



PRISON LAW OFFICE

General Delivery, San Quentin CA. 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Steven Fama
Penny Godbold
Alison Hardy
Corene Kendrick
Millard Murphy
Lynn Wu

Your Responsibility When Using the Information Provided Below:

When we wrote this handout, we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

Life Without Parole (LWOP) **and Other Lengthy Sentences for Offenses** **For Juveniles and Youthful Offenders** (Updated April 2016)

This information is about new laws and court decisions that may affect the sentences of prisoners who were young (under age 18, and in some cases under age 23) when they committed their crimes and who were sentenced to very long prison terms (more than 15 actual years). The first portion is about laws for juveniles sentenced to life *without* the possibility of parole (LWOP). The second portion concerns juveniles who were sentenced to life *with* the possibility of parole or to very long determinate (specific number of years) terms. The final portion describes steps such prisoners can take to try to get shorter sentences or early parole; it also lists helpful resources.

LIFE WITHOUT PAROLE TERMS (LWOP) FOR JUVENILES

LWOP Sentences are Cruel and Unusual for Juvenile Non-Homicide Crimes

In *Graham v. Florida* (2010) 560 U.S. 48, the U.S. Supreme Court forbade sentences of life in prison without parole (LWOP) for minors under age 18 who commit crimes *other* than homicide (murder or manslaughter). The Court held that such sentences are cruel and unusual punishment in violation of the U.S. Constitution's Eighth Amendment. The Court has also forbidden the death penalty for minors under age 18 in *Roper v. Simmons* (2005) 543 U.S. 551. In these cases, the Court relied on scientific research about how the brain develops to find that juveniles are different from adults. The differences include that youth are highly susceptible to peer pressure, they are impulsive, and most importantly, they are not fully formed and have a greater capacity for change, reformation, and rehabilitation. These differences are relevant in deciding how harsh a sentence to impose for a crime.

Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President •
Marshall Krause, Treasurer • Christiane Hipps • Margaret Johns • Cesar Lagleva
Laura Magnani • Michael Marcum • Ruth Morgan • Dennis Roberts

Even for Homicides, *Mandatory LWOP Sentences are Cruel and Unusual for Juveniles; Courts Must Consider Factors Related to Youth; This New Rule Applies Retroactively*

In 2012, the U.S. Supreme Court decided that mandatory LWOP sentences for defendants who were under age 18 at the time of their crimes violate the Eighth Amendment's prohibition on cruel and unusual punishment. (*Miller v. Alabama* (2012) 567 U.S. ___, 132 S.Ct. 2455.) The Court held, "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him . . . this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it."

The Court did not completely forbid LWOP sentences for juveniles who commit murder, however. Under *Miller*, it is still possible for a judge and jury to decide that the facts of a murder are so extreme, and the juvenile has so little possibility of rehabilitation, that LWOP is an appropriate sentence. However, the Court said it does not expect very many youth to be given such a sentence, and that a court or jury must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."

In 2016, the U.S. Supreme Court held that *Miller* announced a "substantive rule of constitutional law," which applies retroactively even to cases in which LWOP sentences were imposed and are no longer appealable. (*Montgomery v. Louisiana* (2016) 577 U.S. ___; 136 S.Ct. 718.) As a remedy, the Court held that states may permit "juvenile homicide offenders to be considered for parole, rather than by resentencing them." The Court indicated that post-conviction rehabilitation will be relevant to determine suitability for parole.

The California courts have discussed how *Miller* affects juveniles in California. In *People v. Gutierrez*, the California Supreme Court observed that California Penal Code section 190.5(b) had previously been interpreted as favoring LWOP sentences for 16- and 17-year-olds convicted of special circumstances murder unless there were reasons to impose a lesser sentence of life with the possibility of parole. The Court held that such a presumption in favor of LWOP terms for juveniles violates the Eighth Amendment under *Miller*. (*People v. Gutierrez* (2014) 58 Cal.4th 1354). The court rejected the argument that a new law allowing for juveniles with LWOP terms to be considered for re-sentencing (Senate Bill 9, discussed below), resolved the constitutional problems with the old interpretation of the statute. For these reasons, the Court changed the way the statute is interpreted to give trial courts discretion "to sentence a 16- or 17-year-old juvenile convicted of special circumstance murder to life without parole or to 25 years to life, with no presumption in favor of life without parole."

California courts of appeal have published decisions applying the *Miller* and *Gutierrez* rulings to cases where LWOP terms were imposed before *Miller* and *Gutierrez* were decided. If a juvenile was sentenced to an LWOP term for a homicide crime before *Miller* and *Gutierrez*, and the trial court did not determine whether the crime showed “transient immaturity or irreparable corruption,” the case should be remanded for resentencing consideration unless it is clear that the trial court would have imposed an LWOP term even under the *Miller* and *Gutierrez* rules. (*People v. Chavez* (2014) 228 Cal.App.4th 18.) All relevant evidence of potential for rehabilitation must be considered at the new sentencing hearing, even if it takes place after the defendant has been in prison for a long time. (See *People v. Lozano* (2016) 243 Cal.App.4th 1126.) However, if a trial court follows *Gutierrez* by not presuming in favor of an LWOP term and considers the *Miller* factors, it may still impose an LWOP term, even if the court cannot rule out the possibility that defendant could be rehabilitated. (*People v. Palafox* (2014) 231 Cal.App.4th 68.)

