

To: House Criminal Justice Committee
From: Kevin Werner, Policy Director
Date: December 2, 2020
Re: Proponent Testimony for Senate Bill 256

Chairman Lang, Vice-Chair Plummer, Ranking Member Leland and members of the committee, thank you for the opportunity to provide proponent testimony on Senate Bill 256. My name is Kevin Werner and I am the policy director at the Ohio Justice & Policy Center, a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems. The bill before you today is precisely the kind of reform Ohio's system needs. It is fair, intelligent and redemptive in its goals.

I'd like to focus on three things for you to consider: 1.) what the bill does; 2.) why this bill is appropriate and needed and; 3.) what the national trends and implications are for Ohio.

WHAT S.B. 256 DOES

At the highest level, SB 256 does four things. First, it no longer allows young people who commit certain offenses to be sentenced to life without parole. Second, it automatically applies to any prisoner whose offense was committed before the age of 18. Third, the bill lays out appropriate parole eligibility timelines for individuals whose offenses were committed before the age of 18 with one categorical exception. Fourth, the bill provides specific criteria the parole board is required to consider once an applicable prisoner becomes eligible for parole consideration.

The bill mandates resentencing for all prisoners who were under 18 when they committed their offenses. Each eligible prisoner would be assigned to one of four sentencing categories and would be considered for release by the parole board after they have completed one of the following terms: 18 years of their sentence or sentences; 25 years of a sentence or sentences for eligible offenses of homicide or homicide-related offenses; sentences less than 18 or 25 years. The final category is a narrowly crafted indefinite term of 30-life for certain offenses.

With respect to notice and a hearing, the bill complies with the Victims' Rights Law (R.C. §2930), the Pardon, Parole and Probation Law (R.C. §2967), the Adult Parole Authority (R.C. §5149) and is in accordance with parole board policies and procedures. The bill addresses the need to ensure a review process that provides an opportunity for meaningful review for release by the parole board. Having an opportunity for meaningful review for release has eluded thousands of prisoners who have been routinely "flopped" because of one factor—the nature and seriousness of the offense, a static condition that can and will never change. SB 256 wisely sets forth five mitigating factors the parole board is to consider in applicable cases:

1. Age at the time of the offense;
2. Home environment;
3. Circumstances of the offense;
4. Likelihood of different charge but for the incompetencies of youth;
5. Prisoner's rehabilitation, growth and increase in maturity.



WHY S.B. 256 SHOULD BE ADOPTED

S.B. 256 will bring Ohio into alignment with landmark decisions made by the United States Supreme Court in the cases of *Graham*¹, *Miller*² and *Montgomery*³. In *Miller*, the Court ruled that making life without parole sentences mandatory for juveniles (JLWOP) constitutes cruel and unusual punishment in violation of the Eighth Amendment. *Miller* created a distinction between mandatory and discretionary LWOP sentences for juveniles, but S.B. 256 is not operational based on a mandatory or discretionary sentence. S.B. 256 would prohibit JLWOP in the State of Ohio, allowing youthful individuals who commit crimes the opportunity to earn release contingent on successful rehabilitation.

The *Miller* Court noted adolescence is marked by “transient rashness, proclivity for risk, and inability to assess consequences.” Because their brains are still developing, juveniles are more susceptible to peer pressures, have trouble with the regulation of emotion and impulse control, and are heavily influenced by their environments. In 2012, The Sentencing Project, a national organization that tracks sentencing trends across the nation, conducted a study on what kinds of environments these kids who are sentenced to JLWOP lived in and found the following:

- 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.

Violence was normalized in the homes and communities of young people sentenced to JLWOP. But the answer is not to throw our hands in the air lamenting violence begets violence, unfairly justifying the categorization of young people who commit violent offenses as irredeemable. Rather, it is precisely because brain development is still occurring that young people are ideal candidates for rehabilitation and deserving of a second chance and redemption.

Since 2005, relevant U.S. Supreme Court rulings have consistently accepted and utilized adolescent brain development findings as the underpinning of its rulings. In short, the Court recognizes brain development in youthful offenders is still very much a work in progress. Therefore, our society should take brain development into consideration when sentencing youthful offenders and when determining potential for release from that incarceration. The committee can and should seek out the testimony from medical experts on adolescent brain development.

