



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

BILL: SB 256

TITLE: Regards sentencing offenders under 18 when committed offense

DATE: February 19, 2020

POSITION: SUPPORT

COMMITTEE: Senate Judiciary Committee

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

The Campaign for the Fair Sentencing of Youth respectfully submits this testimony for the official record to express our **SUPPORT for SB 256**. We are grateful to Senator Manning and Senator Lehner for their leadership in introducing this bill and appreciate the Ohio Legislature's commitment to abolishing life imprisonment for people who were under the age of 18 when they committed their crimes. We urge the Legislature to enact SB 256 because it will provide opportunities for release to people who, despite their youth, became involved in the adult criminal justice system, which is an important step in upholding the constitutional and human rights of young people in Ohio.

The Campaign for the Fair Sentencing of Youth ("CFSY") 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.

Prior to working for the CFSY, I spent several years working as a prosecutor in the Tennessee Attorney General's Office. Serving as a prosecutor gave me a unique perspective on the criminal justice system. I have seen things the system does well, and I have witnessed aspects where there is a great deal of room for improvement. One of the most glaring areas in need of reform is juvenile sentencing.

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. These failed policies have resulted in the United States being the only country in the world in which a child may be sentenced to die in prison. 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 8th 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 January 2016, the Supreme Court ruled in *Montgomery v. Louisiana* that its *Miller v. Alabama* decision applies retroactively to individuals serving life without parole for crimes they committed while under age 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**

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

child whose crime reflects “unfortunate yet transient immaturity.”⁶ For the vast majority of 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 Campaign 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 a term of years, and setting forth the factors particular to youth to be considered at the time of original sentencing and at the parole review.

Demographics of Youth Serving Life Without Parole

By sentencing youth under eighteen to life in prison without parole, we as a society are condemning children to die in prison. We throw them away for the rest of their lives 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 percent of these youth witnessed violence in their homes and over half experienced violence weekly in their own neighborhoods.⁸ Half were physically abused and 20 percent were sexually abused.⁹ 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.¹⁰ 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.¹¹ A quarter of those serving¹² this sentence were convicted of felony murder, in which they had no intention to kill anyone.

⁶ *Id.* at 16-17.

⁷ *Id.* at 20.

⁸ 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

⁹ *Id.*

¹⁰ 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>

¹¹ 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>

¹² *Id.*

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.¹³ 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.¹⁴ 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.

Additionally, 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,¹⁵ 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 by mentoring at-risk youth and helping individuals transition back to society after incarceration. CFSY's Incarcerated Children's Advocacy Network ("ICAN") was created by and is composed of formerly incarcerated youth that are living testimonies of young people's capacity for change.¹⁶

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 18.¹⁷ The United States is the only country in the world that has not yet ratified this treaty.¹⁸ 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,¹⁹ West Virginia,²⁰ Hawaii,²¹ Wyoming,

¹³ Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, Laurence Steinberg and Elizabeth Scott, *American Psychologist*, December, 2003.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Incarcerated Children's Advocacy Network, <http://fairsentencingofyouth.org/incarcerated-childrens-advocacy-network/>

¹⁷ U.N. Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁸ *Id.*

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 Delaware,²³ Massachusetts,²⁴ Connecticut,²⁵ Vermont,²⁶ Nevada,²⁷ Utah,²⁸ South Dakota,²⁹ Iowa,³⁰ and the District of Columbia³¹ have 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 youth'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.”³² The American Correctional Association, American Probation and Parole Association, and the National Association of Counties have passed similar resolutions.³³ 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 youth.³⁴

Costs to Society and Victims

In addition to the human rights and constitutional concerns 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.³⁵ In contrast, a child with a high school education who is paroled after serving ten years could potentially contribute \$218,560 in tax revenue.³⁶ With a college degree, a formerly incarcerated child can potentially contribute \$706,560 in tax revenue over his or her lifetime.³⁷ 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.

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

²⁹ S.B. 140 2016 Reg. Sess. (SD. 2016).

³⁰ *Iowa v. Sweet*, No. 14-0455 (Iowa May 27, 2016).

³¹ Comprehensive Youth Justice Amendment Act of 2016, B 21-0683; pending U.S. Congressional Review.

³² Resolution 107C, American Bar Association (Feb. 2015). Available at <http://fairsentencingofyouth.org/resolutions-against-life-without-parole/>

³³ 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/>

³⁴ 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/>

³⁵ *The Mass Incarceration of the Elderly*, ACLU, June 2012. Available at: https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf

³⁶ *The Fiscal Consequences of Adult Educational Attainment*, National Commission on Adult Literacy. Retrieved from: <http://www.nationalcommissiononadultliteracy.org/content/fiscalimpact.pdf>

³⁷ *Id.*

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.

Closing

Our criminal justice system serves complementary functions of protecting the community from safety threats, ensuring justice for victims, and rehabilitating incarcerated individuals to rejoin society as productive contributors. SB 256 achieves all three of these goals. And critically, no single act as a teenager should destine a person to die in prison with no meaningful opportunity to review the sentence and determine whether the individual has experienced rehabilitation. We ask you to give these youth the opportunity to demonstrate that they can change for the better.

Thank you,

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