

***Montgomery v. Louisiana* Six Years Later: Progress and Outliers**



January 2022



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



U.S. Supreme Court

In five decisions—*Roper v. Simmons* (2005), *Graham v. Florida* (2010), *Miller v. Alabama* (2012), *Montgomery v. Louisiana* (2016), and *Jones v. Mississippi* (2021)—the Supreme Court of the United States established that “children are constitutionally different from adults for purposes of sentencing.” *Roper*, *Graham*, *Miller*, *Montgomery*, and *Jones* are critical in defining Eighth Amendment limitations for sentencing a child to die in prison.

Roper struck down the death penalty for children. *Graham* struck down life without parole for children who commit non-homicide offenses, requiring a meaningful opportunity to obtain release. *Miller* required sentencing judges to consider the mitigating attributes of youth before a child charged with homicide can be sentenced to life without parole—and *Montgomery* applied *Miller* retroactively.

In the Supreme Court's most recent decision in *Jones*, the Court declined to adopt additional procedural protections for children facing life without parole, but it affirmed *Miller* and *Montgomery* and the core constitutional proposition that “youth matters in sentencing.” Moreover, the Court in *Jones* made clear that state legislatures and Congress are empowered to enact legislation that bans life without parole for children.

Montgomery v. Louisiana Six Years Later: Progress and Outliers

At the time *Miller* and *Montgomery* were decided, Pennsylvania, Michigan, and Louisiana each had more children sentenced to life without parole than any other state in the country. Since *Montgomery*, these states have resentenced and released hundreds once told they would die in prison who are now rebuilding their lives and contributing positively to their communities—including Henry Montgomery, the petitioner in *Montgomery v. Louisiana*. The hundreds who have gained release in these states have demonstrated maturation, positive growth, and capacity to benefit their communities to both judges and parole boards. Despite abundant evidence that children who commit serious crimes can be rehabilitated and a massive nationwide shift away from these sentences, juvenile life without parole (JLWOP) is still available and imposed in these states and whether someone receives a meaningful opportunity for release frequently depends on which county they are from or which judge they are assigned.

Louisiana

At the time of *Miller*, JLWOP was a mandatory sentence for both first and second degree murder in Louisiana. Since *Montgomery*, a number of legislative reforms have taken effect in Louisiana providing resentencing opportunities and parole eligibility for some sentenced as youth, and barring JLWOP for second degree murder in future cases.

While these are important incremental steps forward, much work remains to be done. Louisiana continues to sentence children to life without parole in new cases much more frequently than any other state. With the increased discretion at sentencing mandated in *Miller*, racial disparities have only worsened.

While 76% of the pre-*Miller* JLWOP population in Louisiana was Black, Black children received 93% of JLWOP sentences since 2012. Today, the sentence is reserved almost exclusively for Black boys.

Since Henry Montgomery's release in November of 2021, he's been actively restoring family relationships by spending lots of time with his family and friends. With the help of Louisiana Parole Project, he's been able to gain his identity through securing necessary documents such as his birth certificate, state ID, and social security card. Henry's biggest achievement and highlight is going grocery shopping. His biggest challenge is navigating his cell phone. He continues to be humble and grateful for all the support he has been given.



Louisiana

JLWOP population at time of *Miller*: 297

Completed resentencings: 251

Currently Serving JLWOP: 63

Released: 99



Michigan

Once second to Pennsylvania in JLWOP cases, Michigan now has the most children serving life without parole in the country. Racial disparities for this population in Michigan are starker than they are nationally—71% of those eligible for resentencing in Michigan after *Miller* were Black (compared to 61% nationally), and 74% of those still awaiting resentencing are Black.

In the wake of *Montgomery*, prosecutors in Michigan initially filed motions seeking life without parole in 60% of the state's resentencing hearings. In several counties, prosecutors sought to reimpose JLWOP in 100% of cases, disproportionately impacting children of color. While many of these motions were subsequently withdrawn and the case resolved to something less than JLWOP, this is an alarming indication of the potential impacts of increased prosecutorial discretion.

Despite six years passing since the Supreme Court ordered resentencings in *Montgomery*, almost 100 people still serving unconstitutional JLWOP sentences in Michigan have not yet had their day in court. This is especially concerning in light of the COVID-19 pandemic, which tragically claimed the life of William Garrison a few months shy of freedom.