Setting aside the Court ruling’s for a moment, there is another compelling reason Ohio should enact S.B. 256. When examining how did Ohio arrive at this policy of sentencing

¹ *Graham v. Florida*, 130 S. CT. 2011 (2010).

² *Miller v. Alabama* and *Jackson v. Hobbs*, 132 S. CT. 2455 (2012).

³ *Montgomery v. Louisiana*, 136 S. CT. 718 (2016).

children to life without parole, we find a sobering reason. The following excerpt from the website of the Campaign for the Fair Sentencing of Youth encapsulates the narrative for Ohio's, and other states' use of JLWOP:

In the mid 1990s, criminologists predicted a violent juvenile crime wave, saying that “godless fatherless monsters” would wreak havoc on our communities. They plastered photos of Black teenagers in the media and dubbed them “superpredators.” State legislatures reacted by passing tough on crime policies that made it possible to try children as adults at younger and younger ages. At the same time, an increase in mandatory minimums and truth in sentencing took hold. The confluence of these laws led to these extreme sentences for children, which have no equal elsewhere in the world.

Years later, the superpredator theory was disproven. There never was a violent juvenile crime wave, but the policies remained in place, including life-without-parole for children. African American youth are serving life without parole at a per capita rate that is 10 times that of white youth. Historically, just five states are responsible for imposing two-thirds of overall juvenile life without parole sentences, despite youth in those states being no more deserving of punishment than in any other.

NATIONAL TRENDS AND IMPLICATIONS FOR OHIO

Across the country today, state legislatures are enacting policies that move away from sentences that cast young people into the “irredeemable” category. Last month, Oregon became the 22nd state to legislatively ban life without parole sentences for juveniles. Another six states have no one serving a JLWOP sentence, bringing the national number, in legislation and practice, to 28. Ohio would be the 23rd state to legislatively end JLWOP sentences.

Ohio could save significant resources by adopting S.B. 256 and parole reform more broadly. The costs associated with JLWOP sentences are astronomical. Tables 2 and 3 below calculate costs for incarceration and potential savings on a per prisoner basis. But those Tables do not take into consideration costly litigation Ohio will ensue in the aftermath of the controlling cases. The Office of the Ohio Public Defender estimates at least 11 cases subject to further litigation after *Montgomery*, at least 27 cases subject to further litigation after *Moore* and at least 71 cases ripe for litigation after *Miller* and *Montgomery*. Enacting S.B. 256 saves resources on litigation and incarceration costs.

In closing, the Ohio Justice & Policy Center strongly supports S.B. 256. We are grateful to Senators Lehner and Manning for their leadership on this issue. We believe this bill appropriately reflects the desire to support children and young people because they are much, much more their worst mistakes. Thank you and I am happy to answer any questions.



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Table 1. States With and Without JLWOP Sentences

Legislative Ban JLWOP (22)		No One Serving JLWOP (6)	Permit JLWOP (22)	
Alaska	Arkansas	Maine	Alabama	Arizona
California	Colorado	Minnesota	Florida	Georgia
Connecticut	Delaware	Missouri	Idaho	Illinois
Hawaii	Iowa	New Mexico	Indiana	Louisiana
Kansas	Kentucky	New York	Maryland	Michigan
Massachusetts	Nevada	Rhode Island	Mississippi	Montana
New Jersey	North Dakota		New Hampshire	Nebraska
Oregon	South Dakota		North Carolina	Ohio
Texas	Utah		Oklahoma	Pennsylvania
Vermont	Washington		South Carolina	Tennessee
West Virginia	Wyoming		Virginia	Wisconsin

Table 2. Costs for incarceration (using avg. inflation from 2000-2020)

