



Ohio Prosecuting Attorneys Association

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Senate Bill 256
Opponent Testimony
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Chairman Eklund, Vice-Chair Manning, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to provide opponent testimony on Senate Bill 256, a bill that would repeal juvenile life without parole and establish special parole eligibility dates for youthful offenders sentenced to a stacked term of years sentence. Proponents of this legislation have pointed two United States Supreme Court cases and one Ohio Supreme Court case that they argue makes this legislation necessary in order to bring our sentencing practices in line with what the Constitution requires. We support addressing this line of cases. Senate Bill 256, however, goes far beyond what is necessary and instead reduces the amount of time juvenile offenders serve for the most violent offenses.

Juvenile Life Without Parole

Senate Bill 256 repeals juvenile life without parole sentences in Ohio. In *Miller v. Alabama*, 567 U.S. 460, the Supreme Court of the United States held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. The Court did not foreclose the possibility of a discretionary life without parole sentence and neither should the General Assembly. In *Miller*, the Court reasoned that mandatory life without parole is flawed because it gives no significance to the character and record of the individual offender or the circumstances of the offense and therefore does not allow for individualized sentencing that enables a judge to account for factors of youth. A blanket sentencing rule that juvenile can ever be sentenced to life without parole is no more individualized than a mandatory life without parole sentence. An especially depraved juvenile offender may be just as culpable and an adult. *Roper v. Simmons*, 543 U.S. 599 at 600 (O'Connor, J., dissenting.)

There are only a couple of offenses in the Ohio Revised Code that mandate life without parole. Ohio law can be brought into line with the *Miller* decision by providing for discretionary sentencing for these offenses as they relate to youthful offenders.

Retaining discretionary life without parole would also address another issue presented by Senate Bill 256, the equal protection problem that is created by the bill's attempt to permit any juvenile life without parole sentence that has already been imposed to remain in effect. The bill does this by creating the "aggravated homicide offense" – the purposeful killing of three or more persons. If a youthful offender was already sentenced to life without parole for an "aggravated homicide offense" they are not eligible for parole under the bill. This is effectively the T.J. Lane exception. It would not apply to any future youthful offender who killed three or more persons, either in a school shooting or otherwise. Such a person would become eligible for parole under the bill no matter how many people they killed. If life without parole is appropriate for T.J. Lane, it is appropriate for any future juvenile offender whose actions are similarly depraved.

Discretionary life without parole should be retained.

Special Parole Eligibility – Homicide Offenses

The bill provides that for any homicide offense that is not an “aggravated homicide offense” a person becomes eligible for parole after serving 25 years.

Current law provides judges wide discretion under most circumstances to impose whatever sentence they feel is appropriate. They can impose concurrent sentences or if they determine the conduct was more serious and the offender more dangerous consecutive sentences. The penalty for murder, under most circumstances, is fifteen years to life. For aggravated murder, a judge can select from a range of sentences that include life without parole, 20 to life, 25 to life, or 30 to life. They can decide whether to impose concurrent sentences or consecutive sentences for other offenses. So, a judge who selects a sentence of 30 years to life has made a determination that the offense is more serious and more deserving of a harsher punishment than 20 to life or 25 to life. Nevertheless, Senate Bill 256 would make the person eligible for parole after 25 years. It undoes the judicial determination that the offense required something more. It empowers the parole board to reduce a properly imposed judicial sentence. This is a power that the parole board should not have.

Parole eligibility in homicide cases should instead be addressed by providing for parole after the offender has served 40 years. This would recognize current judicial sentencing options while still providing a meaningful opportunity for parole.

Special Parole Eligibility – Non-Homicide Offenses

The bill provides that for non-homicide offenses, a person becomes eligible for parole after serving 18 years.

In *State v. Moore*, 2016-Ohio-8288 the Ohio Supreme Court held that a term of years sentence imposed on a juvenile non-homicide offender that exceeds their life expectancy amounts to a functional life sentence and is prohibited under the constitution. We support addressing the *Moore* decision which requires a meaningful opportunity for release. But in providing for parole eligibility after only 18 years, Senate Bill 256 disconnects parole eligibility from the seriousness of the offenses. Brandon Moore was convicted of three counts of aggravated robbery, three counts of rape, three counts of complicity to commit rape, one count of kidnapping, one count of conspiracy to commit aggravated robbery, one count of aggravated menacing, and 11 firearm specifications. He was originally sentenced to 141 years in prison. When this sentence was reversed, he was resentenced to 112 years in prison. After the Supreme Court decision in his case, Moore was resentenced to 50 years. Under Senate Bill 256 he would be eligible for parole after serving only 18 years. An offender sentenced to a stacked term of years who committed some lesser serious offenses non-homicide offenses would also be eligible after 18 years. In other words, there is no connection in the bill between what the offender does and when they become eligible for parole. The bill doesn't account for the seriousness of the conduct or the fact that a judge determined that consecutive sentences were necessary.

The *Moore* decision should instead be addressed by providing for parole eligibility in non-homicide cases after the offender has served 40 years or 80% of their sentence, whichever comes first. This would tie release eligibility to the seriousness of the crimes.

Thank you again for the opportunity to provide testimony in opposition to Senate Bill 256. I would be happy to answer any questions that you have.