

# **SECOND LOOK**

## **FOR JUSTICE, SAFETY & SAVINGS**

**MAY 2020**

**A PLAN TO ADDRESS REHABILITATED YOUTH SERVING  
EXTREME SENTENCES IN ADULT PRISONS**



**TEXAS CRIMINAL  
JUSTICE COALITION**

**Celebrating 20 Years**



The Texas Criminal Justice Coalition advances solutions and builds coalitions to end mass incarceration and foster safer communities.

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EXTREME SENTENCES IN ADULT PRISONS**

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# HOW WE GOT HERE

## RISE OF THE FALSE “SUPERPREDATOR” THEORY

With only five percent of the world’s population, the United States is responsible for nearly 25 percent of its prisoners.<sup>1</sup> **America incarcerates more of its citizens than any other country in the world.** In 1972, the total incarcerated population in the United States totaled less than 200,000 people.<sup>2</sup> The War on Drugs policymaking in the 1980s dramatically increased the number of individuals incarcerated in America for drug offenses; that was followed by other “tough on crime” campaigns in the 1990s, leading to the expansion of mandatory minimum sentencing, the growth of private prisons, and the explosion of life-without-parole sentences.<sup>3</sup> Today, more than 2.2 million people are incarcerated across the country,<sup>4</sup> and nearly seven million people are under “correctional control,” which includes probation and parole supervision.<sup>5</sup> To place the effects of these policies within context, **nationwide there are more people serving life sentences (206,000) today than there were total people in the entire American prison population (196,000) in 1970.**<sup>6</sup>

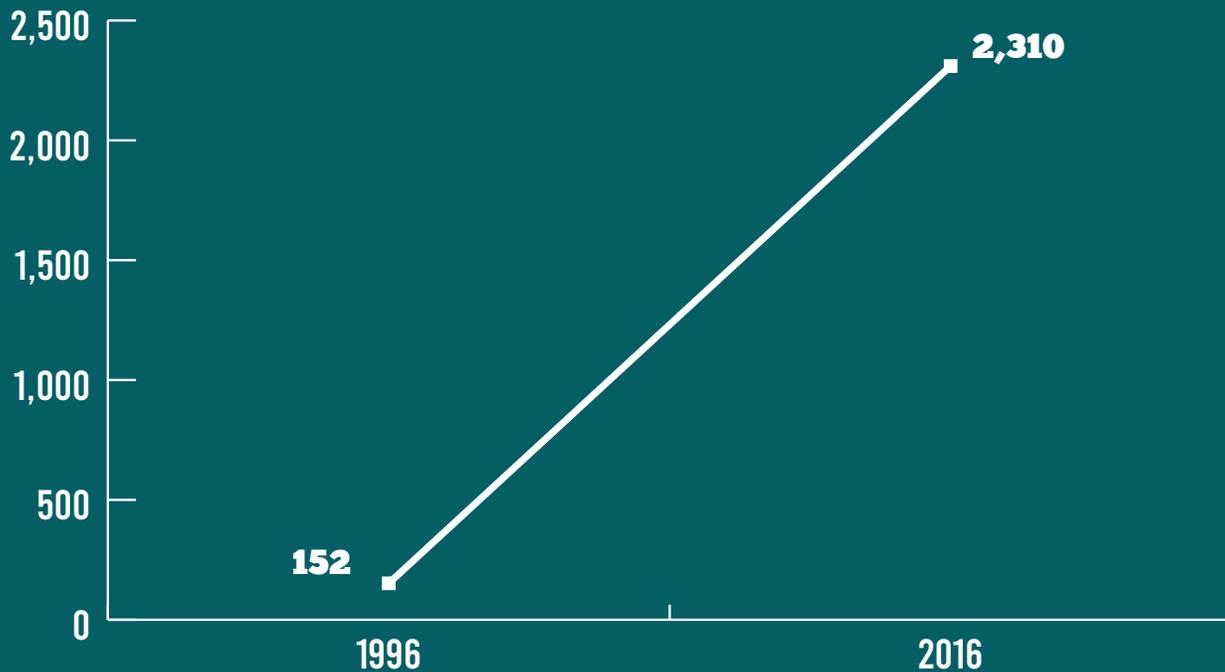
From 1983 to 2013, punishments in the United States became 165 percent more harsh, despite declining crime rates, as criminal penalties increased, opportunities for parole were reduced, and other policies were put into place that effectively sent more people to prison and kept them there for longer.<sup>7</sup> According to one study, **the length of stay for murder in the United States increased by 238 percent from 1981 to 2000.**<sup>8</sup> Alex Kozinski, a judge on the U.S. Court of Appeals for the Ninth Circuit, stated, “the prison population grew every year, yet arrests for felonies and conviction rates remained essentially constant. Thus, to reduce incarceration rates, we must reduce sentence lengths. It is that simple.”<sup>9</sup>

Youth were not exempt from the expansion of overly harsh punishments and long sentence lengths, and states across the country enacted more punitive laws to respond to juvenile offenses, embracing the idea of “adult crime, adult time”<sup>10</sup> based on a misperception that system-involved youth were a “new breed of juveniles...for whom violence was a way of life.”<sup>11</sup> This view was coined the “superpredator” theory<sup>12</sup> by Princeton Professor John Dilulio, who stated that “the number of juveniles in custody would increase three-fold in the coming years and that, by 2010, there would be ‘an estimated 270,000 more young predators on the streets than in 1990.’”<sup>13</sup> However, Dilulio’s predictions proved false as data suggests that adults, not youth, were responsible for the increase in crime rates during the 1980s and 1990s.<sup>14</sup>

OVER THE PAST  
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“Two decades of research by sociologists, criminologists, psychologists, and neurologists has now debunked [the superpredator] theory, showing instead that very few people who commit offenses in their youth continue to participate in serious criminal conduct as they get older. Instead, **they age out of this conduct, which is often a reflection of their immaturity, lack of impulse control, and chaotic, even traumatic, childhood experiences.** In recognition of the fact that youth are different from adults in why they commit crimes and what sanctions work, many countries around the world now treat young people into their early 20s differently from older adults in the criminal justice system, providing more rehabilitative services, alternatives to incarceration, and shorter prison terms. **The United States, on the other hand, remains the only country in the world that still sentences children under the age of 18 to life without parole.** It also prosecutes and detains many more youth as adults to grow up and die in prison.”<sup>15</sup>

## NUMBER OF KIDS SERVING LIFE WITHOUT PAROLE IN THE UNITED STATES



Nonetheless, the pervasiveness of the superpredator theory spread, leading to the implementation of harsh new laws that exposed young people to permanent punishments, including life without parole and the death penalty — punishments that were once reserved only for adults.<sup>16</sup> In 1996, the number of youth given life without parole sentences spiked at 152, which at that time was a historic high,<sup>17</sup> and the numbers only exploded from there, with 2,310 young people serving life without parole sentences in the United States by 2016.<sup>18</sup>



