

**ACLU-NM**

May 4, 2021

## Children sentenced as adults are disproportionately children of color

By Susan Dunlap



When Carissa McGee was 16 years old, she was sentenced to 21 years in an adult correctional facility for stabbing two members of her family.

McGee told *NM Political Report* she was mentally ill at the time, but the judge still sentenced her to more than two decades in prison.

"I experienced my ultimate low. I was sentenced at 16 years old. I didn't know what 21 years would feel like," McGee said.

McGee, who is now in her 30s, was granted early release after serving nine years. She said that before her sentencing a children's psychiatric center evaluated her. Four of the five doctors said she was amenable to treatment.

But the sentencing judge listened to the fifth doctor who disagreed.

Last month, the U.S. Supreme Court decided ([https://www.supremecourt.gov/opinions/20pdf/18-1259\\_8njg.pdf](https://www.supremecourt.gov/opinions/20pdf/18-1259_8njg.pdf)) in *Jones v. Mississippi* to uphold the process defendant Brett Jones went through in the courts when he was sentenced to life without parole for a crime he committed at age 15. The court declined to require a finding of permanent incorrigibility before sentencing a child to life without parole. The decision affirmed prior Supreme Court precedent requiring sentencing judges to consider youth and its attendant mitigating factors before sentencing a child to life without parole.

In New Mexico, children can and often are sentenced as adults for violent crimes even though studies ([https://www.aacap.org/AACAP/Families\\_and\\_Youth/Facts\\_for\\_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx](https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx)) have shown that children have less impulse control and that the brain doesn't completely stabilize until a person reaches their mid-20s. This makes children more susceptible to peer pressure and decision making based on passion, impulse or momentary excitement, said Denali Wilson, a Corinne Wolfe

Transformative Advocacy Fellow and Soros Justice Advocacy Fellow for the American Civil Liberties Union of New Mexico.

"It's like the entire engine is there but there's no brake," Wilson told *NM Political Report*.

Children in New Mexico can be sentenced to life without parole for violent offenses. They can also be sentenced for an amount of prison time that, essentially, locks them away for the rest of their lives.

"They could be sentenced for life imprisonment or sentenced to 90 years or 70 years. That's what we see in New Mexico," Wilson said.

In New Mexico a term of life imprisonment means the state requires the person to serve 30 years before parole eligibility, Wilson said.

During McGee's time in prison, she was able to avail herself of a program called Project Echo, through the University of New Mexico, which helped her to get a health care certificate. She was able to do peer work with her own prison population. She said she found that overwhelmingly, the women she encountered in prison had been victims of sexual assault and, like McGee, suffered from mental health disorders.

"I didn't meet one woman in the whole nine years who didn't suffer from a mental health disorder. We were all so very similar," McGee said.

The work and training McGee was able to do helped her to heal and gave her "a light at the end of the tunnel." She is now a training support analyst of New Mexico Peer Education Project, a collaboration between Project Echo and New Mexico Department of Corrections. Through that program, she continues to work with the state's prison population.

But, New Mexico has "one of the lowest grant rates of parole from life sentences of any state in the U.S." Wilson said.

Wilson said she has clients who are in their mid-40s and mid-50s serving time in New Mexico for crimes they committed as minors.

State Sen. Antoinette Sedillo Lopez introduced [SB 247](https://www.nmlegis.gov/Sessions/21%20Regular/Amendments_In_Context/SB0247.pdf) ([https://www.nmlegis.gov/Sessions/21%20Regular/Amendments\\_In\\_Context/SB0247.pdf](https://www.nmlegis.gov/Sessions/21%20Regular/Amendments_In_Context/SB0247.pdf)) in the 2020 regular session. SB 247 passed the Senate but died on the House floor, Sedillo Lopez said.

The bill would have amended the criminal code to prohibit New Mexico from sentencing a child to life without parole. Sedillo Lopez told *NM Political Report* that the fact that a child can be sentenced to life without parole in New Mexico is unconstitutional.

"The *Jones v. Mississippi* decision affirms a judge must have the discretion to impose a lesser punishment than life without parole for a child under the age of 18. I will continue to seek reform of New Mexico law to ensure that children in unique circumstances are considered in our scheme of punishment," she said.

But, she called the Supreme Court's decision, written by Justice Brett Kavanaugh, "disappointing."

"It is disappointing that Justice Kavanaugh upheld a life sentence without the possibility of parole for a 15 year-old," she said.

Wilson said the Supreme Court's 6-3 decision declined to give guidance on sentencing children to life without parole.

"The results will be uneven and arbitrary based much more on geography and the race of the defendant rather than culpability or the capacity of change. It'll depend on where you are and what you look like. That'll be the result of *Jones v. Mississippi*," Wilson said.

Already, children of color are disproportionately affected by long sentencing, Wilson said.

Wilson said that in New Mexico, 71 percent of youth serving excessively long adult sentences are Hispanic or Latino.

But Black youth are over represented at the highest rate, she said. Black youth make up 6 percent of those serving long adult sentences, which is over twice their representation in the general population in New Mexico. Wilson called it “an issue of racial equity and racial justice here in New Mexico.”

Nationally, Black youth are sentenced to life without parole as children at a per capita rate that is 10 times that of white youth, Wilson said.

“It’s disparate for Latinos and the Native population but for Black youth, it’s the most disparate,” Wilson said.

McGee, who is African-American, agreed. She said a young, white male who murdered family members around the same time as her crime, received a much lighter sentence than she did. McGee’s victims survived her attack.

“I definitely think my race and gender played a factor in it. I felt like I was targeted and given a bigger sentence solely based on my demographics,” McGee said.

