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Juvenile Life Without Parole: In Brief

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Juvenile Life Without Parole: In Brief

Since the creation of separate courts for juveniles in the United States in 1899, the juvenile justice system has generally operated under the broad understanding that the role of criminal justice differs for juvenile offenders relative to adults. This understanding typically manifested in juvenile justice policies focused on the best interests of the child, and on rehabilitation rather than punishment. In the 1980s, many states responded to the public perception that juvenile crime was increasing by passing more punitive laws for juvenile offenders. Some of these laws removed certain types of crimes from the juvenile court system altogether, instead mandating that they be handled by the adult criminal system. This change accelerated in the 1990s, with a majority of states passing laws expanding sentencing options for juveniles. However, in recent years, there has been a resurgence of interest in rehabilitative programs and less punitive treatment of juvenile offenders. Even when juvenile offenders are tried as adults there have been efforts in the United States to restrict the use of the most punitive sentences.

In particular, there has been a movement in state legislatures, as well as rulings in the U.S. Supreme Court, to ban the death penalty for juvenile offenders and ban or limit the use of juvenile life without parole (JLWOP) sentences. Several states have passed legislation to ban JLWOP in some or all cases. As of May 2021, 25 states and Washington, DC, had banned JLWOP, and in 10 states that allow JLWOP, no convicted offenders were serving such a sentence. A survey of state Departments of Corrections conducted every four years by the Sentencing Project found that JLWOP sentences decreased by 38% between 2016 and 2020.

In the United States, the federal government manages a small juvenile justice system, and federal law authorizes the imposition of JLWOP sentences. However, the juvenile justice system operates primarily under state and local control. The federal government's role in state and local juvenile justice includes (1) implementing federal grant programs supporting state and local systems and (2) issuing federal court rulings interpreting the Constitution pertaining to juvenile justice.

The federal government administers grant programs that influence how states and localities organize and operate their juvenile justice programs. For instance, in 1974 Congress passed the Juvenile Justice and Delinquency Prevention Act (JJDP; P.L. 93-415), which created a set of institutions within the federal government dedicated to coordinating and administering federal juvenile justice efforts, established grant programs to assist the states with setting up and running their juvenile justice systems, and set core requirements that states had to adhere to in order to be eligible to receive certain federal grant funding. There are no limits on JLWOP included in the JJDP or other federal juvenile justice legislation.

Of all federal courts, the U.S. Supreme Court in particular has issued rulings that have led to changes in juvenile justice policy. In the 2005 case *Roper v. Simmons*, the Supreme Court held that the use of the death penalty for juveniles violates the Eighth Amendment's prohibition against cruel and unusual punishment. Justice Kennedy's majority opinion in *Roper* considered evidence of national consensus against the death penalty for juveniles, as well as differences between juveniles and adults including juveniles' lack of maturity and sense of responsibility, their vulnerability to negative influences and outside pressures, and the fact that a juvenile's character is not yet as well formed as that of an adult. The Supreme Court has subsequently considered similar factors when ruling on challenges to JLWOP sentences in *Graham v. Florida*, *Miller v. Alabama*, *Montgomery v. Louisiana*, and *Jones v. Mississippi*.

Policymakers, advocates, and the Supreme Court have all cited cognitive development as a key reason that juveniles are treated differently from adults in the criminal justice system and why they should be subject to less harsh sentencing practices. Since at least the 1990s, there has been an understanding among psychologists and neuroscientists that the influence of brain development on the cognitive decisionmaking processes of juveniles has unique implications for their criminal culpability.

Congress may consider actions to promote, maintain, limit, or prohibit the use of JLWOP at the federal or state levels.

