



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
Alison Hardy
Corene Kendrick
Rita Lomio
Margot Mendelson
Millard Murphy
Thomas Nosewicz
Camille Woods
Lynn Wu

Your Responsibility When Using this Information:

Because we cannot give specific advice to every person who requests it, and because we know legal information is often difficult to obtain in prison, we have created this pamphlet for the purpose of providing useful and accurate information to as many people as possible.

We also encourage readers of this pamphlet to be aware that laws change frequently and can be interpreted in different ways, and that we do not have the resources to update this pamphlet every time the law changes.

If you use this pamphlet, it is your responsibility to check whether the law has changed since the time we published this information, and also to determine how this information applies to your specific situation (if at all). We recommend that you do so using materials available in your institution's law library.

Information for People Serving Long Sentences in California for Crimes Committed as Juveniles or Young Adults (“Youthful Offenders”)

(Updated July 2018)

This letter is for people sentenced to lengthy prison terms in California for crimes committed when they were juveniles (under age 18) or young adults (under age 26); these people are called “youthful offenders.” The information here applies mainly to youthful offenders whose convictions are final (no longer on appeal), and who are serving any of the following types of sentences: life *without* the possibility of parole (LWOP); indeterminate terms (life *with* the possibility of parole after a minimum number of years); and long determinate terms (a set number of years). The purpose of this pamphlet is to tell youthful offenders about changes in the laws that might help them get released from prison earlier.

TABLE OF CONTENTS

1.	What legal changes have expanded the rights of “youthful offenders”?	Page 2
2.	Which legal changes relief apply to me? An overview.	Page 4
3.	I was sentenced to an indeterminate term of life with the possibility of parole or a long determinate (set length) term for a crime committed when I was a juvenile or a young adult (under 26). How can I get out of prison earlier?	Page 5
4.	I was sentenced to LWOP for a crime committed when I was a juvenile (under 18). How can I get out of prison earlier?	Page 7
5.	How can I get more information or help?	Page 9

Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President • Marshall Krause, Treasurer
Harlan Grossman • Christiane Hips • Margaret Johns • Cesar Lagleva
Laura Magnani • Michael Marcum • Ruth Morgan • Seth Morris

1. What legal changes have expanded the rights of “youthful offenders”?

Three types of legal changes have expanded the rights of “youthful offenders” in California: **(a) U.S. Supreme Court decisions** that set constitutional limits on how juveniles (under 18) can be sentenced; **(b) California court decisions** that interpreted those limits; and **(c) California legislation** that created new rights for many juveniles and young adults under age 26.

(a) U.S. Supreme Court decisions

The U.S. Supreme Court has made the following rulings under the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment:

- It is unconstitutional to sentence a juvenile (anyone under age 18) using the death penalty.¹
- It is unconstitutional to sentence a juvenile to LWOP in any case not involving homicide (that is, for any crime other than murder or manslaughter).²
- In homicide cases, a court may impose LWOP on a juvenile – but only after considering **youth-related mitigating factors**, including the juvenile’s age, immaturity, vulnerability to negative influences, and capacity to change. This means it is unconstitutional to impose LWOP on a juvenile as a mandatory sentence that does not allow for individual consideration.³
- Except for the rare cases in which a sentencing court has considered youth-related mitigating factors and found the juvenile to be “irreparably corrupt” (permanently lacking the capacity for rehabilitation), sentences imposed on juveniles must provide a meaningful opportunity to eventually obtain release from prison based on later growth and maturity.⁴
- The constitutional limits on LWOP sentences for juveniles apply retroactively to people who were sentenced before the U.S. Supreme Court’s decisions.⁵

(b) California court decisions

The California Supreme Court has interpreted the Eighth Amendment and made the following rulings:

- The constitutional limits on LWOP sentences for juveniles also apply to very long sentences that exceed a person’s natural life expectancy (called “de facto LWOP” or the practical equivalent of LWOP).⁶
- The same constitutional limits apply to sentences that set a juvenile’s earliest possible release date at such a far-off point in old age that they do not provide a realistic chance for reintegration into the community or a meaningful incentive for rehabilitation.⁷

¹ *Roper v. Simmons* (2005) 543 U.S. 551.