During the rise of the superpredator theory, states adopted laws that permitted a more general use of juvenile transfers to the adult court system. This actualized in lowering the age at which a court could transfer a youth to the adult system, or by expanding the types of offenses eligible for transfer — in some cases making crueler sentences mandatory.<sup>19</sup>

In the end, however, the rise of the juvenile superpredator never occurred.<sup>20</sup> Although Dilulio expressed regret, admitting no evidence supported his theory, it was not until 2005 that the U.S. Supreme Court began trying to undo some of the wrongs that resulted from the theory.<sup>21</sup>

## Hannah Overton

**WRONGFULLY INCARCERATED IN A TEXAS PRISON FOR SEVEN YEARS UNTIL SHE WAS DECLARED FACTUALLY INNOCENT IN 2015 – SHARES THE STORY OF HER FRIEND, IRENE.**

“When I first walked through those prison gates, I was scared and lonely and so depressed! I wasn't eating or sleeping. Irene looked at me and saw her younger self, a very young teenager when she entered the same prison gates. Irene took care of me, and she convinced some of her friends to take care of me, too. She helped me start eating again and get the essentials I needed. She was a friend to me when no one wanted to be my friend. When Irene was in middle school, she began being bullied by another girl. The bullying went on for years and, in high school, Irene and this same girl got into a fight over a boy. This time, Irene was determined she wouldn't let the girl bully her anymore. The fight got physical and, although Irene only intended to stand her ground, the girl tragically died. Irene, a scared teenager, was immediately charged as an adult, convicted of murder, and sent to a maximum-security prison. Irene has now spent 25 years in prison. She made one bad decision as a kid, and in the past 25 years she has grown up and matured. Irene has so much to offer the world, if she could just get a second chance.”

## Chon

**75-YEAR SENTENCE AT 17 YEARS OLD.**

“To detach myself from the infectious negativity of prison culture, I pursued an education and participated in available rehabilitative programs. To date, I have earned four college degrees (an AA in Liberal Arts, a BS in Behavioral Science, a MA in Literature, and a MA in Christian Education), a college trade (in Computer Repair), five On-The-Job Vocational Trainings, and nine TDCJ rehabilitative programs (two more of which I am currently enrolled). My prison record testifies of my transformative maturation and self-betterment, exudes my longing desire to rejoin society, and reflects my propensity for success. My survival has largely been fueled by hope of a second chance at life, and I am living proof that youthful offenders are not beyond hope or rehabilitation.”

## UNDOING LIFE WITHOUT PAROLE (LWOP)

Undoing juvenile life without parole (LWOP) began as a series of important rulings made by the Supreme Court between 2005 and 2016. In these rulings, the Court began to change how youth can be sentenced, finding that children are fundamentally different and less culpable than their adult counterparts and, therefore, must be treated differently under the law.

### ROPER V. SIMMONS (2005)

Citing scientific research establishing general differences between youth and adults, the U.S. Supreme Court held the death penalty unconstitutional for youth.

### GRAHAM V. FLORIDA (2010)

Citing advances in psychology and neuroscience, the U.S. Supreme Court held the developmental shortcomings of youth mean that a sentence of life without the possibility of parole (LWOP) cannot be constitutionally proportional for a youth convicted of a nonhomicide offense.

### MILLER V. ALABAMA (2012)

The U.S. Supreme Court took the reasoning of *Graham* a step further, holding the 8th Amendment limits imposition of LWOP sentences on youth, regardless of their crime.

### MONTGOMERY V. LOUISIANA (2016)

The U.S. Supreme Court held that its decision in *Miller* applied retroactively, requiring that people serving mandatory LWOP sentences for offenses committed as youth must be either re-sentenced or granted meaningful parole consideration.

In *Roper v. Simmons* (2005), the Supreme Court held the death penalty unconstitutional for youth who were younger than 18 at the time of the crime.<sup>22</sup> The Court began from the foundation of scientific research establishing three general differences between youth and adults: (1) youth are less mature, have less impulse control, and have a relative inability to weigh future risks and consequences; (2) youth are more vulnerable to outside influences, including peer pressure; and (3) these are time-limited developmental traits, such that youth have a greater capacity for rehabilitation.<sup>23</sup> The Court noted that these differences undercut the conventional rationales for the death penalty: retribution and deterrence. Retribution for youth is less warranted because their developmental shortcomings render them less culpable for their conduct and, therefore, less deserving of punishment. And deterrence is less potent in the case of young people because the same shortcomings mean that youth are less likely to consider future punishment in their decision-making.<sup>24</sup> Accordingly, the Court concluded that the death penalty could not be justified for youth, holding that a categorical bar on capital punishment in the case of youth was necessary because, if sentencing were left to the discretion of the judge or jury in individual cases, the risk was too great that a death sentence might be imposed in view of the heinous nature of the underlying offense, despite the youth's diminished culpability and heightened capacity for reform.<sup>25</sup>

In *Graham v. Florida* (2010), the U.S. Supreme Court expanded on the *Roper* decision. Citing advances in psychology and neuroscience that only strengthened the premises underlying that prior decision, the Court held that the developmental shortcomings of youth also mean that a sentence of life without the possibility of parole cannot be constitutionally proportional for a youth convicted of a nonhomicide offense.<sup>26</sup> Importantly, the Court covered new ground

not previously addressed in *Roper*. In going beyond the death penalty to hold that the Eighth Amendment also limits imposition of LWOP on certain youth, the Court held that “life without parole sentences share some characteristics with death sentences that are shared by no other sentences,” namely, that both sentences mean “denial of hope” and “no chance for fulfillment outside prison walls” or for “reconciliation with society.”<sup>27</sup> Further, the Court noted that it is difficult even for expert psychologists to distinguish between a youth whose conduct reflects irreparable depravity from one who is capable of reform.<sup>28</sup> Accordingly, the Court concluded that youth convicted of nonhomicide offenses must be provided “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”<sup>29</sup>

In *Miller v. Alabama (2012)*, the Supreme Court took the reasoning of *Graham* a step further, holding that the Eighth Amendment limits imposition of LWOP sentences on youth convicted of homicide offenses, because the same scientific evidence concerning the shortcomings of youth applies to all youth “regardless of their crimes.”<sup>30</sup> As a result, *Miller* held that a mandatory sentence of LWOP may not be imposed on a youth convicted of a homicide offense; instead, that sentence may be imposed only on a youth who is determined “incorrigible,” or incapable of reform, after careful consideration of particular factors. The Court delineated these factors to include “chronological age and its hallmark features,” including “immaturity, impetuosity, and failure to appreciate risks and consequences”; the “family and home environment”; “peer and familial pressure”; the degree to which youths’ developmental shortcomings may have prejudiced them in their criminal defense; and their capacity for rehabilitation. All youth convicted of a homicide offense who have not been determined incorrigible, the Court held, must receive the same relief prescribed in *Graham*: “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”<sup>31</sup>

Finally, in *Montgomery v. Louisiana (2016)*, the Court held that its decision in *Miller* applied retroactively, requiring that people serving mandatory LWOP sentences for offenses committed as youth must be either resentenced or granted meaningful parole consideration.<sup>32</sup>

**However, the Court’s decisions from *Roper* to *Montgomery* left several questions open, including:**

- whether the *Miller* decision applies not only to mandatory LWOP sentences, but also to discretionary ones;
- if so, whether *Miller* and *Graham* also apply to so-called de facto LWOP sentences, i.e., sentences that for all practical purposes will ensure a youth’s death in prison; and
- what it means for a youth who cannot be sentenced to LWOP to receive some “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation,” both in terms of the process that must be afforded and when this process must be made available during the course of the youth’s sentence.

