

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



TESTIMONY PRESENTED TO THE U.S. SENATE JUDICIARY COMMITTEE NOVEMBER 13, 2017

Dear Chairman Grassley and Committee Members:

We are pleased to submit testimony in strong support of Section 208 in S. 1917, the Sentencing Reform and Corrections Act of 2017. We are grateful to Senator Grassley for his leadership in introducing this bill, which will, among other things, eliminate life without the possibility of release sentences for children in the federal criminal justice system.

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 sentences for all youth. We work closely with formerly incarcerated youth, family members of victims, and family members of incarcerated youth to help develop sentencing alternatives for children that focus on their rehabilitation and capacity for reintegration into society. We work with policymakers across the political spectrum as well as a variety of national organizations to develop policy solutions that will keep our communities safe and hold children accountable in a fair and age-appropriate way when they are convicted of serious crimes.

The Campaign supports the Sentencing Reform and Corrections Act of 2017, because, if signed into law, it will ensure that Congress fulfills the meaning and spirit of recent U.S. Supreme Court rulings and it will create more fair and age-appropriate sentencing standards for children. The U.S. Supreme Court has held that because children are constitutionally different from adults, they cannot be subject to our nation’s harshest punishments. Instead of life without the possibility of release, this bill provides for life with the possibility of release by allowing individuals under the age of 18 at the time of their crimes to petition the sentencing court to review their sentences after they have served 20 years. The bill does not guarantee that anyone will be released; rather, it gives individuals who were convicted of crimes committed as children the opportunity to have their sentences reviewed by a judge and the opportunity to demonstrate growth, maturity, and rehabilitation.

Life Sentences Without the Possibility of Release or Parole

Today, at least 2,500 individuals have been sentenced to life without parole for crimes committed as children in the United States.¹ There were approximately three dozen individuals

¹ Data collected and published by Human Rights Watch; accessible at <http://www.pbs.org/wgbh/pages/frontline/whenkidsgetlife/etc/map.html>.

serving these sentences in the federal system for offenses committed when they were younger than 18 years old.² Individuals as young as 15 have been tried and sentenced to life in prison without the possibility of parole in the federal system.³ Most individuals serving these sentences are now in their thirties, with ages ranging from early twenties to mid-forties.⁴ The racial disparity is extreme: at least 73.7 percent are minorities.⁵ More than half of the individuals serving these sentences in the federal system are black.⁶

Life without parole is a final judgment that disregards children's unique capacity to grow and change as they mature into adulthood. Studies have shown that children's brains are not fully developed. As a result, children are less capable than adults to consider the long-term impact of their actions, control their emotions and impulses, or evaluate risks and reward. They also are more vulnerable and susceptible to peer pressure.

We also know from life experience and from behavioral and brain development experts that children possess a unique capacity for change. The vast majority of children who commit crimes age-out of criminal behavior and no longer pose a threat to society in adulthood.⁷ Therefore sentencing policies must reflect the scientific and developmental realities of children.

In the United States, we do not allow children to enter into contracts, serve in the military, purchase or consume tobacco and alcohol, vote, or engage in other adult activities, because we believe that children are too immature to make significant decisions with long-lasting implications. We also must look at children who commit crimes through this same lens: with recognition of their immaturity and capacity for positive change over time.

The practice of sentencing children to die in prison stands in direct contradiction to what we know about children. These sentences also are most frequently imposed upon the most vulnerable members of our society. Nearly 80 percent of juvenile lifers reported witnessing violence in their homes; more than half (54.1 percent) witnessed weekly violence in their neighborhoods.⁸ In addition, 50 percent of all children sentenced to life in prison without the possibility of parole have been physically abused, and 20 percent have been sexually abused during their life.⁹ For girls serving life without parole sentences, more than 80 percent have been sexually assaulted.¹⁰

² Data from letter dated April 22, 2010, from Alecia S. Sillah for Wanda M. Hunt, Chief, FOIA/PA Section, Federal Bureau of Prisons, to Ashley Nellis, Ph.D., in response to a Freedom of Information Act request.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, Moffitt, 675, *Psychological Review* (1993).