² *Graham v. Florida* (2010) 560 U.S. 48.

³ *Miller v. Alabama* (2012) 567 U.S., 460; *Montgomery v. Louisiana* (2016) 577 U.S. __; 136 S.Ct. 718.

⁴ *Miller v. Alabama* (2012) 567 U.S., 460; *Montgomery v. Louisiana* (2016) 577 U.S. __; 136 S.Ct. 718.

⁵ *Montgomery v. Louisiana* (2016) 577 U.S. __; 136 S.Ct. 718.

⁶ *People v. Caballero* (2012) 55 Cal.4th 262.

⁷ See *People v. Contreras* (2018) 4 Cal.5th 299.

- When a juvenile is convicted of special-circumstance murder, a court is authorized to impose either LWOP or 25-to-life, *but* the court must not make a presumption in favor of LWOP and must consider all youth-related mitigating factors before deciding LWOP is appropriate.⁸
- When being sentenced, all juveniles and young adults who will eventually be considered for parole as “youthful offenders” (see section 1(c), below) must have an opportunity to make a record of youth-related mitigating factors that the parole board must consider.⁹

Meanwhile, there are key issues that California appellate courts have not agreed about, and that the California Supreme Court has left unresolved for now. These unresolved issues include:

- What is the cutoff at which a long sentence on a juvenile fails to provide a “meaningful opportunity” for release and thus is the practical equivalent of LWOP? So far, the California Supreme Court has held that sentences of *110 years to life*, *58 years to life*, and *50 years to life* are “de facto LWOP” and cannot be imposed in non-homicide cases; however, the Court has not set an exact numerical cutoff.¹⁰
- In cases involving special-circumstance murder, must sentencing courts apply a presumption *against* LWOP for juveniles? Specifically, must a court decide the juvenile is “irreparably corrupt” (permanently lacking the capacity for rehabilitation) before imposing LWOP? The California Supreme Court has declared this issue moot for juveniles serving LWOP who are now eligible for youthful offender parole hearings under a new law (see section 1(c) below).¹¹ But these issues still need to be resolved for people serving LWOP who are *not* eligible for youthful offender parole hearings.

(c) California state legislation

Legislators and voters in California have recently passed laws that create rights and opportunities for “youthful offenders.” Here are the key changes:

- Earlier parole consideration is available to many “youthful offenders” who are serving LWOP terms for crimes committed before they turned 18, and to many “youthful offenders” serving other lengthy sentences for crimes committed before they turned 26.¹²
- The opportunity to be resentenced to a term of life with the possibility of parole is now available to some youthful offenders who are serving LWOP terms for crimes committed before they turned 18.¹³

⁸ *People v. Gutierrez* (2014) 58 Cal.4th 1354.

⁹ *People v. Franklin* (2016) 63 Cal.4th 261; *People v. Rodriguez* (2018) 4 Cal.5th 1123.

¹⁰ *People v. Caballero* (2012) (110 years to life is “de facto LWOP”), *People v. Contreras* (2018) (50 years to life and 58 years to life terms are “de facto LWOP”); *People v. Franklin* (2016) 63 Cal.4th 261 (declining to define a cutoff). See also *People v. Adams* (2016) 245 Cal.App.4th 498, *People v. Bell* (2016) 3 Cal.App.5th 865.

¹¹ *People v. Padilla* (2018), S239454, WL 3013115 (dismissing *Miller* challenges to LWOP as moot in light of S.B. 394); *People v. Padilla* (2016), 4 Cal.App.5th 656; *People v. Meraz* (2016) 6 Cal.App.5th 1162; *People v. Watson* (2017) 8 Cal.App.5th 496; *People v. Marquez* (2017) 11 Cal.App.5th 816; *People v. Lozano* (2017) 16 Cal.App.5th 1286.

¹² S.B. 260 (Cal. 2014), S.B. 261 (Cal. 2015), A.B. 1308 (Cal. 2017), S.B. 394 (Cal. 2017) (amending Penal Code §§ 3051, 3051.1, 4801).