State legislatures, state courts, and lower federal courts have been left to grapple with these questions. As a result, many state legislatures have abolished LWOP for youth outright, and 13 states and the District of Columbia have established maximum-term-of-years sentences that youth may serve before they must be provided an opportunity for parole eligibility or resentencing.<sup>33</sup> As for the judiciary, while decisions have varied, **the majority of courts have held that *Miller* applies to discretionary and de facto LWOP sentences.**<sup>34</sup> No court has yet decided, however, when the opportunity for release must be provided to a youth who is capable of reform.<sup>35</sup>

# TEXAS IN THE NATIONAL LANDSCAPE OF JUVENILE SENTENCING

## HOW CHILDREN END UP IN TEXAS' ADULT PRISONS

In Texas, youth are systematically sent to adult prisons in one of three ways. First, because Texas is one of only three states to still automatically treat 17-year-olds as adults in the criminal

justice system,<sup>36</sup> someone who is 17 years old at the time of offense is automatically sent to the adult system. Second, for certain offenses, children as young as 14 years old can be transferred to adult court or “certified” to stand trial as an adult.<sup>37</sup> Third, children as young as 10 years old can receive a “determinate sentence,” which is a hybrid sentence whereby children who have been adjudicated of certain offenses serve a portion of their sentence in the juvenile justice system and are transferred to the adult system to complete their sentence when they are as young as 16 years old.<sup>38</sup>

### Scope of De Facto Life Sentences for Youth in Texas

**12** PEOPLE ARE CURRENTLY SERVING UNCONSTITUTIONAL LIFE WITHOUT PAROLE SENTENCES FOR AN OFFENSE THAT OCCURRED WHEN THEY WERE YOUNGER THAN 18.

**637** PEOPLE ARE CURRENTLY SERVING LIFE SENTENCES—WITH NO CHANCE AT PAROLE UNTIL 40 YEARS SERVED—FOR AN OFFENSE THAT OCCURRED WHEN THEY WERE YOUNGER THAN 18.

**1,483** PEOPLE ARE SERVING A LIFE OR DE FACTO LIFE SENTENCE OF AT LEAST 40 YEARS FOR AN OFFENSE THAT OCCURRED WHEN THEY WERE YOUNGER THAN 18.

## TEXAS IS A HARSH OUTLIER

In Texas, sentencing laws ignore scientific evidence on adolescent development and neuroscience, and the state's current parole system provides no viable mechanism for reviewing a case after a young person has rehabilitated and matured. In 2009, Texas banned LWOP sentences for youth aged 16 and younger and, four years later, banned LWOP sentences for 17-year-olds as well.<sup>39</sup> Unfortunately, when the Texas Legislature made this change, they failed to consider a broader range of punishment and more individualized sentencing for youth. As a result, children as young as 14 who are convicted of certain serious crimes can be sentenced to a de facto life sentence without any opportunity for parole until they have served, in many cases, at least 40 years behind bars.<sup>40</sup>

Texas has the harshest parole eligibility of all states that have banned juvenile LWOP.<sup>41</sup> According

to the U.S. Sentencing Commission, a sentence of 470 months (just over 39 years) constitutes a de facto life sentence based on the average life expectancy of someone incarcerated for such an extreme length of time.<sup>42</sup> Therefore, Texas' requirement that some youth must serve a minimum of 40 years before eligibility for even the consideration of parole serves as a de facto LWOP sentence and is contrary to *Graham*, which held that juvenile LWOP deprives these young people of a chance for "fulfillment outside prison walls" and for "reconciliation with society."<sup>43</sup>

## STANDARD PAROLE ELIGIBILITY FOR JUVENILES SENTENCED TO LIFE WITH PAROLE

### TEXAS IN THE NATIONAL LANDSCAPE



In Nevada, North Dakota, Virginia, and Washington, the maximum amount of time a youth must serve before parole eligibility is 20 years. In California, Colorado, Utah, Louisiana, and Wyoming, youth must serve 25 years before parole eligibility; in Arkansas, Connecticut, Delaware, Massachusetts, Georgia, Alabama, and New Jersey, they must serve 30 years.<sup>44</sup> **Texas' 40-year requirement before parole can be considered a harsh outlier, rendering its ban on juvenile LWOP virtually meaningless because the "remedy" is equally punitive and extreme.**

## Robert

### LIFE SENTENCE AT 15 YEARS OLD.

“Should a child be punished? Yes, most definitely. Should a child spend the rest of his natural life in prison for his first crime ever? No. Politicians would like you to believe that giving kids life in prison acts as a deterrent, but it doesn't. Some may think or say, "After 25 years, he has finally learned his lesson." But that isn't true, I learned my lesson not long after my incarceration. Kids deserve a second chance because they are our future and we should never just "lock 'em up and throw away the key." Given a second chance, I'll be a success story and no longer just a statistic.”

# Did You Know?

Parole eligibility in Texas is determined by the laws in effect at the time the offense was committed.

## TEXAS' CHANGING RESTRICTIONS ON MINIMUM TIME SERVED BEFORE PAROLE ELIGIBILITY OVER TIME

OFFENSE TYPE	DATE OF OFFENSE	MINIMUM TIME SERVED BEFORE PAROLE ELIGIBILITY
Aggravated sexual assault, aggravated kidnapping, aggravated robbery, or any felony with a deadly weapon	9/1/77 to 8/31/87	20 years or 1/3 sentence
	9/1/87 to 8/31/93	15 years or 1/4 sentence
	After 8/31/93	30 years or 1/2 sentence
Capital murder	Before 9/1/77	10 years
	9/1/77 to 8/31/87	20 years
	9/1/87 to 8/31/91	15 years
	9/1/91 to 8/31/93	35 years
	9/1/93 to 8/31/05	40 years

Even in the event that a youth sentenced to such an extreme prison term survives their incarceration, lives long enough to become eligible for parole, and is actually granted parole by the governor-appointed Board of Pardons and Paroles, the opportunity remaining for a meaningful life is likely nonexistent. Youth incarcerated for multiple decades are necessarily locked up during the period when people typically start a career, obtain financial independence,<sup>45</sup> and start a family.<sup>46</sup> Moreover, when people are incarcerated long term they suffer from “accelerated-aging,” including early development of chronic illnesses and disabilities.<sup>47</sup> Upon release, they typically return to a weakened or nonexistent social and emotional support system since connections to family and friends tend to erode with lengthy terms of incarceration.<sup>48</sup>

Additionally, people who serve decades in prison are at heightened risk of suffering the effects of “institutionalization,” a potentially disabling set of changes that can foster dependence on the institutional structure.<sup>49</sup> It is no surprise that people imprisoned early in life and released in old age tend to be the most dependent on public benefits and the most likely to live in shelters or transitional housing programs.<sup>50</sup> Young people who must serve extremely long sentences before their first opportunity for parole are deprived of the qualitative benefits of life in free society — not only during incarceration but upon release as their lengthy prison terms leave them disadvantaged.