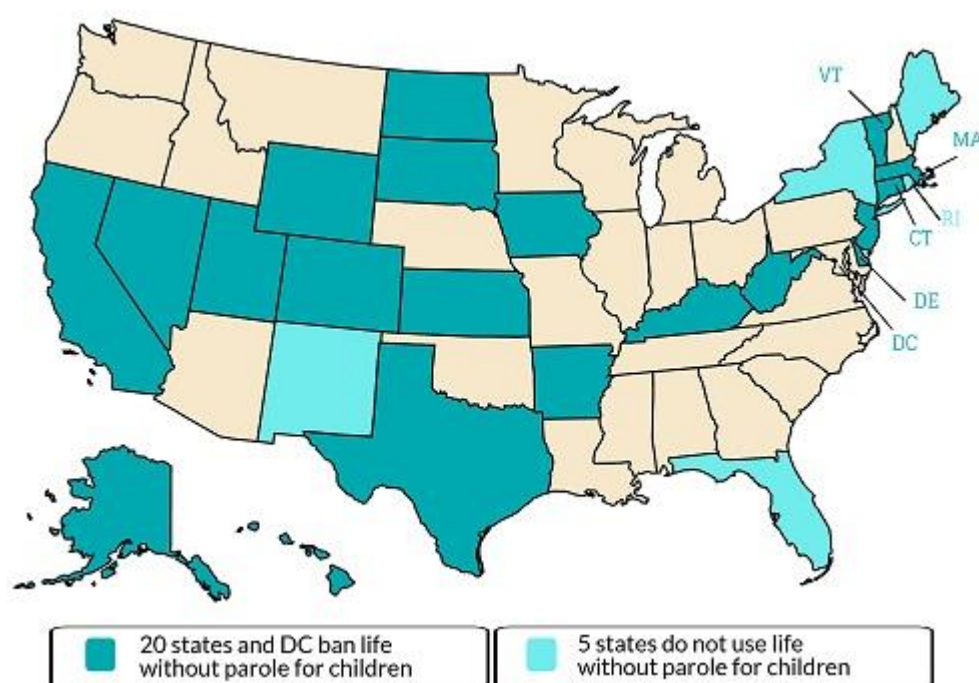
⁸ *The Lives of Juvenile Lifers*, The Sentencing Project, March 2012, http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf

⁹ *Id.*

¹⁰ *Id.*

The United States is the only democracy in the world that is known to still use life without parole as a sentencing option for children.¹¹ Most recently, Arkansas, Texas, North Dakota, South Dakota, Wyoming, California, Utah, Nevada, Iowa, West Virginia, Hawaii, Vermont, Connecticut, Delaware, Massachusetts, and the District of Columbia have eliminated life without parole sentences for children. Other states, including Florida, Rhode Island, Maine, and New Mexico, do not use the sentence on children. The number of states that ban life without parole sentences for children has quadrupled since 2012. These states represent geographic and political diversity, highlighting the widespread support for these policies on both sides of the aisle.

Overall, 20 States and the District of Columbia have banned life without parole as a sentencing option for children and several others have significantly scaled back its use, as detailed in the map below.



The U.S. Supreme Court

The United States Supreme Court, in a series of decisions during the last decade, has said that children are constitutionally different from adults and cannot be subject to the nation's harshest punishments. In *Roper v. Simmons* (2005) the Court struck down the death penalty for children, finding it to be a violation of the 8th Amendment's prohibition on cruel and unusual punishment.¹² In that opinion, the Court highlighted brain and behavioral development science that shows that children are fundamentally different than adults in their development and that they have a unique capacity to grow and change as they mature.¹³ In *Graham v. Florida* (2010)

¹¹ *Here Are All the Countries Where Children Are Sentenced to Die in Prison*, Huffington Post, Saki Knafo, September 20, 2013, http://www.huffingtonpost.com/2013/09/20/juvenile-life-without-parole_n_3962983.html

¹² *Roper v. Simmons*, 543 U.S. 551 (2005).

