscalimpact.pdf>

⁴¹ *Id.*