¹³ S.B. 9 (Cal. 2017) (amending Penal Code § 1170(d)).

2. Which legal changes apply to me? An overview.

The legal changes that apply to you depends on several factors. The most important factors are *the nature of your sentence* and *your age at the time of your crime*. Below is a chart summarizing this information with a few additional details.

Type of long sentence	Age at time of crime	Available forms of relief	Notes on eligibility and exclusions
Determinate For example: 50 years flat <i>Discussed on pages 5-7.</i>	Under 26	Youth Offender Parole hearing (under S.B. 260/261, A.B. 1308)	Eligible for your first parole hearing during your 15th year in custody. Might be excluded based on your crime or criminal history.
	Under 26	Franklin hearing to present mitigating evidence (under <i>People v. Franklin</i>)	Eligible if you never got a chance to put youth factors at sentencing.
	Under 18	Resentencing hearing for possible lower sentence (under <i>Miller v. Alabama</i>)	Eligible only if you are disqualified from getting a YOPH.
Indeterminate For example: 50 years to life <i>Discussed on pages 5-7.</i>	Under 26	Youth Offender Parole Hearing (under S.B. 260/261, A.B. 1308)	Eligible for your first parole hearing during either your 20th or 25th year (depending on your minimum term). Might be excluded based on your crime or criminal history.
	Under 26	Franklin hearing to present mitigating evidence (under <i>People v. Franklin</i>)	Eligible if you never got a chance to present youth factors at sentencing.
	Under 18	Resentencing hearing for possible lower sentence (under <i>Miller v. Alabama</i>)	Eligible only if you are excluded from getting a YOPH.
LWOP <i>Discussed on pages 7-9.</i>	Under 18	Youth Offender Parole hearing (under S.B. 394)	Eligible for your first parole hearing during your 25th year in custody. Might be excluded based on your crime or criminal history.
		Franklin hearing to present mitigating evidence (under <i>People v. Franklin</i>)	Eligible if you never got a chance to present youth factors at sentencing.
		Resentencing hearing for possible lower sentence (under <i>Miller v. Alabama</i>)	Eligible <i>only if</i> you are excluded from getting a YOPH.
		Resentencing hearing (under S.B. 9/P.C. § 1170(d)) For possible sentence of life with the possibility of parole	Eligible to ask for resentencing after serving 15, 20, and 24 years. Excluded if the crime involved torture of victim and/or the victim was a public safety official.

3. I was sentenced to an indeterminate term of life with the possibility of parole or a long determinate (set length) term for a crime committed when I was a juvenile or a young adult (under 26). How can I get out of prison earlier?

If you are serving a determinate term of *longer than 15 years* or an indeterminate term of *greater than 20 years to life* for a crime committed when you were under age 26, there's a good chance you could benefit from recent legal changes.

If your case is still on direct appeal, you might be able to challenge your sentence in your appeal case. You should contact your appellate attorney about this.

If your case is no longer on appeal, there are three forms of relief to be aware of: **(a) Youth Offender Parole Hearings** (special early parole consideration); **(b) Franklin hearings** (a chance to make a record of youth-related mitigating factors for future parole consideration); and **(c) resentencing under Miller**. You can seek any and all of these types of relief so long as you meet the eligibility criteria for each one. You should try to get all types of relief that might help you get out of prison earlier.

(a) Youth Offender Parole Hearings

You *might* be eligible for earlier parole consideration as a “youthful offender” if you are serving a long determinate or indeterminate term for a crime committed before you turned 26.¹⁴ If you are eligible, you should get a Youth Offender Parole Hearing (YOPH) after you have served a specific amount of time; the exact amount of time depends on the length of your sentence:

- If you were sentenced to a *determinate term* (a set number of years), you are eligible for a YOPH during your *15th year* in custody.
- If you were sentenced to an *indeterminate term* of *less than 25 years to life*, you are eligible for a YOPH during your *20th year* in custody.
- If you were sentenced to an *indeterminate term* of *25 (or more) years to life*, you are eligible for a YOPH during your *25th year* in custody.¹⁵

Note that if your regular earliest possible release date (EPRD) or minimum eligible parole date (MEPD) is before your YOPH date, you will be released or considered for parole at that earlier date.

