

the CAMPAIGN for the FAIR  
SENTENCING of YOUTH 

**BILL: Senate Bill 968**

**DATE:** March 28, 2019

**POSITION: SUPPORT**

**COMMITTEE:** Senate Judiciary Committee

**CONTACT:** Nikola Nable-Juris (nnablejuris@fairsentencingofyouth.org)

Chair Prozanski, Vice-Chair Thatcher, and members of Senate Judiciary Committee:

The Campaign for the Fair Sentencing of Youth respectfully submits this testimony for the official record to express our **support for Senate Bill 968**. We are grateful Senator Prozanski and the Judiciary Committee for their leadership in introducing this bill and appreciate the Oregon Legislature's commitment to addressing this important constitutional and human rights issue concerning children. We urge the Oregon Legislature to enact legislation holding youth accountable for their actions in an age-appropriate manner while providing them the opportunity for parole eligibility and complying with the U.S. Constitution.

The Campaign 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 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 demonstrated rehabilitation.

Oregon should enact SB 968 to both hold youth accountable for serious crimes while simultaneously recognizing the capacity all children have for growth and change. SB 968 would eliminate the use of life without parole as a sentencing option for children under 18 and would ensure that all youth are eligible for parole after serving no longer than 15 years. Additionally, it would establish youth-related factors for judges to consider at the time of sentencing and the Parole Board to consider at the time of parole eligibility. SB 968 applies *prospectively only*, therefore not disrupting any existing sentences. Oregon should act now to ensure that youth receive age-appropriate, Constitutional sentences that both protect the community while also giving youth an incentive toward rehabilitation.

### **United States Supreme Court**

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. In *Roper v. Simmons* (2005), the Court struck down the death penalty for children, finding that it violated the 8<sup>th</sup> Amendment's prohibition against cruel and unusual punishment.<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup>

The Supreme Court has repeatedly ruled that children who commit homicide offense are constitutionally different and must be sentenced accordingly. In *Miller v. Alabama* (2012), the Court 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.<sup>4</sup> The Court made clear that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders.”<sup>5</sup> Subsequently, in 2016, the U.S. Supreme Court ruled in *Montgomery v. Louisiana* that its *Miller v. Alabama* decision applied retroactively to individuals serving life without parole for crimes they committed while under age eighteen.<sup>6</sup> As the 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.’”<sup>7</sup> Considering youth-related mitigating factors at the time of sentencing is 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 child whose crime reflects ‘unfortunate yet transient immaturity.’”<sup>8</sup> 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.”<sup>9</sup>

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 at sentencing which children are “irreparably corrupt.”

SB 968 ensures that Oregon fulfills both the letter and spirit of the recent U.S. Supreme Court rulings by prohibiting life-without-parole sentences for youth, therefore circumventing any challenges against any unconstitutional sentences under *Miller* or *Montgomery*. It would prevent litigation in future cases challenging what may be considered a “life-equivalent sentence.” In doing so, this bill *does not guarantee release* for any individual. Rather it simply gives them hope for a future, an incentive for rehabilitation, and the opportunity to present to the Parole Board the ways in which they have grown and changed.

### **Demographics of Youth Serving Life Without Parole**

By sentencing youth under eighteen to life in prison without parole, we as a society are sentencing children to die in prison. We condemn them for life 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% of these youth witnessed violence in their homes and over half experienced violence weekly in their own neighborhoods.<sup>10</sup> Half were physically abused and 20% were sexually abused.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> A quarter of those serving this sentence were convicted of felony murder, in which they had no intention to kill anyone.<sup>14</sup>

Currently, five individuals are serving life-without-parole sentences in Oregon for offenses they committed while they were under eighteen.

### **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.<sup>15</sup> 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.<sup>16</sup> 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.

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,<sup>17</sup> 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, including by mentoring at-risk youth and helping individuals transition back to society after incarceration. CFSY's Incarcerated Children's Advocacy Network was created by and is composed of formerly incarcerated youth that are living testimonies of young people's capacity for change.<sup>18</sup>

### **National Perspective**

Oregon 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. The following states ban life-without-parole sentences for youth under eighteen: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Nevada, New Jersey, North Dakota, South Dakota, Texas, Utah, Vermont, West Virginia, Washington, and Wyoming.<sup>19</sup> Currently twenty-one states and the District of Columbia outright ban this practice, quadrupling the number of states to do since the *Miller* decision seven years ago. An additional five states have no one serving the sentence (Maine, Minnesota, New Mexico, New York, and Rhode Island). More than half the country has abandoned the practice of sentencing children to life without parole. Oregon should look to

neighboring California, Nevada, and Washington as examples of how to hold youth accountable for serious crimes while acknowledging youth's potential to change.

