



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



**HUMAN RIGHTS**  
*for KIDS*

May 21, 2021

Senator Durbin  
Chairman  
711 Hart Senate Building  
Washington, D.C. 20510

Senator Grassley  
Ranking Member  
135 Hart Senate Office Building  
Washington, D.C. 20510

**RE: JOINT LETTER OF SUPPORT FOR S. 1014 – The First Step Implementation Act**

Dear Chairman Durbin, Ranking Member Grassley, and Members of the Senate Judiciary Committee:

The Campaign for the Fair Sentencing of Youth & Human Rights for Kids respectfully submit this letter for the official record to express our support for S. 1014 – the First Step Implementation Act. We are grateful to Senator Durbin and Senator Grassley for their leadership in introducing this bill and appreciate the U.S. Senate’s willingness to address these important criminal justice reform issues, specifically the extreme sentencing of America’s children.

The Campaign for the Fair Sentencing of Youth (CFSY) is a non-profit organization that works to catalyze the just and equitable treatment of children in the United States by demanding a ban on life without parole and other extreme sentences for children who cause harm; advancing alternative responses that focus on their unique characteristics as children, including their capacity for change; and creating opportunities for formerly incarcerated youth to thrive as adults and lead their communities.

Human Rights for Kids (HRFK) is a non-profit organization dedicated to the promotion and protection of the human rights of children. We incorporate research and public education, coalition building and grassroots mobilization, as well as policy advocacy and strategic litigation, to advance critical human rights on behalf of children. A central focus of our work is advocating in state legislatures and courts for comprehensive justice reform for children consistent with the U.N. Convention on the Rights of the Child.

We support S. 1014 because, if it is signed into law, it will grant sentencing review after 20 years to individuals prosecuted in the federal criminal justice system who are serving life and de facto life without parole sentences for crimes they committed as children. The continuing practice of imposing extreme sentences on children is a human rights abuse and, as many states across the nation have already recognized, a form of cruel and unusual punishment.

Over the years too little attention has been paid to the most vulnerable casualties of mass incarceration in America — children. From the point of entry and arrest to sentencing and

incarceration our treatment of children in the justice system is long overdue for re-examination and reform.

### **Children Sentenced as Adults**

In the late 1980's and early 1990's states began passing laws to make it easier to transfer children into the adult criminal justice system which exposed them to harsh sentences, including the death penalty and life without parole. By the year 2000, a child as young as 10 years old could be tried as an adult for certain offenses. And by 2010, an estimated 139,000 children were housed in adult prisons and jails across the United States.

Policymakers were driven by the now-debunked "[Super-Predator Theory](#)" which stated that a new generation of child predators were coming of age who were more violent and less remorseful than ever before. These children, the authors said, were "Godless, jobless, and fatherless" monsters and urged states to respond by treating them as adults and thereby exposing them to overly punitive mandatory minimum sentences and extreme sentences like life and de facto life without parole.

### **Adverse Childhood Experiences & Disproportionate Minority Impact**

The vast majority of children involved in the criminal justice system are contending with early childhood trauma and unmitigated Adverse Childhood Experiences (ACEs), including psychological, physical, and/or sexual abuse; witnessing domestic violence; living with family members who are substance abusers, suffer from mental illness or suicidal ideation, or are incarcerated. Studies have shown that approximately 90 percent of children in the juvenile justice system have experienced at least two ACEs, and 27 percent of boys and 45 percent of girls have experienced at least five ACEs.<sup>1</sup> For children sentenced to life in prison, nearly 80 percent of them reported witnessing violence in their homes, 50 percent were physically abused, and 20 percent were sexually abused during their life.<sup>2</sup> However, the justice system rarely recognizes or understands the connection between children who have committed a criminal act and their previous exposure to trauma. The lack of regard for child status and the failure to account for the impact of early childhood trauma in children transferred into the adult criminal justice system should be seen through a human rights lens – especially for youth of color and youth from low socio-economic backgrounds who make up the vast majority of children prosecuted as adults,<sup>3</sup> as well as those sentenced to life without parole.<sup>4</sup>

### **Juvenile Brain & Behavioral Development Science**

Studies have shown that children's brains are not fully developed. The pre-frontal cortex, which is responsible for temporal organization of behavior, speech, and reasoning continues to develop into early adulthood. As a result, children rely on a more primitive part of the brain known as the amygdala when making decisions. The amygdala is responsible for immediate reactions including fear and aggressive behavior. This makes children less capable than adults to regulate

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<sup>1</sup> Human Rights for Kids (2018). <https://humanrightsforkids.org/wp-content/uploads/HRFK-ACES-Infographic-final.pdf>

<sup>2</sup> Nellis, A. (2012). *The Lives of Juvenile Lifers*. The Sentencing Project. [sentencingproject.org/doc/publications/jj\\_The\\_Lives\\_of\\_Juvenile\\_Lifers.pdf](https://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf)

<sup>3</sup> U.S. Department of Justice, OJJDP, Disproportionate Minority Contact (DMC).

