



NO HOPE

*Re-Examining Lifetime Sentences
for Juvenile Offenders*

A REPORT OF THE PHILLIPS BLACK PROJECT

By John R. Mills, Anna M. Dorn, and Amelia C. Hritz • September 22, 2015

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THE PHILLIPS BLACK PROJECT is a public interest law practice dedicated to providing the highest quality of legal representation to inmates in the United States sentenced to the severest penalties under law. Phillips Black's attorneys further contribute to the rule of law by conducting death penalty clinical training and developing research on the administration of criminal justice. For more information, please visit PhillipsBlack.org.

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EXECUTIVE SUMMARY

In a handful of U.S. counties, teenagers are still being sentenced to a lifetime in prison with no chance of release. This harsh and increasingly isolated practice falls disproportionately on black and Hispanic youth and is a remnant of an earlier period of punitiveness based on an unfounded prediction of a new class of superpredators that never actually materialized.

While the use of this sentence has dramatically declined in recent years, it continues to be practiced in a relatively small number of jurisdictions. The Supreme Court now has the opportunity to declare juvenile life without parole a cruel and unusual punishment, far outside our standards of decency in the twenty-first century.

In *Miller v. Alabama*, the Court took the first step by forbidding mandatory sentences of life without parole for homicide offenses committed by juveniles (JLWOP). The opinion, however, left open the question of whether the Eighth Amendment prohibits the imposition of life without parole upon juveniles entirely.

That question, the constitutionality of life without parole sentences for juvenile offenders, is being presented to the Court in two cases. In one case to be argued in October, the Court will consider whether its earlier rulings on this subject apply to past cases and not just cases going forward. A brief offered by the Charles Hamilton Institute for Race and Justice urges the Court to tackle the constitutional question of whether the punishment should stand at all.¹ In another case, an inmate serving a JLWOP sentence has directly presented the question: “Does the Eighth Amendment prohibit sentencing a child to life without possibility of parole?”²

This report examines the key evidence for answering the question of whether there is now a national consensus against juvenile life without parole. To make this assessment, the Court generally examines legislative enactments and actual sentencing practices. This report catalogs the rapid abandonment of JLWOP, both legislatively and in terms of actual use. Although JLWOP dramatically expanded between 1992 and 1999—an era of hysteria over juvenile superpredators—since *Miller* states have rapidly abandoned JLWOP in law and practice.

Nine states have abolished JLWOP after *Miller*, bringing the current number of jurisdictions completely banning the sentence to fifteen. California and Florida, two of the most frequent users of the sentence, have dramatically limited the reach of JLWOP by restricting its application to a narrow set of circumstances. Moreover, North Carolina, Pennsylvania,

This report examines the key evidence for answering the question of whether there is now a national consensus against juvenile life without parole.

1. Brief for the Charles Hamilton Houston Institute for Race and Justice and the Criminal Justice Institute as *Amicus Curiae* Supporting Neither Party at 2, *Montgomery v. Louisiana*, No. 14-280.
2. Petition for a Writ of Certiorari, *Jacobs v. Louisiana*, No. 15-5004.

The disproportionate application of the punishment on juveniles of color is stark.

and Washington have abolished JLWOP for a category of offenders. This pace of abolition far outstrips those that occurred in the years prior to the high Court's rulings that the executions of juveniles and the intellectually disabled are unconstitutional.

This report provides an in-depth analysis of state and county JLWOP sentencing practices. At the state level, just nine states account for over eighty percent of all JLWOP sentences. A single county, Philadelphia County, Pennsylvania, is responsible for nearly ten percent of all JLWOP sentences nationwide. Orleans Parish, Louisiana, has tenfold the number of JLWOP sentences as its population would suggest. Five counties account for more than one fifth of *all* JLWOP sentences. JLWOP, in practice, is isolated in a handful of outlier jurisdictions.