¹³ *Id.*

the Court struck down life without parole sentences for non-homicide offenses, holding that states must give children a “realistic opportunity to obtain release.”¹⁴ Two years later, in *Miller v. Alabama* (2012) the Court struck down mandatory life without parole sentences for homicide offenses, finding 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.”¹⁵ Finally, in *Montgomery v. Louisiana* (2016), the U.S. Supreme Court found that “the sentence of life without parole is disproportionate for the vast majority of juvenile offenders” convicted of homicide offenses and ruled that the *Miller* decision applied retroactively.¹⁶ The *Montgomery* Court expounded upon *Miller* and clarified 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.’”¹⁷

In 2015, the American Bar Association adopted Resolution 107C, which was supported by the U.S. Department of Justice, calling on all states and the federal government to “eliminate life without the possibility of release or parole for youthful offenders [under 18 years of age] both prospectively and retroactively.”¹⁸

The American Correctional Association and the National Association of Counties have also passed resolutions in support of eliminating life without parole as a sentencing option for children.¹⁹ Across the political spectrum, there is a recognition that children are fundamentally different from adults and should be treated as such, even when they commit serious crimes.

The U.S. Sentencing Commission Guidelines, as well as federal sentencing laws, remain in violation of the 8th Amendment’s prohibition on cruel and unusual punishment in light of both the *Graham*, *Miller*, and *Montgomery* U.S. Supreme Court decisions. Since these decisions came down, Congress has failed to bring the country’s laws into compliance with the U.S. Constitution. The federal government should follow the recent trend at the state level and enact S. 1917, which reflects what we now know about adolescent brain and behavioral development and children’s unique capacity to change and be rehabilitated.

Fiscal Burden

Aside from the human rights and constitutional reasons for Congress to pass this Act, there is also a strong fiscal argument to be made in support of Section 208 in this legislation. In the U.S. it costs approximately \$2.5 million to incarcerate a child for the duration of his or her life. Collectively the 2,500 individuals sentenced to life without parole will cost taxpayers an estimated \$6.2 billion over their lifetimes.²⁰ In contrast, a child with a high school education who

¹⁴ *Graham v. Florida*, 130 S. Ct. 2011 (2010).

¹⁵ *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

¹⁶ *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

¹⁷ *Id.* at 734.

¹⁸ http://www.americanbar.org/content/dam/aba/images/abanews/2015mm_hodres/107c.pdf.

¹⁹ <http://fairsentencingofyouth.org/wp-content/uploads/2014/10/ACA-Resolutions-and-Policies-on-Juveniles-Newly-Revised-and-Adopted.pdf>; See also, <http://www.naco.org/newsroom/countynews/Current%20Issue/8-25-2014/Pages/Resolutions-spark-debates-at-Annual-Conference.aspx>

²⁰ *The Mass Incarceration of the Elderly*, ACLU, June 2012. Available at: https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf

is paroled after serving 10 years could potentially contribute \$218,560 in tax revenue.²¹ A formerly incarcerated child who obtains a college degree can potentially contribute \$706,560 in tax revenue over their lifetime.²² These figures do not include their contributions to the local economy, job productivity, or the intangible impact of being positive role models for other at-risk youth.

Conclusion

Section 208 of the Sentencing Reform and Corrections Act will bring the United States in line with the letter and spirit of recent U.S. Supreme Court decisions by ensuring that children have the opportunity for sentencing review. This provision of the bill balances public safety with an understanding about adolescent development and the factors of youthfulness that mitigate against the most extreme sentences. It ensures children are held accountable, given the opportunity to become rehabilitated, and prove themselves worthy of a second chance. This bill does not mandate anyone to be released, but instead gives judges the ability to review a child's sentence after he or she reaches adulthood, which morality demands. We therefore urge this Committee, and Congress, to pass this important legislation.

Thank you for the opportunity to submit this testimony. If you have any questions or want further information, please contact Jody Kent Lavy, Executive Director at the Campaign for the Fair Sentencing of Youth, at jkent@fairsentencingofyouth.org or 202-289-4677. More information about the CFSY can also be found at www.fairsentencingofyouth.org.

²¹ *The Fiscal Consequences of Adult Educational Attainment*, National Commission on Adult Literacy. Retrieved from: <http://www.nationalcommissiononadultliteracy.org/content/fiscalimpact.pdf>

²² *Id.*