<sup>4</sup> Campaign for the Fair Sentencing of Youth (2018). <https://cfsy.org/wp-content/uploads/Tipping-Point.pdf>

their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, and being heavily influenced by their surrounding environment.

Children's underdeveloped brains and proclivity for irrational decision-making is why society does not allow children to vote, enter into contracts, work in certain industries, get married, join the military, or use alcohol or tobacco products. These policies recognize that children are impulsive, immature, and lack solid decision-making abilities until they've reach adulthood.

It is also for these reasons, that the U.S. Supreme Court in a litany of cases over the past 15 years has found that the use of extreme punishments on children violate the 8<sup>th</sup> Amendment's prohibition on cruel and unusual punishments.

### Dynamic mapping of human cortical development



Source: "Dynamic mapping of human cortical development during childhood through early adulthood," Nitin Gogtay et al., Proceedings of the National Academy of Sciences, May 25, 2004; California Institute of Technology.

### The U.S. Supreme Court & Other Jurisprudence

Starting in 2005, the U.S. Supreme Court began considering the emerging juvenile brain and behavioral development science when it ruled in *Roper v. Simmons* that the Eighth Amendment forbids the imposition of the death penalty on children.<sup>5</sup> Five years later, the Court in *Graham v. Florida* struck down life without parole sentences for children convicted of non-homicide offenses, holding that the state "must impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation."<sup>6</sup>

Just a few years later in 2012, the Court addressed the issue of extreme sentences again in *Miller v. Alabama* where it struck down mandatory life without parole sentences for children convicted of homicide offenses.<sup>7</sup> Sentencing courts must now consider "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."<sup>8</sup> In 2016, the Court decided *Montgomery v. Louisiana* which held that the *Miller* decision was to be applied retroactively under the standard set forth in *Teague v. Lane*.<sup>9</sup> The *Montgomery* Court went on to state that life without the possibility of parole for a child violates the Eighth Amendment where the crime reflects unfortunate yet transient immaturity.<sup>10</sup>

<sup>5</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>6</sup> *Graham v. Florida*, 560 U.S. 48 (20210).

<sup>7</sup> *Miller*, 567 U.S. at 480.

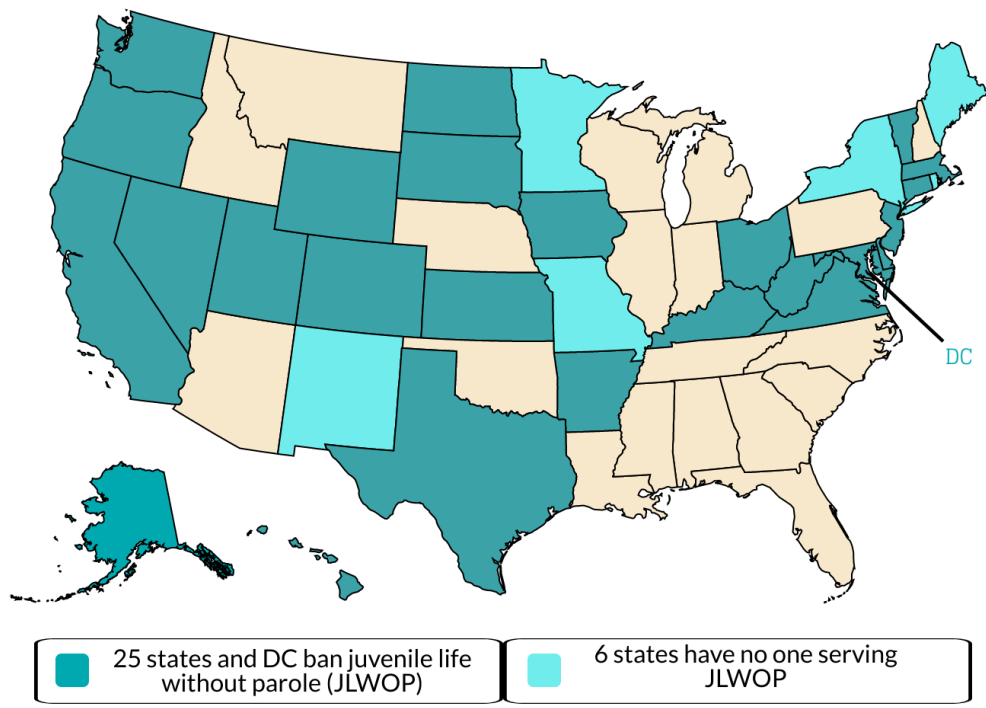
<sup>8</sup> *Id.*


<sup>9</sup> *Montgomery*, 136 S. Ct. at 734.