Finally, state sentencing practices also show marked racial disparities in JLWOP's administration. Starting in 1992, the beginning of the super-predator era, a black juvenile offender would be twice as likely to receive a JLWOP sentence as his white counterpart. The disproportionate application of the punishment on juveniles of color is stark. All of Texas's JLWOP sentences were imposed on persons of color. Pennsylvania has imposed it eighty percent of the time on persons of color.

There is now a growing consensus against JLWOP, calling into question its constitutionality. The policy's suspect origins and disparate implementation require rigorous examination to determine whether it serves any legitimate penological purpose.

INTRODUCTION

In a handful of U.S. counties, teenagers are being sentenced to a lifetime in prison with no chance of release. This harsh and increasingly isolated practice falls disproportionately on black and Hispanic adolescents and is a remnant of an earlier period of punitiveness based on an unfounded fear of superpredators—a growing band of lawless youth—that never actually materialized.

The U.S. Supreme Court has taken steps to lessen the use of this inhumane sentence of life without parole for juvenile offenders, but it continues to be practiced in a relatively small number of outlier jurisdictions. As shown in the report below, the United States is clearly moving away from this treatment of young offenders, which has condemned many people to a hopeless existence for crimes committed when they were as young as twelve years old. It is now time for the sentence itself to be declared a cruel and unusual punishment, far outside our standards of decency in the twenty-first century.

In *Miller v. Alabama*, the Supreme Court took the first step by forbidding mandatory sentences of life without parole for homicide offenses committed by juveniles (JLWOP). The opinion, however, left open the question of whether the Eighth Amendment prohibits the imposition of life without parole upon juveniles entirely.

There are two basic questions in considering JLWOP’s constitutionality. First, does this sentence meaningfully advance the legitimate purposes of punishment—retribution, deterrence, rehabilitation, and incapacitation—when it is applied to juvenile offenders? Second, is there now in America a “consensus” against this punishment based on objective factors, such as its declining use and the abandonment of the sentence altogether by many state legislatures.³

This report examines the origin of life-without-parole sentences for juveniles, and then closely demonstrates the clear trend in America away from this practice. Relying on department of corrections data and other public information, the Phillips Black Project has compiled a database of every juvenile currently serving a sentence of JLWOP.⁴ This data, as well as a comprehensive examination of each state’s JLWOP policy, provides a compelling picture of the ways in which states are abandoning this practice.

An analysis of all JLWOP sentences nationwide establishes two key findings: JLWOP sentences are largely imposed by a handful of outlier counties and states, and JLWOP is disproportionately imposed on persons of color.

3. *Graham v. Florida*, 560 U.S. 48, 62 (2010).

4. This report relies extensively on a forthcoming law review article, authored by the undersigned reporters. The article provides an in-depth examination of the findings presented here, as well as the political and legal background relevant to the discussion findings presented here. See John Mills, Anna Dorn, Amelia Hritz, *Juvenile Life Without Parole in Law and Practice: The End of Superpredator Era Sentencing*, forthcoming available upon request. That article relied on state departments of corrections for reporting the JLWOP population for a particular state. Other information, such as date of offense, was occasionally obtained elsewhere, but the JLWOP population was identified by the various states. Thus, any limitations state departments of corrections have in knowing who in their custody is serving JLWOP is a limitation on the information provided here.

STATES HAVE RAPIDLY ABANDONED JUVENILE LIFE WITHOUT PAROLE SENTENCES

After the Supreme Court prohibited mandatory JLWOP sentences in *Miller v. Alabama*, many states eliminated the practice outright. Nine states have abolished JLWOP after *Miller*, bringing the current number of jurisdictions banning the sentence to sixteen. This is a much more rapid change than it took for a comparable number of states to abandon the execution of juveniles or the intellectually disabled. This suggests *Miller* has caused states to reconsider the wisdom of JLWOP, and many have decided to abolish it.⁵

Even the states that retain JLWOP have greatly diminished its impact in two ways. First, legislatures have substantively limited the offenses for which it can be applied. For example, prior to 2012, California maintained JLWOP availability for homicides involving any one of twenty-two special circumstances.⁶ But in 2012, California limited this availability to one of only two special circumstances. After the reform, a person serving JLWOP can “submit to the sentencing court a petition for recall and resentencing” after serving fifteen years unless the JLWOP sentence is “for an offense where the defendant tortured . . . the victim” or where “the victim was a public safety official.”⁷ If the petition is not successful, the inmate may re-petition after serving a total of twenty and twenty-five years. After the change, California became one of the states with the narrowest JLWOP policies despite having been a jurisdiction with one of the broadest.