Contents

The Federal Role in the Juvenile Justice System	2
Juvenile Justice and Delinquency Prevention Act (JJDP)	3
Supreme Court Rulings	4
Research on Juvenile Cognitive Development.....	6
Considerations for Congress.....	7

Contacts

Author Information.....	8
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Since the creation of separate courts for juveniles in the United States in 1899, the juvenile justice system has generally operated under the broad understanding that the role of criminal justice differs for juvenile offenders relative to adults.¹ This understanding often manifested in juvenile justice policies and practices focused on the best interests of the child, and on rehabilitation rather than punishment. In the 1980s, many states responded to the public perception that juvenile crime was increasing by passing more punitive laws for juvenile offenders.² Some of these laws removed certain types of crimes from the juvenile court system altogether, instead mandating that they be handled by the adult criminal system. This change accelerated in the 1990s, with a majority of states passing laws expanding sentencing options for juveniles.³ However, in recent years there has been a resurgence of interest in rehabilitative programs and less punitive treatment of juvenile offenders. Even when juvenile offenders are tried as adults, there have been efforts in the United States to restrict the use of the most punitive sentences.

The United Nations Convention on the Rights of the Child (UNCRC) includes a similar sentiment with regard to the unique status of juvenile offenders. Article 37 of the UNCRC provides, in part: “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”⁴ The UNCRC went into effect in 1990 and, to date, all UN member states have ratified the agreement except for the United States.⁵ Commonly discussed reasons as to why the United States has not ratified the UNCRC include concerns about sovereignty, parental rights, and the limits of federal power on juvenile justice systems, which are largely under state and local control.⁶ Some provisions in the UNCRC align with federal legislation related to juvenile justice systems—for example, certain federal grant funding requires states to separate incarcerated juveniles from adults,⁷ while the UNCRC requires that “every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.”⁸ However, other UNCRC provisions do not align with current federal law. Most relevant to this report, the UNCRC prohibits sentencing juveniles to life imprisonment without the possibility of parole (i.e., juvenile life without parole [JLWOP]), while

¹ National Institute of Correction, *Desktop Guide to Quality Practice for Working with Youth in Confinement, Principles and Concepts*, Chapter 1: Historical Perspective, “Advent of the Juvenile Court in 1899,” <https://info.nicic.gov/dtg/node/9>.

² U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice: A Century of Change*, National Report Series, December 1999, p. 2, (hereinafter, “A Century of Change”).

³ A Century of Change.

⁴ United Nations, Office of the High Commissioner for Human Rights, *Convention on the Rights of The Child*, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (hereinafter, “Convention on the Rights of The Child”).

⁵ United Nations Treaty Collection, Chapter IV Human Rights, *Convention on the Rights of the Child*, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en (hereinafter, “UNCRC Status”); UNICEF, “What is the UN Convention,” <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>. The United States signed the agreement in 1995, but no President has presented the treaty to the Senate for ratification. At various points, resolutions have been introduced in the House and Senate related to the UNCRC; however, most of these have not progressed further than committee referral.

⁶ See CRS Report R40484, *The United Nations Convention on the Rights of the Child*.

⁷ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, “Core Requirements,” <https://ojjdp.ojp.gov/about/core-requirements>.

⁸ Convention on the Rights of The Child.

the United States is the only country to allow life without parole sentences for crimes committed by offenders who were under 18 at the time of the offense.⁹

In recent years, there have been efforts in the United States to restrict the use of certain types of sentences for juvenile offenders. Several states have passed legislation to ban JLWOP in some or all cases.¹⁰ As of May 2021, 25 states¹¹ and Washington, DC, have banned JLWOP, and in 10 states¹² that allow JLWOP, no convicted offenders were serving such a sentence.¹³ A survey of state Departments of Corrections conducted every four years by the Sentencing Project found that the population serving JLWOP sentences decreased by 38% between 2016 and 2020.¹⁴ The U.S. Supreme Court has also issued decisions limiting the use of JLWOP.¹⁵

This report provides information on the federal role in juvenile justice, including the sentencing of juvenile offenders, as well as implications from recent Supreme Court decisions concerning juvenile sentencing. The report also discusses research related to cognitive development that is commonly cited in policy debates about juvenile offenders. It concludes by presenting key issues that may be of interest to Congress.

