



The **CAMPAIGN** for the
FAIR SENTENCING
of **YOUTH**

BILL: SB 256

TITLE: Regards sentencing offenders under 18 when committed offense

DATE: December 3, 2020

POSITION: SUPPORT

COMMITTEE: House Criminal Justice Judiciary Committee

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Chair Lang, Vice Chair Plummer, Ranking Member Leland, and members of the Criminal Justice Committee:

The Campaign for the Fair Sentencing of Youth (“CFSY”) respectfully submits this testimony for the official record to express our **SUPPORT for SB 256**. We are grateful that in September the Senate overwhelmingly passed this legislation by a vote of 29-4, setting the stage for Ohio to become the 24th state in the nation to abolish life in prison without the possibility of parole for people who were under the age of 18 when they committed their crimes. We urge the Committee members to vote in favor of SB 256 because it will provide meaningful opportunities for people who, despite their youth, became involved in the adult criminal justice system, to demonstrate rehabilitation and suitability for a second chance at life outside prison walls. This is a crucial step in upholding the constitutional and human rights of young people in Ohio and an opportunity for Ohio to join the 23 other states and the District of Columbia that have banned the practice of sentencing children to die in prison.

The Campaign for the Fair Sentencing of Youth 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 and life-equivalent 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 demonstrating rehabilitation.

Background

The United States is the only country in the world in which a child may be condemned to die in prison. In the 1990s, tough-on-crime rhetoric was widely employed at the federal level and trickled down to the states. The term “superpredator” was coined to describe a new kind of

mythical young criminal, incapable of remorse or rehabilitation. As a result of this flawed logic, which has since been debunked and repudiated by its former proponents, policies were enacted that led increasing numbers of children to be tried as adults and given extreme sentences, including life in prison without the possibility of parole. Under this framework, we betray some of our best and most cherished values, such as our belief in redemption and second chances and our concern for the well-being and positive development of all children. Rather than invest in the rehabilitation of children who caused harm, we effectively told them with these policies that it did not matter what they did over the next ten, fifteen, twenty, or thirty years. There was no hope for them. They were thrown away based on the worst moment of their young lives without regard for the great potential that young people have to make positive change.

United States Supreme Court Decisions

Fortunately, 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, and our policies must take these fundamental differences into account. In *Roper v. Simmons* (2005), the Court struck down the death penalty for children, finding that it violated the Eighth Amendment's prohibition against cruel and unusual punishment.¹ 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.² 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."³ In *Miller v. Alabama* (2012), the Court struck down life-without-parole sentences for most 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.⁴

In 2016, the Supreme Court ruled in *Montgomery v. Louisiana* that its decision in *Miller v. Alabama* applies retroactively to individuals serving life without parole for crimes they committed while under age of eighteen. As the Supreme 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.'"⁵ Additionally, considering youth-related mitigating factors at the time of sentencing may be insufficient to protect against unconstitutional sentences if judges improperly evaluate an individual's capacity for rehabilitation. 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.'"⁶ For the vast majority of

¹ *Roper v. Simmons*, 543 U.S. 551 (2005).

² *Id.*

³ *Graham v. Florida*, 130 S. Ct. 2011 (2010).

⁴ *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

⁵ *Montgomery v. Louisiana*, No. 14-280, slip op. at 16 (2016), http://www.supremecourt.gov/opinions/15pdf/14-280_4h25.pdf

⁶ *Id.* at 16-17.

children, life without parole will be 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.”⁷ By preserving life-without-parole sentences for children, states expose themselves to *Miller* and *Montgomery* violations each time a child is charged with murder. Based on juvenile brain science and the demonstrated potential all children have for rehabilitation, the CFSY believes it is impossible for courts to accurately predict which children are “irreparably corrupt.”

SB 256 takes an important step toward constitutional compliance for youth convicted of serious crimes by abolishing life without parole, providing meaningful opportunities for parole review after serving either 25 or 18 years, depending on whether it was a homicide offense, and setting forth the factors particular to youth to be considered at the time of original sentencing and at the parole review.

Adolescent Developmental Research

As the United States Supreme Court has noted, empirical research reveals that adolescent brains are not fully developed. Parents and educators have long known from personal experience that 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 risks and consequences.⁸ Additionally, youth as a whole are more vulnerable, more susceptible to peer pressure,⁹ and heavily influenced by their surrounding environment, which they rarely can control.⁹ The majority of our laws reflect adolescents’ diminished decision-making capacity. We do not permit people under the age of 18 to vote, serve on juries or in the military, get married, enter into contracts, or purchase alcohol or tobacco. Yet our criminal laws uniquely treat them as adults.