Juveniles with LWOP Sentences Can Petition for Resentencing After Serving Part of Their Terms (Senate Bill 9)

On January 1, 2013, a new law went into effect that allows many prisoners who were sentenced to LWOP terms for crimes they committed as juveniles under age 18 to ask for resentencing. The new law is in Penal Code § 1170(d) [Senate Bill 9].) Prisoners who were sentenced to LWOP for juvenile crimes can file a petition for resentencing in the original sentencing court after serving 15 years of their terms. If resentencing is denied, the prisoner can petition for resentencing again after serving 20 years in CDCR custody, and again after serving 24 years. During a resentencing proceeding, the court can either keep the LWOP term or reduce it to a term of 25 years to life with the possibility of parole. A prisoner who gets resentenced will get credit for time served and, upon reaching the minimum eligible parole date, will go before the Board of Parole Hearings (BPH) to be considered for parole.

Unfortunately, there is no law that allows youthful offenders who were between ages 18 and 22 when they committed their crimes to seek reduction of their LWOP terms. The § 1170 resentencing law (SB 9) does not apply to any offenders whose crimes were committed when they were age 18 or older. The § 3051 youthful offender parole process (SB 260/261) does not apply to anyone with an LWOP term.

LIFE WITH THE POSSIBILITY OF PAROLE AND LONG DETERMINATE SENTENCES FOR JUVENILES AND YOUTHFUL OFFENDERS

Sentences Longer than a Person’s Life Expectancy are Cruel and Unusual for Juvenile Non-Homicide Crimes

Juveniles who commit crimes when they are under age 18 are sometimes sentenced to very long terms of life *with* the possibility of parole or to very long determinate (specific number of years) terms. Although these are not officially LWOP sentences, a very long sentence may be a “de facto LWOP” terms if there is no possibility that the prisoner will be eligible for parole before dying. The California Supreme Court has held that a “de facto LWOP” sentence (110 years to life)

for juvenile non-homicide crimes is forbidden by the Eighth Amendment under the reasoning set forth in the *Graham* and *Miller* decisions, discussed above. (*People v. Caballero* (2012) 55 Cal.4th 262.) The federal Ninth Circuit Court of Appeals reached the same conclusion in a case in which it struck down a 254-year determinate sentence imposed on a juvenile for non-homicide crimes. (*Moore v. Biter* (9th Cir. 2013) 725 F.3d 1184.)

Courts are grappling with questions about the line at which a sentence is so long as to be beyond a juvenile's life expectancy. In one case, a court of appeal upheld a sentence of 30 years to life for a 16-year-old who committed non-homicide crimes, in part because the prisoner was likely to be eligible for release during his lifetime. (*People v. Perez* (2013) 214 Cal.App.4th 49.)

Even for Homicides, Sentences Longer than a Person's Life Expectancy Might be Cruel and Unusual for Juveniles, If the Sentence is Mandatory or the Court Did Not Consider Factors Related to Youth

Some California courts of appeal have overturned sentences for homicide crimes committed by juveniles under age 18 where the sentence was longer than the juvenile's life expectancy ("de facto LWOP") and the trial court did not consider the *Miller* factors related to youth, discussed above. One court of appeal remanded a case for resentencing where a 15-year-old received a term of 196 years to life for a murder and the court had not considered the *Miller* factors. (*People v. Thomas* (2012) 211 Cal.App.4th 987.) Another court of appeal did the same in a case with a sentence of 100-years to life for a 15-year-old convicted of murder as an aider and abettor. (*People v. Argueta* (2012) 210 Cal.App.4th 1478.) In another case, a court of appeal addressed a situation in which the juvenile was convicted of both homicide and non-homicide offenses and received an aggregate sentence of 115 years to life; the court held that the sentence should be viewed as a whole and remanded the case with directions for the trial court to set a lesser sentence that would allow the juvenile an opportunity to parole within his expected lifetime, unless it found that the juveniles offenses reflect irreparable corruption within the meaning of *Miller*. (*People v. Lewis* (2013) 222 Cal.App.4th 108, 122.)

The California Supreme Court is considering how long a homicide sentence must be to be a "de facto LWOP," whether a de facto LWOP term violates the Eighth Amendment if the trial court does not consider the *Miller* sentencing factors, and whether the early parole provisions of Senate Bill 260, discussed below, solve any Eighth Amendment problems. The leading cases before the California Supreme Court are *People v. Franklin*, No. S217699 and the consolidated cases *In re Alatraste/In re Bonilla* (Nos. S214652 and S214960).