The Federal Role in the Juvenile Justice System

In the United States, juvenile justice systems operate primarily under state and local control. However, the federal government plays a role in the juvenile justice system in two principal ways. First, the federal government prosecutes a small number of juvenile cases that fall under federal jurisdiction.¹⁶ As of April 2022, Bureau of Prisons (BOP) records indicated that BOP held five federal inmates under age 18.¹⁷ This statistic does not include federal prisoners who were juveniles at the time of sentencing but are now adults. According to BOP, the majority of juvenile inmates in federal prisons are Native American youths who were convicted of crimes that

⁹ See UNCRC Status, and Natasja Sheriff, “UN expert slams US as only nation to imprison kids for life without parole,” *Al Jazeera America*, March 9, 2015.

¹⁰ The Sentencing Project, “Juvenile Life Without Parole: An Overview”, May 24, 2021, <https://www.sentencingproject.org/publications/juvenile-life-without-parole/> (hereinafter “JLWOP: Overview”); and John Kelly, “Estimate Shows Adult Court Is Increasingly Rare Destination for Youth,” *The Imprint News*, November 9, 2021, <https://imprintnews.org/youth-services-insider/estimate-shows-adult-court-is-increasingly-rare-destination-for-youth/60281>. There have also been shifts around the prosecution of juveniles as adults; however, that topic is outside the scope of this report.

¹¹ These states are Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Nevada, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

¹² These states are Illinois, Indiana, Maine, Minnesota, Missouri, New Hampshire, New Mexico, New York, and Rhode Island.

¹³ JLWOP: Overview.

¹⁴ JLWOP: Overview. Note that this decrease may reflect changes arising from the Supreme Court’s decisions in *Miller v. Alabama* and *Montgomery v. Louisiana* limiting JLWOP sentences. See the “Supreme Court Rulings” section of this CRS report for more information on these decisions.

¹⁵ See the “Supreme Court Rulings” section of this CRS report.

¹⁶ 18 U.S.C. §5032.

¹⁷ Federal Bureau of Prisons (BOP), *Inmate Statistics*, https://www.bop.gov/about/statistics/statistics_inmate_age.jsp.

occurred on tribal lands and fell under federal jurisdiction.¹⁸ Under current federal law, juvenile offenders may face life without parole sentences if tried as adults for certain offenses.¹⁹

Second, the federal government plays a role in juvenile justice via grant programs that influence how states and localities organize and operate their juvenile justice systems. Third, decisions of the U.S. Supreme Court have limited the ability of states to impose certain punishments on juvenile offenders.

Juvenile Justice and Delinquency Prevention Act (JJDP)

In 1974, Congress passed the JJDP (P.L. 93-415), which included three main components. First, the JJDP created a set of institutions within the federal government dedicated to coordinating and administering federal juvenile justice efforts. Second, it established grant programs to assist the states with setting up and running their juvenile justice systems. Finally, it set core requirements that states must adhere to in order to be eligible to receive certain federal grant funding.²⁰ Under current law, there are four core requirements:²¹

1. States must keep status offenders (e.g., truants, runaways, underage users of alcohol) out of secure detention or correctional facilities.
2. States cannot detain or confine juveniles in facilities in which they would have contact with adult inmates.
3. Subject to limited exceptions, juveniles cannot be detained or confined in any jail or lockup for adults.²²
4. States must show that they are working to address racial and ethnic disparities within their juvenile justice systems.²³

Three of the four core requirements set by Congress in JJDP are grounded in the understanding that juvenile offenders are different from adult offenders in ways that merit both unique consideration and physical separation. However, there are no restrictions on JLWOP or other limits on sentence length included in the JJDP or other federal legislation addressing juvenile justice.

¹⁸ BOP, *Juveniles*, https://www.bop.gov/inmates/custody_and_care/juveniles.jsp.