## TEXAS HAS FAILED TO CATCH UP WITH THE REST OF THE COUNTRY

Following the United States' dramatic rise in incarceration over the past four decades, many states have introduced legislation to address long prison terms.<sup>51</sup> One such policy, **"Second Look," grants earlier parole eligibility to people sentenced as children to extreme terms in adult prisons.**

In 2015, the first Second Look bill was filed in Texas<sup>52</sup> and would have allowed for earlier parole eligibility (25 years) for a person convicted of a capital felony for an offense committed when they were younger than 18 years old. Unfortunately, the bill never received a hearing.

During Texas' 2017 legislative session, a similar bill<sup>53</sup> was filed setting parole eligibility at no more than 20 years for a person convicted of certain serious felonies committed when they were younger than 18 years old; the bill also outlined a specialized set of factors for the parole board to consider when determining whether to grant parole (e.g., growth, maturity, rehabilitation, the hallmark features of youth, and youthfulness at the time of the offense). In a public hearing before the House Committee on Criminal Jurisprudence, 15 people testified in favor of the bill and an additional 21 people recorded their support but did not testify.<sup>54</sup> No one testified in opposition and only three people registered in opposition. The Second Look bill was voted favorably out of committee but failed to be placed on the House Calendar before the relevant deadline.

### HOW LONG IS LONG ENOUGH?

What constitutes a long sentence is not a fixed legal or factual concept. Around the world, individuals convicted of offenses through their early to mid-20s are given the benefit of rehabilitative services and shorter prison terms. Such limits on sentencing reflect criminological and medical research on youth and development, as numerous studies show how a young person's mind continues to develop into their mid-20s, especially with regard to impulse control, resistance to peer pressure, planning, and thinking ahead.

Additionally, research on criminal behavior has revealed an "age-crime curve" whereby criminal conduct escalates in adolescence, peaks during late teenage years, and steadily declines in a person's early 20s. Recently, organizations such as The Sentencing Project have called for sentences to be capped at 20 years except in extraordinary circumstances.

The United States' staggering incarceration rate has garnered bipartisan condemnation for its massive fiscal costs, as well as because of the incredible loss of human potential. "Approximately \$80 billion is spent each year on corrections in the United States, and politicians and advocates agree that too many people are unnecessarily sent to prison, with devastating costs to them and their families."

*Source: "False Hope: How Parole Systems Fail Youth Serving Extreme Sentences," ACLU*

**“NUMEROUS STUDIES CONDUCTED OVER THE PAST TWO DECADES BY CRIMINOLOGISTS, PSYCHOLOGISTS, AND SOCIOLOGISTS DEMONSTRATE THAT YOUNG PEOPLE WHO GET INVOLVED IN CRIMINAL ACTIVITY — INCLUDING THE MOST SERIOUS OFFENSES, SUCH AS HOMICIDE — AGE OUT OF THIS CONDUCT BY THEIR MID-20S. BECAUSE RESEARCH SHOWS THAT WE CANNOT KNOW WHETHER A YOUTH’S CRIMINAL CONDUCT IS TRANSIENT, THE U.S. SUPREME COURT HAS HELD YOUTH MUST HAVE AN OPPORTUNITY FOR RELEASE SO THAT THOSE WHO HAVE GROWN AND CHANGED ARE NOT SERVING EXTREME SENTENCES.”**

**SOURCE: “FALSE HOPE: HOW PAROLE SYSTEMS FAIL YOUTH SERVING EXTREME SENTENCES,” ACLU.**

In Texas’ 2019 legislative session, a bill mirroring the 2017 Second Look bill was filed.<sup>55</sup> For the third consecutive session, the Senate version of the bill was not given a public hearing by the Senate Committee on Criminal Justice. The House version of the bill was given a public hearing in the House Committee on Juvenile Justice & Family Issues,<sup>56</sup> but it was not voted out of committee, largely as a result of in-person opposition from survivors of the 2018 Santa Fe High School shooting.<sup>57</sup> Importantly, the bill’s author agreed to exempt anyone convicted of a mass homicide from eligibility for earlier parole under the bill, but the legislation still failed to advance. Important to note is that this bill would not have *mandated* the release of a single incarcerated person; rather, it would have simply provided an opportunity for parole consideration for those individuals who were sentenced as youth to extreme terms but had rehabilitated and matured.

## **Jermaine**

### **LIFE SENTENCE AT 15 YEARS OLD.**

“ In 1994, I was charged with capital murder. Even though I was not the killer in this crime, I was convicted and given a life sentence. We as humans are destined to make mistakes. As children, we have all fallen victim to our mistakes. We have all been accused of doing wrong, and finally, in God’s eyes, we are all sinners. In his eyes also, we receive redemption through his love and grace. This exists for us all. So too, our society and laws should offer redemption for those who have discovered resilience and rehabilitation out of their moment of making a mistake. Here in prison, where I compose these very thoughts, it can be hard for those of you to acknowledge my redemption. You can’t read my mind, feel my heart, or see my daily walk, but somewhere in this demonstration, I hope you find my seriousness towards my atonement. ”

## **Patricia**

### **LIFE SENTENCE AT 15 YEARS OLD.**

“ My name is Patricia. I am currently serving a life sentence under the law of parties for capital murder. I was sixteen at the time of my arrest and am now thirty-one years old. I have spent the last fifteen years growing up in Texas prison. I dream of being able to use this experience, all that was lost, to help other broken little girls maybe not feel so broken. I want to help them love their selves so they don’t make the same mistakes I did and so that they know they deserve better than what so many of us are taught to accept and settle for. Also maybe help parents realize that their children need them so much. ”