National organizations have expressed strong opposition to life-without-parole sentences for youth. 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.”<sup>20</sup> The American Correctional Association, American Probation and Parole Association, and the National Association of Counties have passed similar resolutions.<sup>21</sup> 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.<sup>22</sup>

### **Costs to Society and Victims**

In addition to the human rights and constitutional concerns for Oregon to enact SB 968, 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.<sup>23</sup> In contrast, a child with a high school education who is paroled after serving ten years could potentially contribute \$218,560 in tax revenue.<sup>24</sup> A formerly incarcerated child who obtains a college degree can potentially contribute \$706,560 in tax revenue over his or her lifetime.<sup>25</sup> 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. Criminal justice reform is sound policy that protects public safety while allowing formerly incarcerated youth to tangibly repay society with positive contributions.

Finally, the Campaign has great 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 offenders to rejoin society as productive contributors. SB 968 achieves all three of these goals. Youth should be held responsible for their actions, especially for serious crimes, and the Parole Board should ensure that they are fully rehabilitated before being eligible for release. However, no teenager should be destined to die in prison with no opportunity for review. We ask you to give youth the opportunity to demonstrate they can change for the better.

Thank you,

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<sup>1</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>2</sup> *Id.*

<sup>3</sup> *Graham v. Florida*, 130 S. Ct. 2011 (2010).

<sup>4</sup> *Miller v. Alabama*, 132 S.Ct. 2455, 2469 (2012).

<sup>5</sup> *Id.*

<sup>6</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).

<sup>7</sup> *Id.* at 734.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 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](http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf)

<sup>11</sup> *Id.*

<sup>12</sup> 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>

<sup>13</sup> 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>

<sup>14</sup> *Id.*

<sup>15</sup> Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, Laurence Steinberg and Elizabeth Scott, *American Psychologist*, December, 2003.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Incarcerated Children's Advocacy Network, <http://fairsentencingofyouth.org/incarcerated-childrens-advocacy-network/>

<sup>19</sup> Ak. Stat. § 33.16.010(a); S.B. 294, 91st Leg. (Ark. 2017); Ca. S.B. 394, 2017-2018 Reg. Sess. (Ca. 2017); Colo. Rev. Stat. § 18-1.3-401(4)(b)(I) (West 2012); S.B. 796, 2015 Reg. Sess. (Conn. 2015); S.B. 9, 147th Gen. Assemb., Reg. Sess. (Del. 2013); B. 21-568, Period 21 (D.C. 2016); H.B. 2116, 27th Leg. (Hawaii 2014); *Iowa v. Sweet*, No. 14-0455 (Iowa May 27, 2016); Kan. Crim. Code § 21-4622; Ky. Rev. Stat. §640.040 H 4307, 188th Gen. Court (Mass. 2014); A.B. 373, 217th Gen. Sess. (N.J. 2017); A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015); H.B. 1194, 65th Leg. (N.D. 2017); S.B. 140 2016 Reg. Sess. (SD. 2016); S.B. 2, 83rd Leg., Special Sess. (Texas 2013); H.B. 405, 61st Leg., Gen. Sess. (Ut. 2016); H. 62, 2015 Reg. Sess. (Vt. 2015); *Washington v. Bassett*, 2018 Wash. LEXIS 704 (Wash. 2018); H.B. 23, 62nd Leg., Gen. Sess. (Wy. 2013).

<sup>20</sup> Resolution 107C, American Bar Association (Feb. 2015). Available at <http://fairsentencingofyouth.org/resolutions-against-life-without-parole/>

<sup>21</sup> 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/>

<sup>22</sup> 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/>

<sup>23</sup> *The Mass Incarceration of the Elderly*, ACLU, June 2012. Available at: [https://www.aclu.org/files/assets/elderlyprisonreport\\_20120613\\_1.pdf](https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf)

<sup>24</sup> *The Fiscal Consequences of Adult Educational Attainment*, National Commission on Adult Literacy. Retrieved from: <http://www.nationalcommissiononadulthoodliteracy.org/content/fiscalimpact.pdf>

<sup>25</sup> *Id.*