¹⁹ See, for example, *Miller v. Alabama*, 567 U.S. 460 (2012). Generally, a person who was under 18 at the time of the offense will be tried in juvenile delinquency proceedings, but minors as young as 13 may be tried as adults under certain circumstances. See 18 U.S.C. §5032.

²⁰ See archived CRS Report RL33947, *Juvenile Justice: Legislative History and Current Legislative Issues*.

²¹ See CRS Report R44879, *Juvenile Justice Funding Trends*.

²² Under JJDP, these exceptions include six hours for processing or release, awaiting transfer to a juvenile facility, or the periods immediately before or after a court hearing. There is also a 48-hour (excluding weekends and holidays) exception for locations outside of metropolitan statistical areas and locations where conditions of distance to travel do not allow for court appearances within 48 hours. There are also exceptions for periods when safety concerns limit court appearances. In each of these cases, the exception requires that there is sight and sound separation from adult inmates and that staff, including those who work with adult and juvenile inmates, have been trained to work with juveniles.

²³ The requirement to address disproportionate minority contact does not require states to establish or meet numerical standards or quotas.

Supreme Court Rulings²⁴

Of all federal courts, the U.S. Supreme Court in particular has issued rulings that have led to changes in juvenile justice policy. Those rulings establish that a state may impose sentences of life without parole on juvenile offenders, but only for homicide offenses, and only when the sentencing judge or jury has discretion to impose a lesser sentence.

In the 2005 case *Roper v. Simmons*, the Supreme Court held that sentencing juvenile offenders to death violates the Eighth Amendment's prohibition on cruel and unusual punishment.²⁵ Justice Kennedy's majority opinion in *Roper* considered "evidence of national consensus against the death penalty for juveniles"²⁶ and also "acknowledge[d] the overwhelming weight of international opinion against the juvenile death penalty."²⁷ The majority further noted that "the death penalty is the most severe punishment" and thus "must be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'"²⁸ The Court considered differences between juveniles and adults, including juveniles' lack of maturity and sense of responsibility, their vulnerability to "negative influences and outside pressures," and the fact that "the character of a juvenile is not as well formed as that of an adult."²⁹ In light of these differences, the Court concluded that juvenile offenders are less culpable than adults, such that "the death penalty is disproportionate punishment for offenders under 18."³⁰

Although *Roper* involved the juvenile death penalty, the Supreme Court has also relied on the factors it considered in *Roper* when ruling on challenges to JLWOP sentences. For instance, in the 2010 case *Graham v. Florida*, the Court held that juveniles may not be sentenced to life without parole for non-homicide offenses.³¹ Following its approach in *Roper* and related cases, the Court considered the rarity of JLWOP sentences for non-homicide offenses and the lesser culpability of juveniles as compared to adults.³² Based on those factors, plus the lesser gravity of non-homicide offenses, the Court concluded that imposing a JLWOP sentence for a non-homicide offense is cruel and unusual in violation of the Eighth Amendment.³³

In the 2012 case *Miller v. Alabama*, the Supreme Court held that the Eighth Amendment forbids any sentencing scheme that *mandates* life without parole for juvenile offenders upon conviction for certain offenses; however, the Court held that sentencers (i.e., judges or juries) who consider an offender's youth and attendant characteristics may impose *discretionary* juvenile life without

²⁴ This section was authored by Joanna Lampe, a Legislative Attorney in CRS's American Law Division (ALD). It uses citation and other editorial styles consistent with ALD's reports.

²⁵ 543 U.S. 551, 568 (2005).

²⁶ *Id.* at 564. The majority opinion stated that, at the time, 30 states prohibited death sentences for juveniles, and that "even in the 20 States without a formal prohibition on executing juveniles, the practice is infrequent." *Id.*

²⁷ *Id.* at 578.

²⁸ *Id.* at 568 (quoting *Atkins v. Virginia*, 536 U.S. 304, 319 (2002)).

²⁹ *Id.* at 569-70.

³⁰ *Id.* at 575.