# WHY SHOULD TEXAS GIVE CHILDREN A SECOND LOOK?

## FOR JUSTICE

### Children are Different from Adults

Neuroscience and adolescent developmental research demonstrate that childhood represents “a period of significant changes in brain structure and functioning.”<sup>58</sup> **Four important changes occur during the process of adolescent brain development that are important to understand when dealing with juvenile sentencing.**<sup>59</sup> First, in pre-adolescence, gray matter associated with the prefrontal area of the brain begins to decrease as part of “synaptic pruning.”<sup>60</sup> Synaptic pruning has been shown to aid the brain’s ability to rewire itself into more “adult patterns,” allowing continued structural brain changes to occur later in development.<sup>61</sup> Second, when a young person reaches puberty, dopamine transmitters within the brain begin to change and interact with other brain systems that play a critical role in the regulation of emotions and impulse control.<sup>62</sup> Third, connections between the prefrontal cortex and the limbic system begin to strengthen, thereby allowing for an increase in self-control and emotion regulation — a process that can extend well into later stages of adolescence.<sup>63</sup> Fourth, “white matter” in the brain increases, helping to facilitate executive functions, including the ability to weigh decisions and plan ahead.<sup>64</sup>

**Research in neuroscience and psychology accepts that youths’ brains are inherently different from adult brains in three ways.**<sup>65</sup> First, youth are immature and have an underdeveloped sense of responsibility.<sup>66</sup> Second, youth are more vulnerable and susceptible to negative influences and outside pressures, including peer pressure.<sup>67</sup> Third, a youth is a “still-developing person whose character is not well formed, with personality traits that are less fixed than an adult, meaning that [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled.”<sup>68</sup>

### Law of Parties

Under a Second Look bill, individuals eligible for earlier parole consideration have come to be known as “Second Lookers.”<sup>69</sup> **In addition to having diminished culpability as a result of their young age at the time of the offense, many Second Lookers are serving extreme sentences — including life sentences for capital murder — despite having never physically harmed anyone.** This is the result of the “law of parties” statute in Texas.

Almost every state has an accomplice liability law<sup>70</sup> that ensures individuals are not absolved of crimes they helped commit even if they were not the primary perpetrators. This sentiment is taken to the extreme through Texas’ law of parties, which has been in effect<sup>71</sup> and applied to criminal cases<sup>72</sup> since the 1970s.

The most overly broad section of Texas’ law of parties allows a person to be held criminally responsible for the conduct of another if, in the attempt to carry out one felony along with at least one other person, another felony is committed by at least one of the people involved in the first

felony. Under this legal doctrine, a youth can be held culpable for criminal acts that they took no part in and never intended, provided those acts were a “reasonably foreseeable outcome” of some underlying criminal act in which the youth did participate. For example, a 14-year-old who agrees to act as the lookout while his older brother robs a store can be convicted of murder under the law of parties if his brother shoots and kills the clerk inside.<sup>73</sup>

**The application of the law of parties is out of step with what we know about youth.** It is, like the analogous felony-murder doctrine, rooted in two related principles: (1) that individuals may fairly be held criminally responsible for the reasonably foreseeable consequences of intentional, underlying criminal conduct under a theory of “transferred intent,”<sup>74</sup> and (2) that holding individuals liable for such foreseeable consequences will deter participation in the underlying criminal activity.<sup>75</sup> But neither of these justifications holds water in the case of youth, given their developmental shortcomings. As the U.S. Supreme Court has recognized, one of the “hallmark features” of youth is a “failure to appreciate risks and consequences.”<sup>76</sup> Neuroscience and psychiatric research shows that this is the result of incomplete development of the brain’s frontal lobe and its connections to other areas of the brain, which collectively account for executive functions like impulse control, foresight, and temperance.<sup>77</sup> **Thus, the theory of “transferred intent” is unjustified as applied to youth, as there is strong evidence that youth cannot reasonably foresee the potential further consequences of their participation in some underlying offense.**

Moreover, the Supreme Court has also held that “the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence,” because the likelihood that they have made the kind of cost-benefit analysis that attaches any weight to the possibility of punishment is “so remote as to be virtually nonexistent.”<sup>78</sup>

**Accordingly, neither justification for the law of parties applies in the case of young people, making the imposition of harsh sentences on this basis unfounded for youth.** For this reason, two Supreme Court justices have stated that they would prohibit imposition of the harshest sentences upon youth in cases of felony murder where the issue was squarely presented.<sup>79</sup> That numerous Texas youth are nonetheless serving extreme sentences based on the law of parties makes the opportunity for release provided by Second Look all the more urgent.

## Linda White

### CRIME SURVIVOR FROM HOUSTON, TEXAS.

“In 1986 my world was turned upside down. My 26-year-old daughter Cathy was brutally raped and murdered by two 15-year-old boys. Some people may find it strange that 34 years after this loss, I spend my time advocating for second chances for young offenders. Yet, my own experience has shown me that individuals who commit heinous acts as youth are capable of change. After being incarcerated for 23 years, Gary Brown, one of the two teens responsible for my daughter’s death, has become a law-abiding, productive citizen. He was released from prison in 2009, though his original sentence would have kept him there until he turned 70.”

*Source: Austin-American Statesman, “Opinion: Youth Deserve Second Chances, Not the Death Penalty”*

Many egregious cases have surfaced in which youth were sentenced under Texas' law of parties to extreme prison terms, including life in prison. In some cases, the primary actor in the offense has received a lesser sentence (often by accepting a reduced sentence through a plea deal, rather than going to trial) than the child sentenced as an accomplice under the law of parties.<sup>80</sup> However, the exact number of Second Lookers sentenced under Texas' law of parties is unknown because Texas does not classify or track these cases in any unique way.<sup>81</sup>

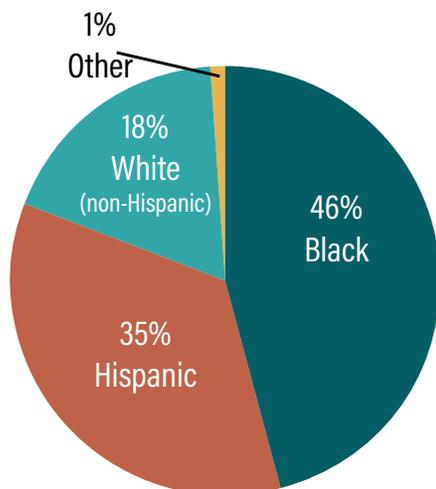
## Racial Disparities

According to the Campaign for Youth Justice, "Too many youth aged 17 or younger are still classified as adults, and too many children still sleep in adult facilities every night. Overwhelmingly, they are African American, Latino, and Tribal youth, with 2016 showing the largest racial disparity in three decades. Too many youth still face extreme sentences and harsh and inhumane treatment in a system designed to punish adults. These young people are trapped between two systems — too often rendering them invisible and forgotten."<sup>82</sup>