Pennsylvania

At the time *Miller* was decided, Pennsylvania mandated JLWOP for first and second degree murder and had the highest number of children sentenced to life without parole in the country. Subsequent reforms have abolished JLWOP for second degree murder, a significant step forward. Since *Montgomery*, approximately 90% of these cases have been resentenced with only 1% resentenced to JLWOP. This progress was bolstered by the Pennsylvania Supreme Court, which acted to ensure resentencing hearings had constitutionally sufficient procedure. The Pennsylvania Parole Board has also recognized the importance of meaningful consideration of these cases, granting parole in approximately 70% of the former JLWOP cases.

Despite this progress, JLWOP remains an available sentence for first degree murder, and sentences of more than 40 years before parole eligibility for children remain common.

A study of released juvenile lifers in Philadelphia County found that recidivism rates for this population are vanishingly small—around 1%.



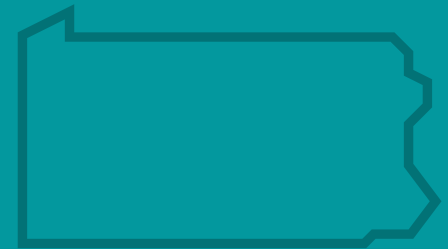
Michigan

JLWOP population at time of *Miller*: 356

Completed resentencings: 273

Currently Serving JLWOP: 97

Released: 154



Pennsylvania

JLWOP population at time of *Miller*: 526

Completed resentencings: 463

Currently Serving JLWOP: 50

Released: 268



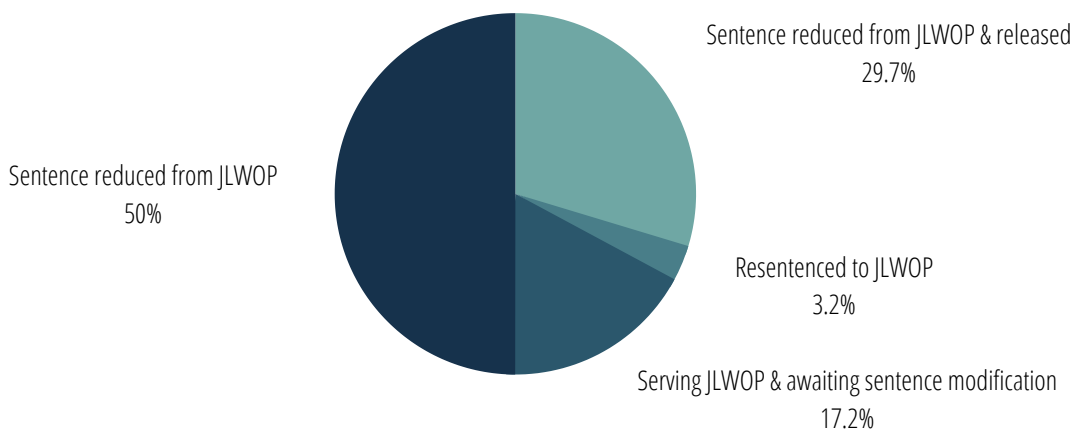
JLWOP post-Miller: National Landscape

A majority of the 2,800 individuals serving juvenile life without parole (JLWOP) following *Miller* have been resentenced in court or had their sentences amended via legislation, depending on the jurisdiction in which they were convicted.

Yet despite the 80% reduction in people serving JLWOP, jurisdictions have varied significantly in their implementation of *Miller*. As a result, relief afforded to individuals serving JLWOP is based more on jurisdiction than on whether the individual has demonstrated positive growth and maturation.

The uneven implementation of *Miller* disproportionately impacts Black individuals, who represent 61% of the total JLWOP population.

The chart below reflects the current status of the approximately 2,800 people serving JLWOP when *Montgomery* was decided. Within that population, 29% have been released, over 50% have had their sentences reduced from JLWOP, about 17% have not yet been afforded relief, and approximately 3% have been resentenced to JLWOP.



Fast facts

835

Over 800 people originally sentenced to JLWOP have been released since *Montgomery*

31

31 states now ban JLWOP or have no one serving the sentence

80%

The national JLWOP population has been reduced by 80% in six years

61%

Sixty-one percent of children sentenced to JLWOP pre-*Miller* are Black, and the proportion of Black children sentenced to JLWOP has increased in new cases post-*Miller*