³¹ 560 U.S. 48 (2010).

³² *Id.* at 62-69.

³³ *Id.* at 74.

parole sentences in homicide cases.³⁴ Relying in part on cases such as *Roper* and *Graham*, the Court required that the sentencing judge or jury in a JLWOP case consider “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.”³⁵ The Court further stated that the sentencing judge or jury should consider each juvenile offender’s chronological age and maturity level, his home environment, the circumstances of the homicide offense, the ways in which the “incompetencies associated with youth” may have hampered the juvenile’s criminal defense, and the possibility of rehabilitation.³⁶ In the 2016 case *Montgomery v. Louisiana*, the Court held that *Miller*’s prohibition on mandatory life without parole sentences for juvenile offenders applied retroactively to convictions that were final before *Miller* was decided.³⁷ Justice Kennedy, joined by five other Justices, explained that *Miller* had announced a new substantive rule by “bar[ring] life without parole ... for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”³⁸

Most recently, in the 2021 case *Jones v. Mississippi*, the Supreme Court held that the Eighth Amendment does not require an explicit finding that a juvenile offender is permanently incorrigible before imposition of a JLWOP sentence.³⁹ Rather, a state sentencing scheme that gives the sentencing judge or jury discretion whether to impose a life without parole sentence for a juvenile homicide offender “is both constitutionally necessary and constitutionally sufficient.”⁴⁰ The Court’s decision in *Jones* did not articulate any new Eighth Amendment protections but stated that it “carefully follow[ed] both *Miller* and *Montgomery*.”⁴¹

The Supreme Court’s decisions interpreting the Eighth Amendment apply to both the federal and state justice systems. Thus, under the foregoing decisions, an individual tried in federal or state court for offenses committed before age 18 may not be sentenced to death, and may not be sentenced to life in prison without the possibility of parole for a non-homicide offense. A juvenile who has committed homicide may not be subject to a mandatory sentence of life without parole. However, a JLWOP sentencing regime may be constitutional if the sentencing judge or jury had the discretion to consider mitigating factors including and related to the offender’s age and nonetheless determined that the most severe sentence was warranted.

De Facto or Virtual JLWOP

A related area of legal and policy discussion concerns the use of “de facto” or “virtual” JLWOP, meaning sentences that do not expressly impose life imprisonment without the possibility of parole but nonetheless make it likely offenders will die while incarcerated or will spend the majority of their lives incarcerated. A sentence may be considered a de facto life without parole sentence because “the length of sentence imposed is so long that the sentence is, for all practical purposes, a life sentence and likely was intended to be such by the judge who imposed

³⁴ 567 U.S. 460 (2012).

³⁵ *Id.* at 480.

³⁶ *Id.* at 477-78.

³⁷ 577 U.S. 190 (2016).

³⁸ *Id.* at 209.

³⁹ 141 S. Ct. 1307 (2021).

⁴⁰ *Id.* at 1313.

⁴¹ *Id.* at 1321. Justice Thomas concurred in the judgment but argued that the majority opinion had “[o]verrule[d] *Montgomery* in substance but not in name.” *Id.* at 1327 (Thomas, J., concurring in the judgment). Justice Sotomayor, joined by Justices Breyer and Kagan, filed a dissent arguing that the majority’s decision was inconsistent with the Court’s prior decisions in *Miller* and *Montgomery*. *Id.* at 1328-41 (Sotomayor, J., dissenting).

it.”⁴² For instance, in cases where the relevant statutes do not authorize life imprisonment, a sentencing judge or jury may order “consecutive sentences for multiple counts of conviction in order to achieve the lengthy period of incarceration imposed.”⁴³ In other cases, a sentence may be considered virtual life without parole because the sentence is longer than the average life expectancy, even if it is unclear whether the sentencing judge intended the offender to die while imprisoned.⁴⁴ The Supreme Court has not ruled on the use of de facto JLWOP.