Florida passed legislation similar to California’s.⁸ The changes in California and Florida apply to every inmate currently serving sentences there. This means that all persons serving JLWOP in Florida are eligible for resentencing, and a large portion of California’s juvenile offenders are likely eligible to petition for the same.⁹

Three additional states—North Carolina, Pennsylvania, and Washington—have eliminated JLWOP for a major class of offenders. North Carolina eliminated JLWOP for felony murder, restricting the sentence only to persons convicted of premeditated or deliberate first-degree murder.¹⁰ Pennsylvania eliminated JLWOP for juveniles convicted of second-degree murder, whereas prior to the amendment, second-degree murder called for automatic JLWOP.¹¹ Finally, Washington retroactively eliminated JLWOP for individuals who were under sixteen at the time of their crimes.¹²

Illinois and New Hampshire have both recently raised the jurisdictional age for adult court, limiting the availability of JLWOP and other adult sentences for juvenile offenders in those states.¹³

5. *Graham v. Florida*, 560 U.S. 48, 66 (2010) (noting that existence of the possibility of a sentence via a provision transferring juveniles to adult court does not amount to an acceptance of the range of sentencing outcomes that a juvenile would be subject to in adult court).
6. See CAL. PEN. CODE § 190.2 (enumerating special circumstances, including felony murder); Steve Shatz & Nina Rivkind, *The California Death Penalty Scheme: Requiem for Furman*, 72 N.Y.U. L. REV. 1283, 1286 (1997) (noting that California’s death penalty eligibility, which set the criteria for JLWOP sentences, is “arguably the broadest such scheme in the country.”).
7. CAL. PEN. CODE § 1170.
8. H.B. 7035, 2014 REG. SESS. (FLA. 2014), enacting FLA. STAT. §§ 775.082(1)(B), 921.1401.
9. Without examining the casefiles of each inmate serving JLWOP in California, it is impossible to know how many inmates are ineligible based on the two remaining special circumstances.
10. N.C. GEN. STAT. §§ 14-17(A), 15A-1476 *et seq.*
11. See *Commonwealth v. Batts*, 66 A.3d 285, 293 (Penn. 2013); 18 PA. STAT. ANN. § 1102.1(c).
12. WASH. REV. CODE § 10.95.030(3)(a)(i).
13. See H.B. 2404, 98TH GEN. ASSEMB. (ILL. 2013, amending 705 ILL. COMP. STAT. ANN. 404/5-120 (changing jurisdictional age from seventeen to eighteen); H.B. 305, Reg. Sess. Ch. 250 (N.H. 2015) amending N.H. REV. STAT. ANN. 6230:1 (N.H. 2015) (changing jurisdictional age from sixteen to seventeen).