Year # / Age	Ave. Annual Cost ^{4 5}	Cumulative Cost	Year # / Age	Ave. Annual Cost	Cumulative Cost
1 / 17	\$ 202,502	\$ 202,502	30 / 46	\$ 59,985	\$ 1,579,087
2 / 18	\$ 208,577	\$ 411,079	31 / 47	\$ 61,785	\$ 1,640,872
3 / 19	\$ 27,835	\$ 438,914	32 / 48	\$ 63,639	\$ 1,704,511
4 / 20	\$ 28,670	\$ 467,584	33 / 49	\$ 65,548	\$ 1,770,059
5 / 21	\$ 29,530	\$ 497,114	34 / 50	\$ 67,514	\$ 1,837,573
6 / 22	\$ 30,416	\$ 527,530	35 / 51	\$ 69,539	\$ 1,907,112
7 / 23	\$ 31,328	\$ 558,858	36 / 52	\$ 71,625	\$ 1,978,737
8 / 24	\$ 32,268	\$ 591,126	37 / 53	\$ 73,774	\$ 2,052,511
9 / 25	\$ 33,236	\$ 624,362	38 / 54	\$ 75,987	\$ 2,128,498
10 / 26	\$ 34,233	\$ 658,595	39 / 55	\$ 78,267	\$ 2,206,765
11 / 27	\$ 34,260	\$ 692,855	40 / 56	\$ 80,615	\$ 2,287,380
12 / 28	\$ 35,288	\$ 728,143	41 / 57	\$ 83,033	\$ 2,370,413
13 / 29	\$ 36,347	\$ 764,490	42 / 58	\$ 85,524	\$ 2,455,937
14 / 30	\$ 37,437	\$ 801,927	43 / 59	\$ 88,090	\$ 2,544,027
15 / 31	\$ 38,560	\$ 840,487	44 / 60	\$ 90,733	\$ 2,634,760
16 / 32	\$ 39,717	\$ 880,204	45 / 61	\$ 93,455	\$ 2,728,215
17 / 33	\$ 40,909	\$ 921,113	46 / 62	\$ 96,259	\$ 2,824,474
18 / 34	\$ 42,136	\$ 963,249	47 / 63	\$ 99,147	\$ 2,923,621
19 / 35	\$ 43,400	\$ 1,006,649	48 / 64	\$ 102,121	\$ 3,025,742
20 / 36	\$ 44,702	\$ 1,051,351	49 / 65	\$ 105,185	\$ 3,130,927
21 / 37	\$ 46,043	\$ 1,097,394	50 / 66	\$ 108,341	\$ 3,239,268
22 / 38	\$ 47,424	\$ 1,144,818	51 / 67	\$ 111,591	\$ 3,350,859
23 / 39	\$ 48,847	\$ 1,193,665	52 / 68	\$ 114,939	\$ 3,465,798
24 / 40	\$ 50,312	\$ 1,243,977	53 / 69	\$ 118,387	\$ 3,584,185
25 / 41	\$ 51,821	\$ 1,295,798	54 / 70	\$ 121,939	\$ 3,706,124
26 / 42	\$ 53,376	\$ 1,349,174	55 / 71	\$ 125,597	\$ 3,831,721
27 / 43	\$ 54,977	\$ 1,404,151	56 / 72	\$ 129,365	\$ 3,961,086
28 / 44	\$ 56,626	\$ 1,460,777	57 / 73	\$ 133,245	\$ 4,094,331
29 / 45	\$ 58,325	\$ 1,519,102	58 / 74	\$ 137,242	\$ 4,231,573

⁴ Callahan, Denise. *Dayton Daily News*, "Ohio spends \$202,502 to jail each juvenile offender," Dec. 12, 2014. Available at <https://www.daytondailynews.com/news/crime--law/ohio-spends-202-502-jail-each-juvenile-offender/3yJc7TzcbWdDnOOC0H3rJ/>

⁵ Ohio Department of Rehabilitation and Correction, Average Cost Per Inmate FY2018, available at <https://drc.ohio.gov/Portals/0/Jan%20fact%20sheet.pdf>

Table 3. Potential Costs Savings under S.B. 256 ⁶			
R.C. Section in S.B. 256	Min. Cumulative Costs/Prisoner (with S.B. 256)	Max. Cumulative Costs/Prisoner (without S.B. 256)	Difference or Potential Savings/Prisoner (with S.B. 256)
2967.132 (C)(1)	\$ 963,249	\$ 4,231,573	\$ 3,268,324
2967.132 (C)(2)	\$ 1,295,798	\$ 4,231,573	\$ 2,917,775
2971.03 (A)(5)	\$ 1,579,087	\$ 4,231,573	\$ 2,652,486

⁶ The table assumes avg. inflation rate between 2000-2020 applied to current incarceration costs of youth and adult prisoners. Table assumes incarceration for two years in juvenile state facility before transfer to adult prison per Table 2 above. "Max. Cumulative Costs/Prisoner (without S.B 256)" assumes life expectancy is 74 years. Costs do not take into consideration more expensive medical care as prisoners surpass age 50 or offsets upon Medicare eligibility.