Research on Juvenile Cognitive Development

Certain policymakers, advocates, and the Supreme Court have all cited juvenile cognitive development as a key reason why youthful offenders should be handled differently than adults by the justice system. Research has demonstrated that there are age-related changes in the brain, which does not reach “full physical or functional development” until the mid-twenties.⁴⁵ Further, structures and functions of the brain do not all develop at the same time.⁴⁶

One of the major theories in developmental neuroscience is the dual systems model, which posits that higher levels of risky behaviors and choices among juveniles may be the result of the socio-emotional system developing before the cognitive control system.⁴⁷ The socio-emotional system is related to the “emotional state of the brain” and increases juveniles’ need for sensation or reward-seeking behavior as well as their emotional reactivity.⁴⁸ This system develops in the brain before the cognitive control system, which is connected to impulse control and emotional regulation.⁴⁹ Stated another way, “the brain is essentially being given the ‘gas’ of the socio-emotional system without having the mature ‘brakes’ of the cognitive control system.”⁵⁰

Since at least the 1990s, there has been an understanding among many psychologists and neuroscientists that the influence of brain development on the cognitive decisionmaking processes among juveniles has unique implications for their criminal culpability.⁵¹ Juveniles are

⁴² United States Sentencing Commission, “Life Sentences in the Federal Criminal Justice System,” February 2015, p. 10, <https://www.ussc.gov/research/research-publications/life-sentences-federal-criminal-justice-system> (hereinafter, “Life Sentences in the Federal Criminal Justice System”).

⁴³ *Id.*

⁴⁴ Life Sentences in the Federal Criminal Justice System, p. 15.

⁴⁵ Kathryn Monahan, Laurence Steinberg, and Alex R. Piquero, “Juvenile Justice Policy and Practice: A Developmental Perspective,” *Crime and Justice*, vol. 44, no. 1 (September 2015) (hereinafter, “Juvenile Justice Policy and Practice”); and Arian Petoft, Mahmoud Abbasia, and Alireza Zalib, “Toward children’s cognitive development from the perspective of neurolaw: implications of *Roper v Simmons*,” *Psychiatry, Psychology, and Law*, preprint (2022) (hereinafter, “Toward children’s cognitive development”).

⁴⁶ See Toward children’s cognitive development. There are also individual differences in cognitive development trajectories and timelines.

⁴⁷ Elizabeth P. Shulman, Ashley R. Smith, and Karol Silva et al., “The dual systems model: Review, reappraisal, and reaffirmation,” *Developmental Cognitive Neuroscience*, vol. 17 (February 2016).

⁴⁸ American Bar Association, *Understanding the Adolescent Brain and Legal Culpability*, August 2015, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/ (hereinafter, “Understanding the Adolescent Brain and Legal Culpability”).

⁴⁹ Toward children’s cognitive development.

⁵⁰ Understanding the Adolescent Brain and Legal Culpability.

⁵¹ Juvenile Justice Policy and Practice.

less capable than adults of exercising restraint, planning ahead, anticipating outcomes (i.e., risks and rewards), regulating their emotions, and understanding social cues.⁵² Juveniles also display a heightened sensitivity to rewards, are more susceptible to peer pressure, have less developed moral perceptions, and have personalities that are still developing.⁵³

As stated in a peer-reviewed article summarizing the relationship between developmental neuroscience and juvenile criminal culpability:

Relative to adults, adolescents are more impulsive, more likely to focus on potential rewards in lieu of potential costs of a risky situation, and more likely to be short-sighted in their decision making ... especially “in the heat of the moment, under potential threat, and in the presence of peers thereby increasing the likelihood of reckless behavior”.... Particularly in emotionally charged situations that involve similar-aged peers, emotional regulation is compromised, resulting in a failure of self-control and a higher probability of poor decision making and involvement in risky behavior.⁵⁴