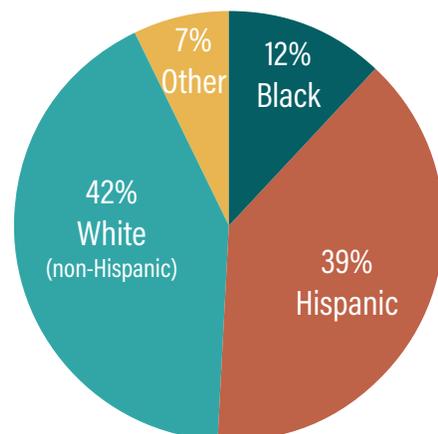
**In Texas, the brunt of juvenile justice policies falls on Black youth.** In 2018, Black youth accounted for 28 percent of all referrals to Texas' juvenile probation departments, while comprising only 11 percent of Texas' general population.<sup>83</sup> All other race categories were underrepresented compared to their percentage of the general population.<sup>84</sup>

When it comes to which youth are transferred to the adult criminal justice system, these racial disparities — and their lifelong consequences — dramatically increase. In 2018, Black youth accounted for 54 percent of all transfers from Texas' secure juvenile facilities to adult prison. Comparatively, white youth made up less than 9 percent of transfers to adult prison, while accounting for more than 31 percent of the general population.<sup>85</sup> Encouragingly, following the institution of new leadership at the Texas Juvenile Justice Department (TJJD)<sup>86</sup> and the expansion of trauma-informed care across TJJD facilities,<sup>87</sup> these racial disparities dramatically decreased in 2019, along with the overall number of transfers from secure juvenile facilities to adult prison.<sup>88</sup>

**TEXAS' SECOND LOOK POPULATION BY RACE/ETHNICITY**



**TEXAS' GENERAL POPULATION BY RACE/ETHNICITY**



For this report, the Texas Criminal Justice Coalition (TCJC) surveyed 86 people whose loved ones are currently serving a lengthy adult prison sentence in Texas for an offense committed as a child, and who would be eligible for earlier parole under Second Look legislation. The survey results mirror the findings of other studies.

### Survey Findings:

- 67% were living in poverty at the time of their offense.
- 72% had to rely solely on a court-appointed attorney for representation.
- 78% did not complete their education past the 10th grade (understandable considering 60% were 16 years old or younger at the time of the commission of the offense for which they are currently incarcerated).
- 40% have an immediate family member who has been incarcerated.
- 34% have been physically abused.
- 23% have been sexually abused or assaulted.
- 38% have been diagnosed with a mental health disorder.
- 20% spent time in foster care prior to their incarceration.

**Black youth — already disproportionately impacted throughout the justice system — are similarly overrepresented among the Second Look population.** Comprising only 12 percent of Texas' overall population,<sup>89</sup> Black individuals account for 46 percent of those who would be impacted by Second Look legislation.<sup>90</sup>

Approximately 39 percent of Texas' overall population is Latinx,<sup>91</sup> and this is closely mirrored within the Second Look population where Latinx individuals account for 35 percent of those who would be impacted by Second Look legislation.<sup>92</sup> Alternatively, white individuals are drastically underrepresented within the Second Look population, accounting for only 18 percent of those who would be impacted by Second Look legislation,<sup>93</sup> despite comprising approximately 42 percent of Texas' overall population.<sup>94</sup>

Per The Sentencing Project, approximately 449 people are incarcerated in Texas with sentences of at least 50 years for crimes committed in their youth, and those impacted by these harsh sentences are disproportionately people of color, where 80 percent are either Black or Latinx.<sup>95</sup> Additionally, a 2015 study found that 100 percent of those serving juvenile LWOP in Texas were people of color.<sup>96</sup>

### Trauma

Highly vulnerable youth tend to receive the harshest penalties in the criminal justice system. **Several studies show that youth treated most punitively have been raised in poor neighborhoods, have limited education, have mental disabilities, and have been victims of physical and sexual violence.**<sup>97</sup>

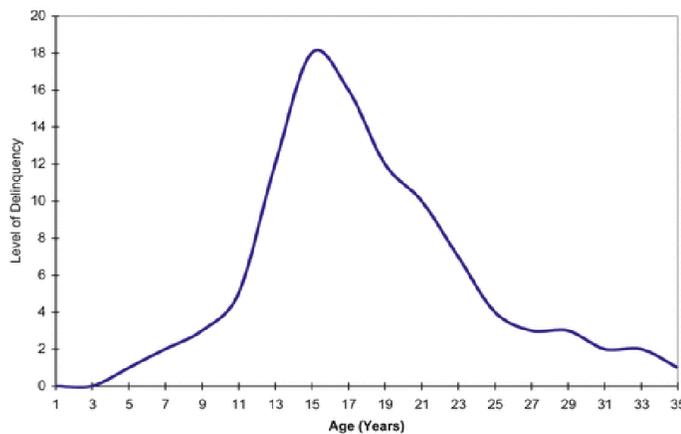
While there has been a national move against sentencing children as adults, many Second Lookers who were convicted decades ago are trapped in Texas' prisons. In fact, 80 percent of respondents to TCJC's survey (discussed above left) reported that their loved one was incarcerated prior to 2004, with 72 percent of incarcerated individuals having already served 20 years or more of their sentence. In the past two decades, as more people have come to realize that extreme sentencing for youth is overused, expensive, and ineffective at reducing recidivism, the justice system has moved toward more developmentally appropriate continuums of care, which provide a more individualized response to juvenile crime.<sup>98</sup> Today, best practices support shifting

toward treatment, trauma-informed care, and evidence-based programs.<sup>99</sup> However, every year for decades, Texas youth have been —and continue to be — prosecuted as adults and excluded from juvenile court jurisdiction, therefore not benefitting from these advancements

## FOR PUBLIC SAFETY

Keeping youth locked up for lengthy prison terms does little in terms of public safety and is a counterproductive use of public expenditures.<sup>100</sup> Research has demonstrated that “people previously convicted of a violent offense are *less* likely to return to prison for any reason, and they are very unlikely to return for another serious crime.”<sup>101</sup> Historically, people convicted of capital offenses who were later released from prison exhibited the lowest rates of reoffending across all offenses, with only 7 percent engaging in violent crime again.<sup>102</sup>

Furthermore, the part of the youth brain that controls risk and reward is still developing until a person’s mid-to-late 20s, after which individuals begin to “age out of crime,” and a sharp drop-off in criminal behavior occurs.<sup>103</sup>



The age-crime curve reflects that many youth are “immediate desisters,” meaning that an individual’s first offense is also their last offense. According to criminological research, between one-quarter and one-half of youth desist after their first crime.<sup>104</sup> For those who do not immediately desist, the majority go on to desist within a few years and, by the time they are in their mid-to-late 20s, only about 10 to 15 percent continue to engage in criminal behavior.<sup>105</sup>

Before the U.S. Supreme Court’s decision in *Montgomery*, Pennsylvania incarcerated more juvenile lifers than any other state; after the decision, it became the nation’s leader in releasing them. In the following years, those individuals proved to be remarkably successful in the free world. As of September 2019, out of over 200 people who were released, six have faced new charges and only one has been convicted of a new crime (contempt), for an incredibly low recidivism rate of 3 percent (compared to an overall state recidivism rate of 40 percent).<sup>106</sup>

### Rethinking “Violence”

“IT IS IMPORTANT TO RECOGNIZE THAT THE TERM ‘VIOLENCE’ HAS BEEN EXPANDED GREATLY IN THE PAST THREE DECADES. IT CAN INCLUDE CRIMES WHERE NO OTHER PERSON IS INVOLVED, AND DEFINITIONS VARY BY JURISDICTION. HIGHER INCARCERATION RATES HAVE BEEN SHOWN NOT TO CORRELATE WITH LOWER INCIDENCE OF VIOLENT CRIME, AND THE MOST ‘SERIOUS’ OFFENSES OFTEN ARE ASSOCIATED WITH THE LOWEST RECIDIVISM RATES.”

