

Memorandum to the Ohio Senate Judiciary Committee in Support of SB256

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee:

I write today to offer my support for Senate Bill 256, which regards the sentencing of offenders under the age of 18.

We ask ourselves: should children who are just that, still children, be sentenced to life with no hope or chance for redemption, even if they have committed terrible crimes? The law, and now this proposed bill and the clarification it offers, have now answered that question: No.

Research and understanding of the development of the youth brain has changed much of how we think about kids, and also how the law treats them. This research shows that brain development is not complete until the age of 24. As a result, kids lack judgment, are more impetuous in decision-making, cannot fully appreciate long-term consequences of their actions, and are easily influenced by peers or others.

As a result, the law no longer allows the execution of a youth under the age of 18. Further, these children cannot be sentenced to life without any chance of parole.

In the leading U.S. Supreme Court case of *Graham v. Florida*, 560 U.S. 48 (2010), the U.S. Supreme Court considered a single sentence of life without parole given to a 16 year old for a non-homicidal sentence. In their ruling, the U.S. Supreme Court held that *Graham* should be given a meaningful opportunity at the chance to rejoin society. There is no guarantee of freedom, but there is an opportunity for freedom to be considered.

In two subsequent cases, the U.S. Supreme Court extended the ruling to murder cases, and made it retroactive.

The second question was: when a youth commits multiple crimes for which the successive sentences equal a life without parole sentence, does *Graham* and subsequent case law provide direction? In *Ohio v. Moore*, 149 Ohio St. 3d 557, the Ohio Supreme Court answered that yes, a child in those circumstances must also be given a parole hearing under the *Graham* guidelines. Ohio followed the lead of multiple other state Supreme Courts who found that successive sentences that created the equivalent of a life without parole sentence were also subject to that “meaningful” opportunity for parole.

In *Moore*, Justice Pfeiffer, the opinion’s author, wrote:

“{¶44} ...*Graham* does not foreclose the possibility that a defendant who commits a heinous crime as a youth will indeed spend his entire remaining lifetime in prison; *Graham* does not guarantee an eventual release. “What the State must do, however, is give defendants like *Graham* some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Id.* at

75. *Graham* leaves it to the states to determine how to achieve that requirement.”

As a result, S.B. 256 lays out those guidelines. That statute is supported by the judges through the Ohio Judicial College, the Ohio Public Defender’s office, and other child advocates, as well as the Ohio Conservative Juvenile Justice Network, which I chair. The bill lays out terms for crimes committed by youth, including murders. It provides a “meaningful opportunity” for parole but does not mandate it, and the application is retroactive, as required by the U.S. Supreme Court.

It also lays out factors for trial judges, consistent with neuroscience research, that should be considered in the sentencing youth under 18, such as:

- Chronological age;
- Intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks and consequences;
- The family home environment;
- A history of trauma;
- School and special education history;
- The way familial and peer pressure may have impacted the offender’s conduct;
- The inability to assist the offender’s own attorney;
- Rehabilitation, including any subsequent growth or increase in maturity

Such new guidelines are fiscally sound, as a lifetime sentence for a juvenile is often years longer than an adult’s, at great costs to the public.

The justice we mete out to child offenders is a measure of our ability as a community to offer guidance, support, and resources to those most in need. Justice-involved children deserve love, mercy, forgiveness, and the support they need to change their future. That’s why the Ohio Conservative Juvenile Justice Network, policy leaders, and judicial experts like me are advocating for this bill and for these youth to have a “meaningful opportunity” to turn their lives around.

I have witnessed what’s possible when innovations in justice policy are backed by powerful data and strong coalitions. Together, we can create a path toward more opportunities for young folks to do better in life, and to increase public safety for all Ohioans today and in the future.

