

# [2015 Session] Support a Meaningful Opportunity for Release for Youth Sentenced to the Texas Department of Criminal Justice

## Policy Background:

In 2009, Texas eliminated juvenile life without parole (JLWOP) as a sentencing option for individuals convicted of a capital felony committed under the age of 17. In 2013, following the U.S. Supreme Court's decision in *Miller v. Alabama*,<sup>[1]</sup> Texas eliminated JLWOP for 17-year-olds convicted of a capital felony.

Instead, these individuals are subject to life sentences with the possibility of parole after 40 years. This mandatory minimum, in addition to the lack of consideration of mitigating factors during sentencing (e.g., the defendant's maturity and background), prohibits Texas from giving a meaningful opportunity for review to those youth who demonstrate that they have been rehabilitated.

Texas policy-makers should provide a range of sentencing options to juries, requiring the incorporation of mitigating factors during sentencing, and making these changes retroactive to those currently serving JLWOP.

## Key Facts:

- 27 youth are currently serving life without parole in Texas; they will be eligible for re-sentencing.<sup>[2]</sup>
- Children sentenced to life in prison without parole are often the most vulnerable members of our society. A national survey revealed that nearly 80% of juvenile lifers reported witnessing violence in their homes; more than half (54.1%) witnessed weekly violence in their neighborhoods.<sup>[3]</sup>
- This national survey further reported that 77% of girls and 20% of all youth lifers said they have been sexually abused.<sup>[4]</sup>
- African American youth are sentenced to life without parole as children at a per capita rate that is 10 times that of white youth.<sup>[5]</sup>
- The Eighth Amendment demands that states provide juvenile offenders a meaningful opportunity for release.<sup>[6]</sup> Since *Miller v. Alabama*, several states have eliminated juvenile life without parole entirely, providing for parole eligibility after 10-35 years.<sup>[7]</sup> Litigation in this area is rampant, depriving victims of the finality they deserve.

- The United States is the only country in the world to allow life without parole sentences for juveniles; the majority of the world (65%) either limits sentences to 20 years or less or reduces the degree of the crime for juveniles.[8]
- The current sentencing scheme deprives Texas juries from exercising their discretion to choose a sentence that matches the facts of the crime and the defendant's level of culpability and potential for rehabilitation.
- It costs approximately \$2.5 million to incarcerate juveniles for life,[9] whereas it costs taxpayers approximately \$625,720 to incarcerate a juvenile for 20 years.[10] Early release for those individuals who have demonstrated that they have sufficiently matured and rehabilitated can save the state approximately \$1,874,280 per inmate. That figure does not include the extra costs of litigation currently associated with life or functional life sentences, which are expected to substantially drive up those costs.

### Relevant Bill:

- **Bill Number:** [SB 1083](#) (Rodríguez)  
**Bill Caption:** Relating to the punishment for a capital felony committed by an individual younger than 18 years of age; changing parole eligibility.  
**TCJE Materials:** [Fact Sheet](#)

### Other Media:

- **[VIDEO] Juvenile Justice Information Exchange:** [“Freed After 19 Years in Prison for Killing Her Pimp, Woman Tells Story”](#) [January 8, 2015]

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[1] In 2012, the US Supreme Court's decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), found that automatically sentencing youth under 18 to life without the possibility of parole violates the Constitution's Eighth Amendment ban on cruel and unusual punishment.

[2] *The Texas Tribune*, “Senate OKs Life with Parole for 17-Year-Old Murderers,” June 14, 2013;  
<http://www.texastribune.org/2013/06/14/senate-oks-life-parole-17-year-old-murderers/>

[3] Ashley Nellis, Ph.D., *The Lives of Juvenile Lifers: Findings from a National Survey*, March 2012;  
[http://sentencingproject.org/doc/publications/jj\\_The\\_Lives\\_of\\_Juvenile\\_Lifers.pdf](http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf)

[4] Ibid.

[5] Ibid.

[6] In a series of cases the Supreme Court of the United States has recognized that juveniles are different and provided strict restrictions upon juvenile sentencing. In *Graham v. Florida*, 560 U.S. 48 (2010), the Supreme Court held that juveniles who had not committed a homicide could never be sentenced to life without parole. It also required states to give juvenile offenders a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. Thus, the Supreme Court limited the length of sentences that states can impose upon juveniles at the time of sentencing, requiring a meaningful review process to occur at some “later” date. The Supreme Court did not provide any guidance on when states must allow that opportunity for release to occur, leaving it up to states to decide in the first instance. Two years later, the Supreme Court in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), held that mandatory life without parole violated the Eighth Amendment. After *Miller*, states must require sentencing courts to consider the distinctive mitigating features of youth prior to sentencing a juvenile to life without parole.

[7] Please see the Appendix, *Memorandum re sentencing reform relating to Graham and Miller nationwide*, Civil Justice Clinic, Quinnipiac University School of Law, March 18, 2014.

[8] Connie de la Vega, et al., *Cruel and Unusual: U.S. Sentencing Practices in a Global Context* (USF School of Law Center for Law and Global Justice 2012); also see: Connie de la Vega & Michelle Leighton, *Sentencing our Children to Die in Prison: Global Law and Practice*, 42 U.S.F L. REV. 983, 2008. Both are available at [http://www.usfca.edu/law/jlwop/law\\_review/](http://www.usfca.edu/law/jlwop/law_review/).

[9] ACLU, *At America’s Expense: The Mass Incarceration of the Elderly*, June 2012; [https://www.aclu.org/files/assets/elderlyprisonreport\\_20120613\\_1.pdf](https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf). Calculation = ((Average cost per year per inmate to incarcerate before age 50 x 34) + (National estimate for annual cost for the care of an inmate after age 50 x 21)).

[10] Ibid. Calculation = (Average cost per year per inmate to incarcerate before age 50 x 20).