SOURCE: CAMPAIGN FOR YOUTH JUSTICE, “IF NOT THE ADULT SYSTEM, THEN WHERE?”

In 2013, in the wake of the Supreme Court's decision in *Miller*, California passed legislation creating specialized "youth offender parole hearings" for people convicted of sentences longer than 15 years for offenses committed when they were younger than 18. The legislation was passed to provide youth with a meaningful opportunity for release; those who qualified under the bill were eligible for an initial parole hearing no later than 25 years into their sentence. From the time the law took effect until June 2015, approximately 150 of the 465 people granted a hearing were approved for parole and released. Per one analysis, **not one of those individuals had returned to prison** by July 31, 2017.<sup>107</sup>

Michigan has had similar positive results. According to Deborah LaBelle, human rights lawyer and founding board member of the Youth Justice Fund, 91 juvenile lifers had been released in Michigan as of March 2019: **"There has not only been zero percent recidivism, but there has not been a single issue — folks are in college, working as advocates, starting businesses, and are engaged in community payback projects."**<sup>108</sup>

In February 2020, Virginia became the most recent state to ensure that all youth are, at a minimum, eligible for parole after 20 years served.<sup>109</sup> **The bill was touted as a modest reform, bringing Virginia in line with many other states.**<sup>110</sup>

According to Abd'Allah Lateef, a teenager when he entered prison and a middle-aged man when he was released, "Just five to 10 years into my incarceration, I was no longer that impetuous kid who was willing to participate in a robbery. And I will attest, I can assure you, that prison administrators say this is true of most juveniles. We stop being problems after less than a decade, and start being the pillars of prison society, mentoring the younger ones behind us. So, if I had to put a number on it, yeah, it would be that: five years, or 10 years. No more."<sup>111</sup>

**Giving a child a sentence with parole eligibility at 40 years in the name of safeguarding public safety is indefensible:** "Sentences should recognize the capacity of children to change, allow for meaningful review, and take into account youth's natural desistence [sic] from engaging in criminal behavior as they age."<sup>112</sup>

## Juan

### LIFE SENTENCE AT 15 YEARS OLD.

“ One night over 20 plus years ago I made a terrible mistake, and the worst choice ever in my life. I wish there was a way to turn back the hands of time, a lot of us probably feel the same . . . if I only knew what I know now back then . . . how we can cherish life on this earth with our loved ones and be there for them, especially when they need us most. I have been in prison since the early age of fifteen—I am now 38 years old. Even though I did not kill anyone myself, I was “certified” to stand trial as an adult and found guilty of capital murder under the “Law of Parties.” My co-defendant was only fourteen—we were just two teenagers caught up, ignorant, reckless, and lost! He could not be “certified” as an adult [because he was too young] and was given a 25-year sentence in the juvenile system. I, on the other hand, qualified for certification because I was fifteen (one year older than he was) and was given an automatic life sentence. ”

## FOR COST SAVINGS

Incarcerating a person for life requires decades of public expenditures. A Tulane University and UC Berkeley study found California spent between \$66 and \$83 million between 1990 and the mid-2000s to incarcerate youth sentenced to LWOP.<sup>113</sup> **In Texas, it costs approximately \$2.5 million to incarcerate a youth for life — an enormous expense considering that most young people are likely rehabilitated long before their 40-year parole eligibility date.** Comparatively, it costs taxpayers approximately \$625,720 to incarcerate a person for 20 years.<sup>114</sup> Early release for those demonstrating sufficient rehabilitation and maturity could save Texas taxpayers approximately \$1,874,280 *per person*.<sup>115</sup> Additionally, a child incarcerated at age 16 who is paroled after 20 years could contribute approximately \$164,010 in tax revenue by working until age 66.<sup>116</sup>

If Second Look becomes law in Texas, hundreds of individuals sentenced as children to lengthy prison terms will have an opportunity to demonstrate to the parole board whether they have sufficiently matured and rehabilitated, and some percentage will be approved for release. Depending on the percentage of approvals, Texas could save between \$3.9 and \$12 million in the first two years following implementation of Second Look legislation.<sup>117</sup>

**Importantly, this cost estimate considers only the actual cost to detain a person; it does not include additional costs, like the treatment of medical and mental health issues that are exacerbated in a prison setting, especially among older and aging individuals (including many Second Lookers who have been incarcerated for 30 years or more).** Despite decreases in Texas' prison population, publicly funded prison health care costs are surging: "The state spent over \$750 million on prison health care during the 2019 fiscal year, a 53 percent increase from seven years earlier, when that cost was less than \$500 million."<sup>118</sup> This is the result of an aging prison population where the number of people incarcerated who are 55 and older increased by 65 percent from 2012 to 2019; this group now accounts for one-eighth of the total prison population in Texas, but one-half of the system's hospitalization costs.<sup>119</sup> This aging prison population includes many Second Lookers who have already been incarcerated for decades and whose release would help lessen costs without compromising public safety.

**EARLY RELEASE FOR THOSE DEMONSTRATING SUFFICIENT REHABILITATION AND MATURITY COULD SAVE TEXAS TAXPAYERS APPROXIMATELY \$1,874,280 PER PERSON. IF SECOND LOOK BECOMES LAW, TEXAS COULD SAVE BETWEEN \$3.9 and \$12 million IN THE FIRST TWO YEARS FOLLOWING IMPLEMENTATION.**

# THE SECOND LOOK MUST BE MEANINGFUL

Despite the U.S. Supreme Court prohibiting some of the harshest punishments for children, thousands of young people are still growing up and dying in prison under extreme sentences with no real hope of release: “[The] shift against extreme sentencing for youth has not been recognized by parole boards, which in many states have the ultimate authority to release those sentenced decades ago as juveniles.”<sup>120</sup>

Since *Miller*, Texas has failed to create procedural safeguards for youth in their parole proceedings. Currently, a person eligible for parole is not provided an in-person hearing, and there is no requirement in the existing parole statutes, regulations, or guidelines that youthfulness be evaluated for its mitigating effect.<sup>121</sup> The historical parole approval rate for youth sentenced for capital offenses in Texas is incredibly low — less than 5 percent of those sentenced to life with the possibility of parole since 1962 have been released.<sup>122</sup> Further, in 2015, Texas extended the amount of time a person is required to wait between parole reviews from five to 10 years for people serving a life sentence for a capital felony,<sup>123</sup> increasing the likelihood that Texas will begin to see even lower rates of parole approvals for this population.