By: Justice Evelyn L. Stratton, Retired Justice, Ohio Supreme Court  
Chair, Ohio Conservative Juvenile Justice Network

# The Columbus Dispatch

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Opinion

## Column: SB 256 gives young defendants chance to turn lives around

Posted at 4:16 AM

Should children be sentenced to life with no hope or chance for redemption, even if they have committed terrible crimes? The U.S. and Ohio Supreme Courts and newly proposed legislation have answered: only in the rarest of circumstances.

The United States is the only country in the world that sentences children to life in prison with no chance of parole. Researching the development of the adolescent brain has changed much of how we think about kids and also how the law treats them. Research shows that brain development is not complete until the age of 24. As a result, kids lack judgment, are more impetuous in decision-making, cannot fully appreciate long-term consequences of their actions and are easily influenced by peers or others.

Consequently, the law no longer allows the execution of a youth under the age of 18. Federal law also no longer allows children to be sentenced to life without any chance of parole for nonhomicide offenses; but Ohio has failed to act on this requirement.

In order to understand how Ohio got left behind, you need to understand the court cases that brought us to this point. In the leading U.S. Supreme Court case of *Graham v. Florida*, 560 U.S. 48 (2010), the U.S. Supreme Court considered a case of a sentence of life without parole given to a 16-year-old for a nonhomicide sentence. The U.S. Supreme Court held that Graham should be given a meaningful opportunity for a chance to rejoin society. There is no guarantee of freedom but an opportunity for freedom to be considered.

In two subsequent cases, the U.S. Supreme Court applied the same reasoning to juvenile homicide cases and extended the ruling to all past and future cases involving juveniles tried as adults.

The second question the courts had to answer is when a youth commits multiple crimes for which the sentence is longer than a lifetime, does that youth also get a meaningful opportunity for a chance to rejoin society? In *Ohio v. Moore*, 149 Ohio St. 3d 557, the Ohio Supreme Court answered: yes. A child also must be given a parole hearing under the Graham guidelines.

Ohio followed the lead of multiple other state supreme courts which found that successive sentences that were the equivalent of life without parole were also subject to that “meaningful” opportunity for release.

In *Moore*, Justice Paul E. Pfeiffer, the opinion’s author, wrote:

“§44...Graham does not foreclose the possibility that a defendant who commits a heinous crime as a youth will indeed spend his entire remaining lifetime in prison; Graham does not guarantee an eventual release. ‘What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’ *Id.* at 75. Graham leaves it to the states to determine how to achieve that requirement.”

As a result, Senate Bill 256, introduced by Sens. Nathan Manning and Peggy Lehner, lays out those guidelines. The proposed statute is supported by judges through the Ohio Judicial College, the Ohio Public Defender’s office and child advocates as well as the Ohio Conservative Juvenile Justice Network, which I chair.

The bill provides a “meaningful opportunity” for parole but does not mandate it, and the application is retroactive, as required by the U.S. Supreme Court.

It also lays out factors for trial judges, consistent with neuroscience, to consider in sentencing youth under 18, such as:

- Chronological age

- Intellectual capacity, immaturity, impetuosity and a failure to appreciate risks and consequences
- The family home environment
- A history of trauma
- School and special education history
- The way familial and peer pressure may have impacted the child's conduct
- The inability to assist the child's own attorney
- Rehabilitation, including any subsequent growth or increase in maturity.

Such new guidelines are fiscally sound, as a lifetime sentence for a juvenile is often years longer than an adult's and at great costs to the public.

The justice we mete out to child offenders is a measure of our ability as a community to offer guidance, support and resources to those most in need. Justice-involved children deserve love, mercy, forgiveness and the support they need to change their future. That's why the Ohio Conservative Juvenile Justice Network, policy leaders and judicial experts like me are advocating for the support of a bill to give these youth a "meaningful opportunity" to turn their lives around.

I have witnessed what's possible when innovations in justice policy are backed by powerful data and strong coalitions. Together, we can create a path toward more opportunities for young folks to do better in life and increase public safety for all Ohioans today and in the future.

*Evelyn L. Stratton is retired justice of the Ohio Supreme Court and chair of the Ohio Conservative Juvenile Justice Network.*