Juvenile cognitive development is also affected by individual and environmental factors including exposure to, and experiences with, violence and material deprivations. Children are uniquely vulnerable in that they are generally dependent upon others for their material, emotional, and social needs and are often unable to remove themselves from harmful or risky environments.⁵⁵ However, most juvenile offenders do not continue to commit crimes as adults, perhaps, in part, due to reaching full cognitive maturity.⁵⁶

Typically, criminal responsibility may be mitigated if the action fell outside of the offender’s control, be it for biological, psychological, or environmental reasons.⁵⁷ Based on findings regarding the limits of juvenile control as described above, the American Psychological Association has argued in legal briefs that “juveniles’ immaturity, vulnerability, and changeability make them less culpable than adults and ... as a result of their lower responsibility and ability to change, they should be deemed less responsible and thus less punishable.”⁵⁸

Considerations for Congress

The legal and policy questions that Congress may consider in determining whether and how to act with respect to JLWOP vary depending on whether proposed legislation would apply to the federal or state justice systems.

Congress possesses significant authority to pass legislation to alter JLWOP sentencing under federal law. However, any legislation Congress might enact would be subject to the constitutional

⁵² Toward children’s cognitive development.

⁵³ Toward children’s cognitive development.

⁵⁴ Juvenile Justice Policy and Practice, pp. 587-588.

⁵⁵ The Supreme Court recognized this factor in *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (stating that children “have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings”) (internal quotes and alterations omitted).

⁵⁶ Juvenile Justice Policy and Practice; and Laurence Steinberg, “Give Adolescents the Time and Skills to Mature, and Most Offenders Will Stop,” MacArthur Foundation, <https://nicic.gov/give-adolescents-time-and-skills-mature-and-most-offenders-will-stop>.

⁵⁷ Juvenile Justice Policy and Practice.

⁵⁸ Juvenile Justice Policy and Practice, p. 599.

limits articulated in *Miller*, *Montgomery*, and any other applicable cases. Thus, Congress could place additional limits on JLWOP sentencing but could not narrow the scope of Eighth Amendment protections announced by the U.S. Supreme Court. For example, Congress could enact legislation requiring federal courts to make certain explicit findings before imposing a JLWOP sentence or otherwise limiting the availability of such sentences under federal law.

Congress could also expand resentencing options for federal offenders serving JLWOP sentences. For example, a proposal from the 116th Congress entitled the Next Step Act of 2019 would have allowed courts to reduce the sentence of a federal juvenile offender tried as an adult if the offender had served at least 20 years in prison and the court found that (1) the offender did not pose a safety risk and (2) the interests of justice warranted a sentence modification.⁵⁹ Similarly, the Second Look Act of 2019, also introduced in the 116th Congress, would have allowed federal inmates sentenced to more than 10 years in prison to petition for sentence reductions.⁶⁰ The act would not have limited such petitions to juvenile offenders, but it would have directed courts to consider factors including “the diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, if the defendant was a juvenile at the time of the offense.”

With respect to state JLWOP sentencing, Congress lacks the constitutional authority to directly alter state criminal law, which is traditionally considered an area of state and local concern.⁶¹ Nonetheless, Congress may consider legislation that would indirectly influence state and local governments’ policies regarding JLWOP. For example, Congress may consider amending state formula grant programs in JJDPA to promote, limit, or prohibit the use of JLWOP or it could provide an incentive for states to pass legislation regarding the use of JLWOP.⁶² Alternatively, Congress may consider continuing current practices. Regardless of whether Congress acts on this subject, U.S. Supreme Court decisions articulating substantive constitutional rights would continue to bind the states.

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⁵⁹ H.R. 1893/S. 697.

⁶⁰ H.R. 3795/S. 2146.

⁶¹ See the “Constitutional Authorities for Congressional Action on Police Reform” section of CRS Report R46530, *Police Reform and the 116th Congress: Selected Legal Issues*.

⁶² A similar strategy of providing an incentive for states to pass legislation was used in the Rape Survivor Child Custody Act (Title IV of the Justice for Victims of Trafficking Act of 2015; P.L. 114-22).

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