Additionally, because the adolescent brain is still developing, children possess a unique capacity for change. The vast majority of children who commit crimes outgrow their illicit behavior,¹⁰ which means long prison sentences without parole eligibility prematurely abandon hope for many youth who would likely mature into contributing members of society. A recent study found that among former juvenile-lifers who have been released pursuant to changes in the law, the rate of recidivism is a mere 1 percent.¹¹ All around the country, we see people, who were once told as children that they had no hope for the future but to die in prison, experiencing dramatic transformation and living abundant, successful lives when they are given the opportunity of a second chance.

⁷ *Id.* at 20.

⁸ Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, Laurence Steinberg and Elizabeth Scott, *American Psychologist*, December, 2003.

⁹ *Id.*

¹⁰ *Id.*

¹¹ <https://medium.com/philadelphia-justice/new-study-finds-1-recidivism-rate-among-released-philly-juvenile-lifers-607f19d6d822>

National and International Perspective

Sentencing children to die in prison directly violates Article 37 of the United Nations Convention on the Rights of the Child, which prohibits the use of “capital punishment and life without the possibility of release” as sentencing options for people younger than 18.¹² The United States is the only country in the world that has not yet ratified this treaty.¹³ One of the main reasons for its refusal to do so is it still sanctions life-without-parole sentences for children.

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 seven years, states as diverse as Texas,¹⁴ West Virginia,¹⁵ Hawaii,¹⁶ Wyoming,¹⁷ Delaware,¹⁸ Massachusetts,¹⁹ Connecticut,²⁰ Vermont,²¹ Nevada,²² Utah,²³ South Dakota,²⁴ Iowa,²⁵ the District of Columbia,²⁶ and Virginia²⁷ have all eliminated the practice of sentencing children to die in prison. Ohio can look to states such as West Virginia and Utah as examples of how to hold youth accountable for serious crimes in age-appropriate ways, acknowledging children’s potential to make dramatic positive 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.”²⁸ The American Correctional Association, American Probation and Parole Association, and the National Association of Counties have passed similar resolutions.²⁹ Organizations including the American Psychological Association, the National

¹² U.N. Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹³ *Id.*

¹⁴ S.B. 2, 83rd Leg., Special Sess. (Texas 2013).

¹⁵ HB, 4210, 81st Legislature, 1st Sess. (W. Virg. 2013).

¹⁶ H.B. 2116, 27th Leg. (Hawaii 2014).

¹⁷ H.B. 23, 62nd Leg., Gen. Sess. (Wy. 2013).

¹⁸ S.B. 9, 147th Gen. Assemb., Reg. Sess. (Del. 2013).

¹⁹ H 4307, 188th Gen. Court (Mass. 2014).

²⁰ S.B. 796, 2015 Reg. Sess. (Conn. 2015).

²¹ H. 62, 2015 Reg. Sess. (Vt. 2015).

²² A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015).

²³ H.B. 405, 61st Leg., Gen. Sess. (Ut. 2016).

²⁴ S.B. 140 2016 Reg. Sess. (SD. 2016).

²⁵ *Iowa v. Sweet*, No. 14-0455 (Iowa May 27, 2016).

²⁶ Comprehensive Youth Justice Amendment Act of 2016, B 21-0683.

²⁷ H.B. 35, 2020 Reg. Sess. (Va. 2020)

²⁸ Resolution 107C, American Bar Association (Feb. 2015). Available at <http://fairsentencingofyouth.org/resolutions-against-life-without-parole/>

²⁹ 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/>

Association of School Psychologists, the National Association of Social Workers, and the National Parent Teacher Association support ending life without parole for youth.³⁰

Costs to Society and Victims

In addition to the human rights and constitutional justifications for Ohio to enact SB 256, 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.³¹ In contrast, a child with a high school education who is paroled after serving ten years could potentially contribute \$218,560 in tax revenue.³² With a college degree, a formerly incarcerated child can potentially contribute \$706,560 in tax revenue over his or her lifetime.³³ 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 CFSY has deep 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.

Personal Perspective

Prior to serving as Senior Policy Counsel for the CFSY, I spent several years working as a prosecutor in the Tennessee Attorney General’s Office. In fact, I went to law school for the sole purpose of becoming a career prosecutor. Several years into my career, I was invited by one of my old university professors to teach a law class in conjunction with an innovative new college prison program. This marked my first opportunity to regularly engage, outside a courtroom, with people who were incarcerated. I was amazed at what I discovered. Several of the people in my class were serving lengthy sentences, including life without the possibility of parole, for offenses they committed when they were under the age of 18. And while each one of them was profoundly gifted and had invested in their own rehabilitation, they often had no meaningful opportunity to demonstrate their transformation and suitability for a second chance. Such is the nature of life without the possibility of parole and other extreme sentences that we impose against teenagers.