Exclusions: Some “youthful offenders” are not eligible for a YOPH based on their crime or criminal history. You *can't* get a YOPH if:

- You were sentenced under the “three strikes” or “two strikes” law based on one or more prior serious or violent felonies. (Penal Code §§ 1170.12, 667.)
- You were sentenced to a life term for a “one strike” sex offense. (Penal Code § 667.61.)
- You were sentenced to LWOP for a new crime that took place after you turned 18.

¹⁴ P.C. §§ 3051, 3051.1, 4801.

¹⁵ Because these laws are new and have been amended several times, the laws give the parole board timelines for holding hearings for people who were immediately eligible for YOPHs when the laws were passed or changed. The exact deadline depends on the type of sentence and the person's age at the time of their crime. Penal Code §§ 3051, 3051.1.

- You were convicted of a new crime involving “malice aforethought” that took place after you turned 26. Crimes in this category include: first- and second-degree murder (Penal Code § 187); attempted murder (Penal Code §§ 664/187); conspiracy to commit murder (Penal Code §§ 182/187); solicitation to commit murder (Penal Code § 653f(b)); assault with a deadly weapon *or* assault likely to produce great bodily injury committed while serving a life term (Penal Code § 4500).¹⁶

At your YOPH, the parole board is required to give special consideration (“great weight”) to all youth-related mitigating factors in your case when evaluating you for parole. If you are granted parole, you should be released if and when the parole grant becomes final.¹⁷ If parole is denied, your next hearing will be scheduled under the regular rules that apply to people serving indeterminate terms.

The board is supposed to notify all eligible “youthful offenders” and hold their YOPHs in a timely manner, so you should not have to take any steps to get a YOPH.¹⁸

(b) *Franklin* hearings

According to the California Supreme Court in *People v. Franklin* “youthful offenders” who will eventually be eligible for parole consideration are entitled to make a record of youth-related mitigating factors that will be given “great weight” at their parole hearings. If you were sentenced to a long determinate or indeterminate sentence for a crime committed before you turned 26, and you never got a chance to make a record of youth factors, you’re entitled to an opportunity to do so; this is called a *Franklin* hearing.¹⁹ Procedures differ greatly across California. In some counties, there is an actual hearing in court. In other counties, there is no hearing; instead, a forensic psychologist or social worker is hired to gather information and write a report, and this report is then sent to the parole board. To ask for a *Franklin* hearing, you must file a petition for writ of habeas corpus in the sentencing court.

(c) Resentencing under *Miller*

The California Supreme Court has ruled that “youthful offenders” who are eligible for Youth Offender Parole Hearings (YOPHs) can no longer challenge their sentences under *Miller*, reasoning that such challenges would be moot because YOPHs provide a “meaningful opportunity” to obtain release.²⁰ So if you are getting an early YOPH, you cannot get resentencing under *Miller*.

However, *if* you are serving a sentence for a crime committed as a juvenile (under 18), *and* you are excluded from getting an early parole hearing based on your crime and/or criminal history under YOPH laws, *and* your sentence is so long that it fails to provide a “meaningful opportunity” to obtain release before you reach old age, you can still challenge your sentence under *Miller*. To do so, you must file a petition for writ of habeas corpus in the sentencing court.

¹⁶ Penal Code §§ 3051, 3051.1, 4801.

¹⁷ A person granted YOP cannot be held longer to serve determinate terms for subsequent in-prison crimes. *People v. Trejo* (2017) 10 Cal.App.5th 972 (in-prison crime when still youthful); *In re Jensen* (2018) 24 Cal.App.5th 266 (in prison crimes when not still youthful; note this decision is not yet final as of July 2018).

¹⁸ However, if you believe you are entitled to a Youth Offender Parole Hearing and the board has failed to notify or schedule you in a timely manner, you should contact: Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812.

¹⁹ *People v. Franklin* (2016) 63 Cal.4th 261; *People v. Rodriguez* (2018) 4 Cal.5th 1123.

²⁰ *People v. Franklin* (2016) 63 Cal.4th 261.