Nine States Have Eliminated JLWOP in the Three Years since *Miller v. Alabama*

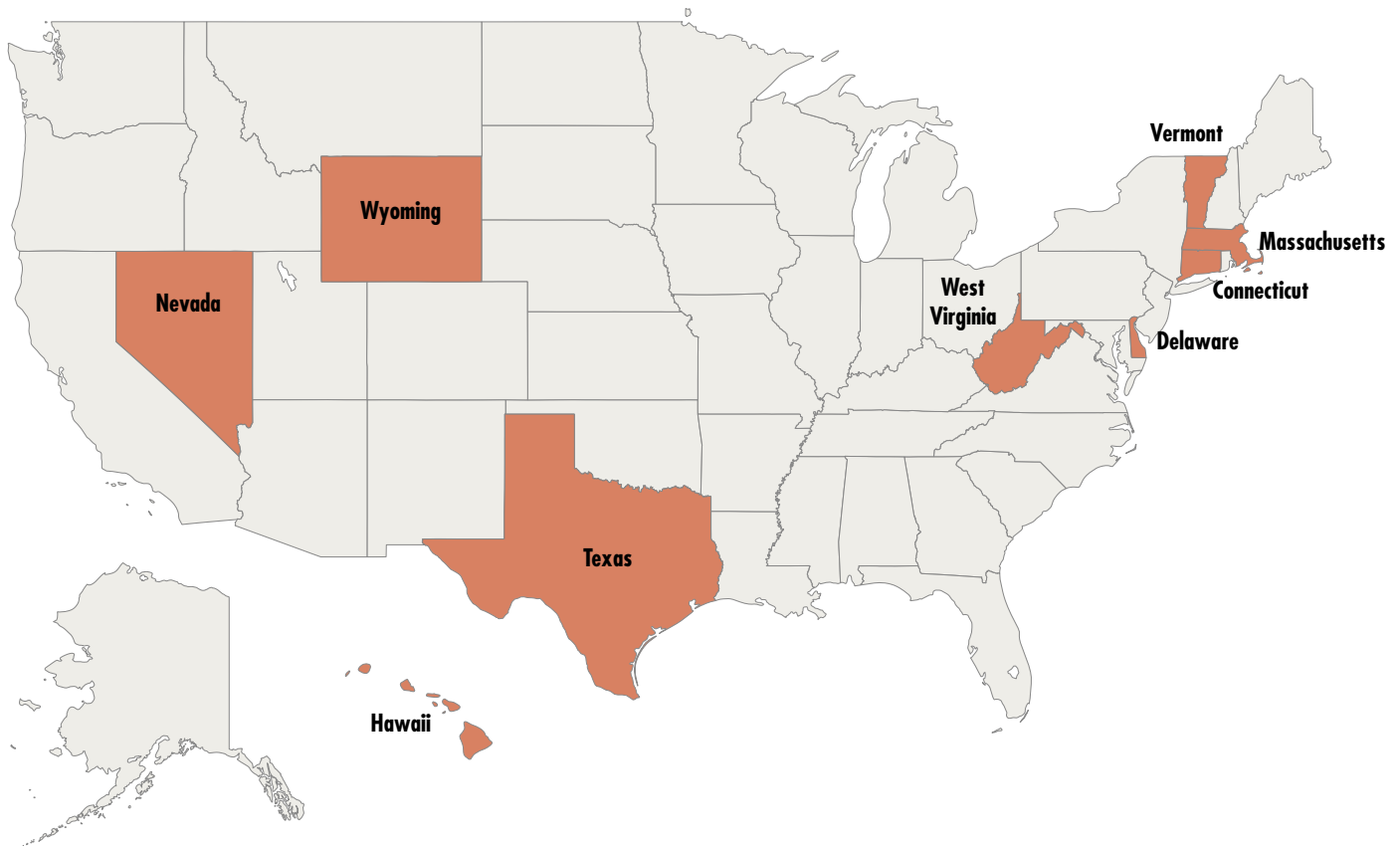


Figure 1. States Which Have Eliminated JLWOP since 2012

States are rapidly abandoning the policies that have historically produced JLWOP sentences. Fifteen states have abolished JLWOP, nine since *Miller*, and six since June 2014. No state after *Miller* has expanded JLWOP, and two states with substantial pre-*Miller* JLWOP populations—California and Florida—have passed retroactive legislation that could provide every inmate there with a sentence less than LWOP. The rate, direction, and consistency of the abandonment of JLWOP policies manifest a growing national consensus against the practice.¹⁴

14. For purposes of the Eighth Amendment, legislative enactments are the “clearest and most reliable objective evidence of contemporary values,” *Atkins v. Virginia*, 536 U.S. 304, 312 (2012) quoting *Penry v. Lynaugh*, 492 U.S. 302, 221 (1989).