According to the ACLU, “The key question after *Graham* and *Miller* is whether the young offenders who have been rehabilitated will be released to live a meaningful life outside prison walls, or if they will at best be released to die outside them.”<sup>124</sup> **In addition to facing the same issues that have historically frustrated other parole-eligible individuals, individuals incarcerated since their youth face additional, unique challenges in seeking parole approval because of their young age at the time of the offense.** Many Second Lookers, incarcerated for decades, may have few, or no, contacts in the outside world, and they will likely face limited job prospects because of their advanced age, criminal history, and lack of work experience outside of prison. These factors alone can place them “in a high ‘risk state,’ unlikely candidates for release unless their circumstances are considered from an appropriate developmental perspective.”<sup>125</sup>

The failure to consider youthfulness as a mitigating, rather than aggravating, factor ensures that even parole eligibility will not provide youth with a meaningful opportunity for release, and many legal scholars and advocates maintain that parole eligibility alone will fail to meet the constitutional standard established in *Miller*.<sup>126</sup> **Some juvenile law experts have suggested that, in order to comply with the constitutional mandate in *Miller*, states should explicitly direct parole boards to consider a person’s age at the time of the offense, as well as all subsequent evidence of maturation and rehabilitation.**<sup>127</sup> Many states — including Louisiana, Nebraska, Nevada, and West Virginia — have reformed their parole process in this way to provide people sentenced as youth with a meaningful opportunity for release.<sup>128</sup>

# TEXAS IS READY FOR SECOND LOOK

**Second Look legislation has bipartisan support in Texas.** According to a 2018 poll by the Texas Smart-on-Crime Coalition, which surveyed more than 600 Texas Republican primary voters, 75 percent of Texas GOP voters support Second Look.<sup>129</sup>

The legislation can also be easily and safely implemented, as Texas organizations and employers have the capacity to support Second Lookers as they are released from prison. **Epicenter, a nonprofit dedicated to rebuilding Texas families with children serving extreme sentences in adult prisons, has developed a reentry plan that has been approved by the Texas Department of Criminal Justice and is in the process of launching.** Epicenter is currently positioned to expand their reentry plan into nine prison units and will add additional units as their volunteer base grows. The program, titled “Aftershock,” will work to equip all Second Lookers with the post-release tools they need to succeed. The program is faith-based and encompasses a 12-step program that fulfills an individualized treatment plan for each participant’s parole packet. Epicenter is also planning to purchase a property in Galveston County to provide safe and stable housing for Second Lookers who are released to the Houston area. In the meantime, Epicenter has partnered with The Crosswalk Center in Harris County, where one released Second Looker is already living after a 30-year incarceration, as well as the El Paso Transitional Center, where another Second Looker is living after serving 29 years. Additionally, **Epicenter has created a network of employers statewide who are willing to hire formerly incarcerated Second Lookers as they are released.**

## Aaron

### 50-YEAR SENTENCE AT 17 YEARS OLD.

“In the throes of rage, sorrow, and youthful ignorance, I took the law into my own hands. I shot a man after he was released on bail following his arrest for the murder of my childhood friend, Omar. Several months thereafter, Omar’s killer was convicted of his murder and was sentenced to thirty years. Yes, you read that correctly; Omar’s murderer was sentenced to thirty years for killing him and I was sentenced to fifty years for shooting him for killing Omar. I cannot defend my act of vengeance, but even so, it is hard to fathom the injustice of these two sentences. Since the years of impetuous immaturity have faded away, I have often found myself contemplating the thoughtless decision I made at that young age and how it not only changed the course of my life, but also altered the lives of all of the people who love me. The thought seems to always linger of where we would all be in life had I not taken the law into my own hands. Would those who love me have been proud of the man I would have become? Would I have found an amazing wife to love? Would I have been blessed with children? Would I have had something greater to live for? Though there is certainty in nothing in life, the possibilities are endless of what might have been.”

Requiring children to serve a minimum of 40 years in prison before becoming parole-eligible runs counter to the U.S. Supreme Court's intent in abolishing the practice of sentencing youth to LWOP. The intent was to ensure that every child sentenced to prison received a meaningful opportunity for release. **With some people not eligible for parole until having served a minimum of 40 years, Texas has the harshest parole eligibility of all states that have banned juvenile LWOP<sup>130</sup> — an amount of time longer than what the U.S. Sentencing Commission considers a de facto life sentence<sup>131</sup> and thus contrary to the Court's position that juvenile LWOP deprives people of a chance for fulfillment outside prison walls and reconciliation with society.<sup>132</sup>**

The youth who have been given these harsh penalties tend to come from vulnerable situations where poverty, limited education, mental disabilities, and abuse and neglect shaped their lives and limited their choices.<sup>133</sup> But that does not have to be where their stories end. **In state after state where people sentenced as children have been given a meaningful second chance, these former lifers have proved to be remarkably successful in the free world and are evidence that keeping children locked up for lengthy prison terms is a counterproductive use of limited tax dollars.** Providing a meaningful opportunity for release for those who can demonstrate that they have sufficiently matured and rehabilitated recognizes the capacity of youth to change.

**As health care costs in Texas' prison system continue to surge<sup>134</sup> — the result of an ever-aging prison population, which includes many Second Lookers — lawmakers can no longer afford to unnecessarily incarcerate people decades beyond what is reasonably defensible.** By granting parole eligibility after, at most, 20 years served and including standards that guarantee youthfulness is viewed as a mitigating factor, Texas will provide people sentenced as youth with that meaningful opportunity for release, meet the constitutional standard established in *Miller*,<sup>135</sup> and save millions of taxpayer dollars each year on indefensible incarceration.

**Texas is ready for Second Look.**

## Megan

### 99-YEAR SENTENCE AT 15 YEARS OLD.

“Here I sit, now a 30-year-old woman, at the Lane Murray Unit in Gatesville Texas. In the past 14 ½ years, many things have become clear and many lessons have been learned. Among the things I've grown to see clearly is the fact that prison is not meant to rehabilitate. Prison is punitive at best and dysfunctionally abusive at worst. Somehow the children, like myself, must wade through the muck and chaos of prison to find out who we are how we'll rise above. Sadly, I've seen many young people lose their true essence to conform to the dysfunction of their surroundings. Amazingly, on the other side of the spectrum are those who, like myself, recognize the dysfunction for what it is and learn to soar. It's the second group who decide early on that we will succeed; not because of our limitations but in spite of them. Children, regardless of circumstance are still kids. Vulnerable and in need of nurturing. Prison does not solve the problem.”

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# SECOND LOOK

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