**4. I was sentenced to LWOP for a crime committed as a juvenile (under 18).
How can I get out of prison earlier?²¹**

If your case is still on direct appeal, you might be able to challenge your sentence in your appeal case. You should contact your appellate attorney about this.

If your case is no longer on appeal, there are four forms of relief you should be aware of: **(a) Youth Offender Parole Hearings** (special parole consideration); **(b) *Franklin* hearings** (a chance to make a record of youth-related mitigating factors for future parole consideration); **(c) resentencing under *Miller***, and **(d) resentencing under S.B. 9/P.C. § 1170(d)**. You can seek any and all of these types of relief so long as you meet the eligibility criteria for each one. You should try to get all types of relief that might help you get out of prison earlier.

Note: Although the relief described here may seem similar to some of the relief available to people serving life with the possibility of parole, several key details are different.

(a) Youth Offender Parole Hearings

If you are serving an LWOP term for a crime committed when you were a juvenile (under 18), you *might* be eligible for a Youth Offender Parole Hearing (YOPH) during your 25th year of actual custody (good conduct and programming credits do not count).²² At the YOPH, the parole board must give special consideration (“great weight”) to youth-related mitigating factors when evaluating you for parole. If parole is denied, your next parole hearing will be scheduled under the regular rules that apply to people serving terms of life with the possibility of parole.²³ The parole board is supposed to notify all “youthful offenders” about YOPH and hold YOPHs in a timely manner, so you should not have to take any steps to make this happen.²⁴ If you are granted parole, you should be released if and when the parole grant becomes final.²⁵

Exclusions: Some people are not eligible for a YOPH based on their crime or criminal history. You *cannot* get a YOPH if:

- Your case includes a sentence under the “three strikes” or “two strikes” law based on one or more prior serious or violent felonies. (Penal Code §§ 1170.12, 667.)
- Your case includes a life term for a “one strike” sex offense. (Penal Code § 667.61.)
- You were sentenced to LWOP for a new crime that took place after you turned 18.

²¹ Currently, there are no special remedies for people serving LWOP for crimes committed *after* they turned 18.

²² Penal Code § 3051. *If* you are eligible, and if your 25th year in custody will be completed before July 1, 2020, the parole board must conduct your YOPH by July 1, 2020. Penal Code § 3051(i).

²³ Penal Code §§ 3051, 4801.

²⁴ If you believe you are entitled to a Youth Offender Parole Hearing and the parole board has failed to notify or schedule you in a timely manner, you should contact: Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812.

²⁵ A person granted YOP cannot be held longer to serve determinate terms for subsequent in-prison crimes. *People v. Trejo* (2017) 10 Cal.App.5th 972 (in-prison crime when still youthful); *In re Jensen* (2018) 24 Cal.App.5th 266 (in prison crimes when not still youthful; note this decision is not yet final as of July 2018).

- You were convicted of a new crime involving “malice aforethought” that took place after you turned 26. Crimes in this category include: first-degree and second-degree murder (Penal Code § 187); attempted murder (Penal Code §§ 664/187); conspiracy to commit murder (Penal Code §§ 182/187); solicitation to commit murder (Penal Code § 653f(b)); assault with a deadly weapon *or* assault likely to produce great bodily injury committed while serving a life term (Penal Code § 4500).²⁶

(b) *Franklin* hearings

According to the California Supreme Court in *People v. Franklin*, “youthful offenders” who will eventually be eligible for parole consideration are entitled to make a record of youth-related mitigating factors that will be given “great weight” at their parole hearings. If you were sentenced to LWOP for a crime committed as a juvenile (under 18), and you never got a chance to make a record of youth factors, you’re entitled to an opportunity to go back to court to make such a record; this is called a *Franklin* hearing.²⁷ Procedures differ greatly across California. In some counties, there is an actual hearing in court. In other counties, there is no hearing; instead, a forensic psychologist or social worker is hired to gather information and write a report, and this report is then sent to the parole board. To ask for a *Franklin* hearing, you must file a petition for writ of habeas corpus in the sentencing court.