A SMALL NUMBER OF OUTLIER JURISDICTIONS PERPETUATE THE PRACTICE

Nine States Account for Over 80% of All Current JLWOP Sentences

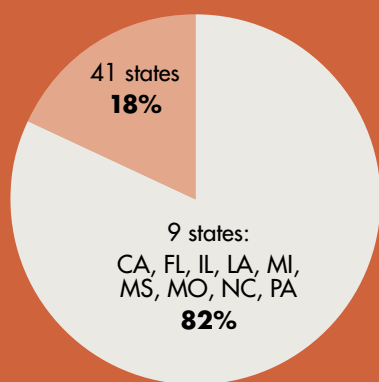


Figure 2. Current JLWOP Sentences by State¹⁵

The actual imposition of JLWOP sentences today is concentrated in a small group of counties and states.

States

As Figure 2 at left shows, JLWOP sentences are concentrated in a small minority of jurisdictions.

As discussed above, California and Florida recently limited the availability of JLWOP, and Pennsylvania and North Carolina have eliminated it for second-degree murder and felony murder, respectively. In light of the significant role that these states play in the number of JLWOP sentences nationwide, both historically and in recent years, these changes will have a substantial impact on the number of sentences going forward.

In eleven of the jurisdictions that retain JLWOP, five or fewer individuals are serving the sentence. The following jurisdictions, despite authorizing the sentence, have no one serving JLWOP at all:

- District of Columbia
- Indiana
- Maine
- New Jersey
- New Mexico
- New York
- Rhode Island
- Utah

Both overall, and particularly in recent years, states have limited their use of JLWOP in actual practice, even if the sentence is legally available. In addition to the eight states with no one serving JLWOP, four states have five or fewer persons serving a JLWOP sentence from any time period.¹⁶ Finally, five other states have five or fewer persons serving a JLWOP sentence that was imposed in the last five years.¹⁷ The United States is clearly moving away from sentencing young offenders to interminable incarceration in prison.

States have further limited the impact of JLWOP since *Miller* through legislation and court rulings by giving all JLWOP inmates an opportunity to request a hearing in which they may be resentenced to less than JLWOP. Thirteen states have rendered final decisions to this effect.¹⁸

15. Ibid.

16. Idaho (4), Ohio (5), New Hampshire (5), North Dakota (1).

17. Alabama (0), Arkansas (1), Iowa (1), Maryland (1), and Minnesota (0).

18. Arizona, Arkansas, Delaware, Florida, Illinois, Iowa, Mississippi, Nebraska, South Carolina, Tennessee, Texas, Washington, and Wyoming. See Mills, et al., *supra* note 4.

Counties

As with states, JLWOP sentences have been imposed by only a handful of counties in the country. Just a tiny fraction of counties are responsible for over one-fourth of *all* sentences nationwide. This is true for such sentences overall, sentences in the last decade, and sentences in the last three years.