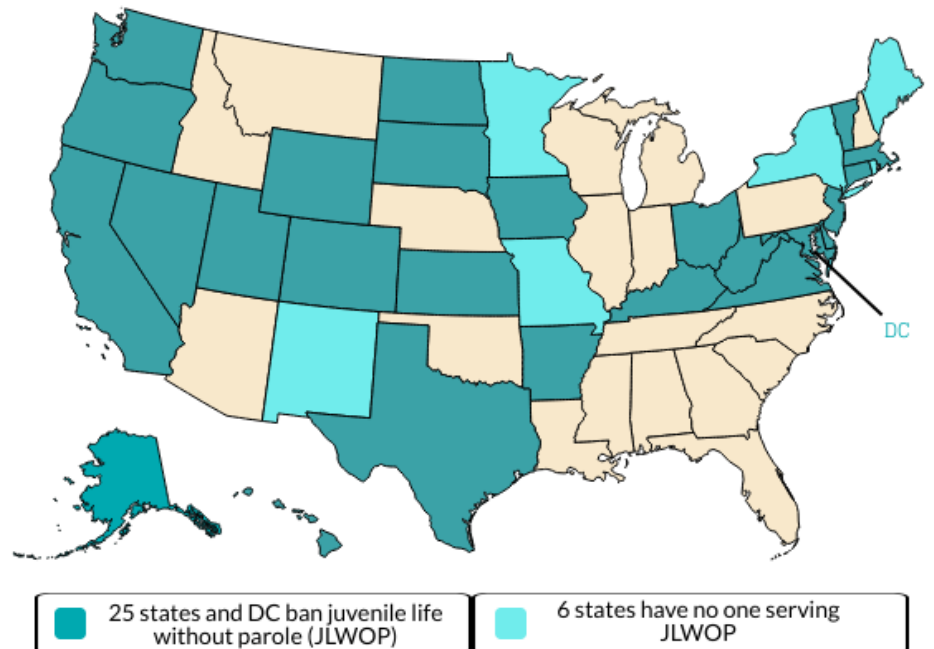
Jurisdictions that ban JLWOP

- Alaska
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Iowa
- Kansas
- Kentucky
- Maryland
- Massachusetts
- Nevada
- New Jersey
- North Dakota
- Ohio
- Oregon
- South Dakota
- Texas
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wyoming

Rapid state-level rejection of life without parole for children

In the ten years since *Miller* was decided in June 2012, the United States has experienced sweeping change in the practice of sentencing children to die in prison. When *Miller* was decided, 45 states and the District of Columbia permitted life without parole as a sentencing option for children. In many states, life without parole was the only sentence available if a child was convicted of homicide.

Remarkably, the number of states that do not allow life without parole to be imposed on children has quintupled since 2012, from five states to twenty-five states and the District of Columbia. And in at least six additional states, no one is serving the sentence for an offense committed as a child. Today a majority of states ban life without parole for children or have no one serving the sentence.



We would like to thank our partners at the Louisiana Parole Project, the Louisiana Center for Children's Rights, and Juvenile Law Center for their assistance and support of this report

The Incarcerated Children's Advocacy Network



 An initiative of the Campaign for the Fair Sentencing of Youth

Along with the many reforms and second chances realized since *Miller* and *Montgomery* has been the growth of the Incarcerated Children's Advocacy Network (ICAN). This first-of-its kind national network is run in partnership with a growing number of leaders who were incarcerated as children with more than 180 members all over the country, the majority of whom were released as a direct result of *Miller* and *Montgomery*. Each and every member of ICAN is living proof of the unique capacity for change that resides within every child. They share a common sense of identity, purpose, and responsibility to help heal the communities they once harmed.

These individuals are experts who demonstrate through their advocacy that children, even those convicted of serious crimes, can mature and become rehabilitated. ICAN identifies, mobilizes, and amplifies the experiences of individuals incarcerated as youth to inform the public debate about children's capacity for positive change and to debunk racially charged and dehumanizing narratives that seek to justify extreme sentencing of youth.

ICAN: What We Do

- Speak publicly as subject-matter experts and living examples of positive change to legislators, stakeholders, and media networks about the realities of incarceration in order to change the damaging narratives about incarcerated youth.
- Create a safe space for formerly incarcerated youth through mutual networks of support, regular check-ins, and self-care retreats.
- Provide resources, training, and educational opportunities for ICAN members to help them become successful in their communities and empower them to use their voices for change.
- Advocate for changes in punitive policies that impose harsh sentences on youth and disregard the differences between children and adults.
- Fight for racial equity and equity for all by changing the carceral system that disproportionately targets children of color and subjects them to extreme sentences.
- Engage with survivors of youth violence, their families, and the families of incarcerated people to emphasize age-appropriate accountability and to facilitate collective hope, healing, and restorative justice while increasing understanding of children's capacity for change.