(c) Resentencing under *Miller*

Until recently, people serving LWOP for crimes committed as juveniles (under 18) could challenge their sentences under *Miller v. Alabama* (and related California case law) if the sentencing court did not consider youth factors or drew a presumption in favor of LWOP. However, the California Supreme Court recently ruled that *Miller* relief is no longer available to “youthful offenders” serving LWOP who will be eligible for a Youth Offender Parole Hearing (YOPH).²⁸ So if you are eligible for a YOPH, you cannot get resentencing under *Miller*.

However, *if* you are serving LWOP for a crime committed when you were a juvenile (under 18), *and* you are excluded from getting a YOPH based on your crime or criminal history, *and* the sentencing court failed to give proper consideration to youth-related mitigating factors when it sentenced you, then you can challenge your LWOP sentence and ask to be resentenced to an indeterminate term of life with the possibility of parole.²⁹ To ask for such resentencing, you must file a petition for writ of habeas corpus in the sentencing court.

(d) Resentencing under Senate Bill 9/Penal Code § 1170(d)(2)

Many people serving LWOP for crimes committed as juveniles (under 18) can ask for a chance to be resentenced to a term of 25 to life with the possibility of parole. *If* you are eligible, you can ask for resentencing after you have served 15 actual years (good conduct and programming credits don’t

²⁶ Penal Code § 3051(h).

²⁷ *People v. Franklin* (2016) 63 Cal.4th 261. See also *People v. Rodriguez and Barajas* (2018), S239713 (holding that juvenile sentenced before S.B. 260 is entitled to remand for a *Franklin* hearing).

²⁸ *People v. Padilla* (2018), S239454, WL 3013115 (dismissing *Miller* challenges to LWOP as moot in light of S.B. 394).

²⁹ See *In re Kirchner* (2017) 2 Cal.4th 1040 (holding that S.B. 9 resentencing is *not* a substitute for *Miller* resentencing).

count).³⁰ To qualify for resentencing, at least one of the following must be true: (1) you were convicted under felony-murder or aiding-and-abetting murder laws; (2) you had no prior juvenile felonies involving assault or potential for personal harm to victims; (3) you committed the crime with an adult codefendant; (4) your record shows rehabilitation and remorse.³¹

Exclusions: You *cannot* get this relief if your crime involved torture of a victim, or if the victim was a public safety officer.³²

To ask for resentencing, you must file a resentencing petition with the sentencing court and send a copy to the district attorney. At a resentencing hearing, the court can either keep your LWOP term or reduce it to 25 years to life with the possibility of parole. If your sentence is reduced, you will get credit for time served, and you should then be scheduled for a parole hearing upon reaching your minimum eligible parole date or YOPH date (whichever is earlier).³³ If your petition is denied, you can file another petition after serving 20 years, and a final petition during your 25th year in custody.

5. How can I get more information or help?

Some public defender offices are working to identify and assist people entitled to *Franklin* or *Miller* hearings or to resentencing hearings under Penal Code § 1170(d)(2). You should contact the public defender's office for the county in which you were sentenced; they may be able to help you or put you in contact with another attorney who can help you. You can also contact your trial attorney or appeal attorney to see if they can help you.

Although the Prison Law Office cannot represent people in parole consideration matters or resentencing cases, we can provide free resources, including:

- **Youth Offender Parole Guide:** includes a summary of the relevant laws, guidelines for parole hearing preparation, and general information about the process;
- **State habeas corpus manual:** includes an explanation of how to file a habeas corpus petition, an official petition form, a sample request for appointment of attorney, and other model pleadings;
- **Manuals for youthful offenders serving LWOP or other long sentences:** including a guide for challenging sentences under *Miller*, as well as a guide for petitioning for resentencing under S.B. 9.

After reviewing this pamphlet to determine which manual(s) might be appropriate for your situation, please write us to request the manual(s) you need. These manuals are also available on the Resources page of the Prison law office website at prisonlaw.com.

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

³⁰ Penal Code § 1170(d)(2).

³¹ Penal Code § 1170(d)(2)(B).

³² Penal Code § 1170(d)(2)(A)(ii).

³³ Penal Code § 1170(d)(2).