Many Youthful Offenders with Very Long Sentences Will Be Considered for Early Parole

In 2014, Senate Bill 260 created a special early parole consideration process for prisoners who were under the age of 18 at the time of their crimes. As of January 1, 2016, Senate Bill 261 expands these youthful offender parole hearings to include prisoners who committed their offenses when they were ages 18 through 22.

The new early parole law for youthful offenders is in Penal Code sections 3051 and 3051.1. A youthful offender who was sentenced to a long determinate (specific number of years) term will be considered for parole after serving 15 actual years. A youthful offender who was sentenced to less than 25 years to life will be considered for parole after serving 20 years. A youthful offender who was sentenced to 25 years to life will be considered for parole after serving 25 years (presumably this also applies to youthful offenders serving aggregate terms of more than 25 years to life). The hearings must take into consideration the facts that youth are less responsible than adults for their actions; the features of youth (for example, that youth are not as good as adults at understanding the risks and consequences of their actions, resisting impulse and peer pressure, or controlling their surroundings, etc.); and any rehabilitation and increased maturity over time. If parole is denied, the prisoner's next parole hearing will be scheduled under the regular rules that apply to prisoners serving indeterminate terms.

Some youthful offender are not eligible for early parole hearings, including:

- People sentenced under the “three strikes” law or the “two strikes” law based on one or more prior serious or violent felonies and prisoners sentenced to a “one strike” life sentence for certain sex offenses. (Penal Code 1170.12, 667(b)-(i), 667.61)
- People sentenced to life without the possibility of parole (LWOP).
- People convicted of a *new crime committed after turning age 23* and given a life sentence for that crime.
- People convicted of a *new crime committed after turning age 23* that shows “malice aforethought;” such crimes include: murder in the first degree or second degree (PC 187, attempted murder (PC 664/187), conspiracy to commit murder (PC 182/187), solicitation to commit murder (PC 653f(b)), and assault with a deadly weapon or assault that is likely to produce great bodily injury committed while you are serving a life sentence (PC 4500). *Being found guilty of a 115 or other CDCR write-up for one of these malice offenses does not count as not a conviction. Only going out to court and being convicted disqualifies someone.*

The Board of Parole Hearings (BPH) will routinely schedule and conduct youthful offender parole consideration hearings for eligible prisoners. We do not know how quickly or in what order the BPH will hold youthful offender parole hearings for people who became immediately due for parole consideration when the new laws went into effect. However, the law sets deadlines by which the BPH must have completed hearings for everyone who already has served enough time to get a youth offender parole hearing. The deadline for people with life sentences is July 1, 2017. The deadline for people with determinate sentences is July 1, 2021.

CHALLENGING A LENGTHY SENTENCE

Unlike youthful offender parole hearings, the other new cases and statutes about juvenile sentences do not take effect automatically. This means that prisoners who are serving LWOP or “de facto” LWOP terms for juvenile crimes must take action if they want to try to get resentenced to lesser terms. Prisoners whose cases are still on direct appeal may be able to challenge their sentences in their appeal cases, and should contact their appellate attorneys. Prisoners whose cases

are no longer on appeal will need to file either a petition for writ of habeas corpus (to get resentenced under *Miller* or *Caballero*) or a petition for resentencing (to get resentenced under SB 9/Penal Code 1170(d)). These petitions should be filed in the county superior court that issued the original sentence.

Unfortunately, the Prison Law Office is not able to represent prisoners in individual re-sentencing cases. However, the Prison Law Office can provide a free manual that describes in detail how to file a habeas corpus petition. The habeas corpus manual also includes the official petition form, a sample request for appointment of an attorney, and other model pleadings. Please write us back to request a habeas corpus manual.

The Prison Law Office can also provide self-help manuals for prisoners who were sentenced as juveniles to life without parole or very long sentences. These include sample petitions and filing instructions. Please write us back to request the appropriate manual for your situation:

- If you were sentenced to life *without* the possibility of parole (LWOP) for a crime you committed when you were under the age of 18, request the SB 9 and *Miller* manuals.
- If you were convicted of a *non-homicide* crime that occurred when you were under the age of 18, and you were sentenced to a sentence that is likely to be longer than your life expectancy, request the *Caballero* primer.
- If you were convicted of a *homicide* crime that occurred when you were under the age of 18, and you were sentenced to a sentence that is likely to be longer than your life expectancy, there is no specific handout for your situation. You should request both the *Caballero* and *Miller* handouts and combine the information as needed.
- If you were sentenced to life with the possibility of parole or a lengthy determinate sentence for a crime committed before you were age 23, and you have already served at least 15 years, request the SB 260 and 261 (Youthful Offender Parole) letter.

Friends and family members of youth sentenced to adult prison sentences can also find helpful information on the web at www.fairsentencingforyouth.org.