³⁰ 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/>

³¹ *The Mass Incarceration of the Elderly*, ACLU, June 2012. Available at: https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf

³² *The Fiscal Consequences of Adult Educational Attainment*, National Commission on Adult Literacy. Retrieved from: <http://www.nationalcommissiononadultliteracy.org/content/fiscalimpact.pdf>

³³ *Id.*

Over the past thirteen years, I have taught several more times in the prison program. One of the most basic, but life-changing lessons that has consistently been brought home to me is that people are more than their worst mistake. Young people in particular have profound rehabilitative potential. Because their brains are still developing, they can experience dramatic positive transformation, move beyond their worst moment, and live healthy, productive lives. I never imagined when I started my career as a prosecutor that I would one day be an advocate for juvenile sentencing reforms such as SB 256. But I have come to understand that for justice to be done, when we recognize that a person has been rehabilitated, especially a person who was sentenced as a child, we must provide them with a meaningful opportunity to demonstrate their suitability for release.

As someone who has prosecuted hundreds of cases, I continue to place great value on public safety and concern for the rights and healing of victims. But justice is not a zero-sum game in which we are able to only concern ourselves with one side of the equation. These priorities must be balanced with other cherished values, such as our beliefs in redemption and second chances and our concern for the well-being and positive development of all children. The need for age-appropriate sentencing does not offend our commitments to victims and public safety. In fact, many of these young people have themselves been victims. Nationally, almost 80 percent of these youth witnessed violence in their homes and over half experienced violence weekly in their own neighborhoods.³⁴ Half were physically abused and 20 percent were sexually abused.³⁵ 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.³⁶ 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.³⁷ A quarter of those serving this sentence were convicted of felony murder, in which they had no intention to kill anyone.³⁸

I have seen the importance of hope and the value of a chance at redemption both in the students in the college prison program and in the members of the CFSY's Incarcerated Children's Advocacy Network ("ICAN").³⁹ My friends and colleagues Eric Alexander, Xavier McElrath-Bey, Catherine Jones, Eddie Ellis, Marshan Allen, Ashlee Sellars and so many other formerly incarcerated individuals serve as shining examples of how children, even those who have committed or been involved in violent crimes, can transcend their darkest moments and go on to make beautiful contributions to society by mentoring at-risk youth, helping individuals

³⁴ 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

³⁵ *Id.*

³⁶ 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>

³⁷ 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>

³⁸ *Id.*

³⁹ Incarcerated Children's Advocacy Network, <http://fairsentencingofyouth.org/incarcerated-childrens-advocacy-network/>

transition back to society after incarceration, serving as schoolteachers and substance abuse counselors, leading restorative justice initiatives, and raising loving families. These fine people, once regarded as deserving nothing more than a prison cell based on the harm they caused, are living testimonies of young people's capacity for change. We need juvenile sentencing policies like those set forth in SB 256 that do not consign a child to permanent punishment, but instead leave room for their promise.

I am grateful for the opportunity to represent the Campaign for the Fair Sentencing of Youth in supporting SB 256. Ohio can look to states such as Arkansas, West Virginia and Wyoming as examples of how to hold youth accountable for serious crimes in age-appropriate ways, acknowledging their potential to make dramatic positive change. SB 256 balances the needs to protect the community from safety threats, to ensure justice for victims, and to rehabilitate incarcerated individuals to rejoin society as productive contributors. I have learned that no act as a teenager should destine a person to die in prison with no meaningful opportunity for review of who the person goes on to become and whether the person has experienced rehabilitation. I ask you to support SB 256 and give all children the opportunity to demonstrate that they can change for the better.

Closing

SB 256 is about hope. It is rooted in the beliefs that no child is born bad, all children, without exception, are deserving of our compassion and concern, and no child should ever be told that they have no hope but to die in prison. While recognizing that children are the most vulnerable members of our society and simultaneously our most valuable resource for building a bright future, and must therefore be held accountable in age-appropriate ways that focus on rehabilitation, SB 256 also ensures that the rights and well-being of victims are respected and the community is protected from safety threats. We are all of us more than our worst moment, so we must have in place sentencing policies, particularly for children, that create opportunities for redemption. We ask you to support SB 256 and give these youth the opportunity to demonstrate that they can change for the better.

Thank you,

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