<sup>10</sup> *Id.*

In the wake of these decisions and the underlying rationale that informed them, states across the country have moved to eliminate life without parole as a sentencing option entirely for children. Conservative leaning states such as Arkansas, Utah, and Texas helped lead the way on this issue, alongside more liberal leaning states such as California, New Jersey, and Connecticut. We have included a map below showing the bipartisan collection of states that have banned life without parole sentences for children by giving these children either parole eligibility or sentencing review at a reasonable point into their sentence.


## 31 states and DC BAN OR HAVE NO ONE SERVING life without parole for children





**“When we sentence a child to die in prison, we forestall the possibility that he or she can change and find redemption. In doing so, we ignore Jesus’ fundamental teachings of love, mercy, and forgiveness.”**

*Nevada Assembly Speaker John Hambrick (R)*



**“We all fall short at times, and, as a person of faith, I believe we all can be redeemed, particularly our children. Young people, often exposed to violence, poverty, and neglect in home environments they cannot escape, sometimes make tragic mistakes. We should and can still hold them accountable for the harm they have caused but in an age-appropriate way that motivates them to learn from their mistakes and work toward the possibility of release. As minority chair on the Judiciary Committee, I can report that we passed this bill with widespread bipartisan support. I hope it will serve as a model for other state legislatures.”**

*Former Delegate John Ellem (R)*

In addition to states that have taken legislative action over the past several years, a number of others have moved to protect children facing life sentences in their State Supreme Courts. For

example, in 2014, the South Carolina Supreme Court noted in *Aiken v. Byars*, that while *Miller* applied to mandatory sentences and did not expressly extend its ruling to states “whose sentencing scheme *permits* a life without parole sentence to be imposed” on a child, it was clear that “it is the failure of a sentencing court not to consider the hallmark features of youth prior to sentencing that offends the Constitution.”<sup>11</sup> The South Carolina Supreme Court held that *Miller* does more than ban mandatory life sentencing schemes for children, it also “establishes an affirmative requirement that courts fully explore the impact of the defendant's juvenility on the sentence rendered.”<sup>12</sup> Similarly, in the wake of the *Montgomery v. Louisiana* decision, both the Georgia Supreme Court and the Oklahoma Court of Criminal Appeals required new sentencing hearings for children previously sentenced to life without parole under discretionary sentencing schemes.<sup>13</sup>

In the past two years alone, Maryland, Virginia, and Ohio became the latest states to pass legislation banning the inhumane sentence of life without parole by allowing children convicted of serious crimes to have their sentences reviewed by either a judge or parole board.

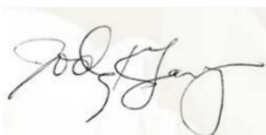
Since 2012, forty-five states in the Union, have either passed legislation banning life without parole sentences for children, begun re-sentencing children sentenced to life without parole, or have no children serving such sentences. The federal government, unfortunately, is well behind the states on this important issue.

### **Human Rights Violations**

The United States remains the only nation in the world that has not ratified the Convention on the Rights of the Child (CRC). Article 37 of the CRC categorically prohibits the imposition of the death penalty and life without parole sentences on children. S. 1014 will ensure that no child is sentenced to die in prison by the federal government which will send an important message to the international community about the United States’ commitment to human rights.

S. 1014 will also better align our sentencing policies with our values as being a nation of second chances and our belief that there is no such thing as a ‘throw-away’ child. The great Nelson Mandela once said, “there is no keener revelation of a society’s soul than the way in which it treats its children.” What does it say about our soul then when we allow children to be sentenced to die in prison? Current policies do not recognize the capacity for change inherent in every person, especially children, and deprive children of liberty for longer than necessary for public safety. It is for these reasons that we urge you to support the First Step Implementation Act of 2021. Thank you.

Sincerely,



Jody Kent Lavy  
Executive Director  
Campaign for the Fair Sentencing of Youth



James. L. Dold  
Chief Executive Officer  
Human Rights for Kids

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<sup>11</sup> *Aiken v. Byars*, 410 S.C. 534, 576-77 (2014).

<sup>12</sup> *Id.*

<sup>13</sup> *Veal v. State*, 298 Ga. 691, (2016); See also, *Luna v. State*, 387 P.3d 956, (Okla. Crim. App. 2016).