The following tables demonstrate the disproportionate effect of outlier

A Small Minority of Counties Are Responsible for JLWOP Sentences Nationwide

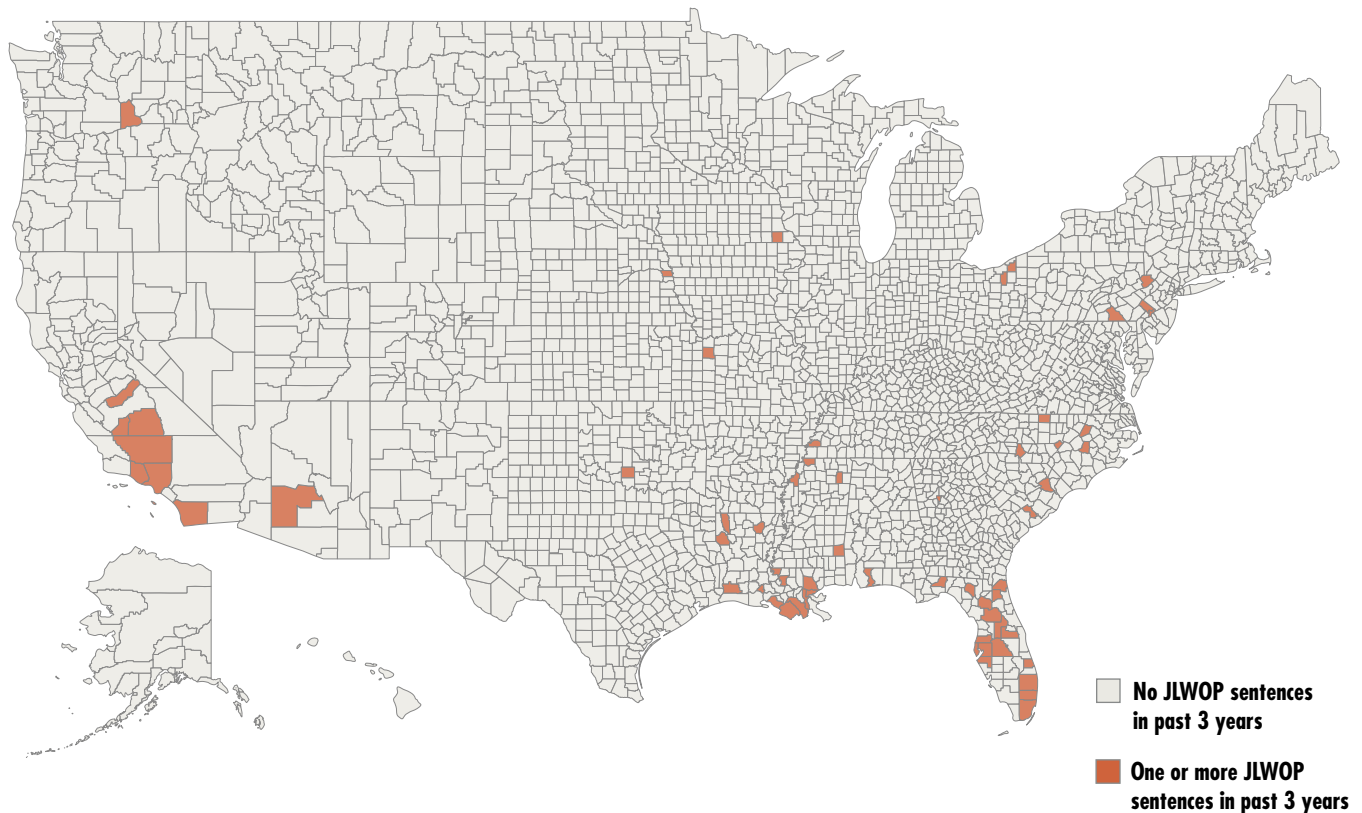


Figure 3. Counties that imposed one or more JLWOP sentences between 2012 and 2015¹⁹

counties on the use of this punishment nationwide. In the first table below, the counties responsible for one-fifth of all current JLWOP sentences are listed, followed by the population of the county as a percentage of the total U.S. population, and the percentage of the JLWOP sentences imposed in that county out of all known JLWOP sentences currently being served in the country, for the period 1953-2015.²⁰ Philadelphia County alone accounts for almost ten percent of all JLWOP sentences.

19. See Mills, et al., *supra* note 4.

20. For 1953–2015, the concentration includes all sentences, including estimates for Michigan, Virginia, and the federal government. However, for more recent sentences, those three jurisdictions are excluded because their respective departments of corrections have failed to provide substantive responses to our requests for public information, meaning we lack information about the location and date of the sentences imposed in those jurisdictions. An attorney familiar with JLWOP practices in Michigan has informed the Phillips Black Project that approximately 360 persons are serving JLWOP there. Notes on File. In 2014, Virginia reported

Five Counties Account for 21.9% of all JLWOP Sentences

County, State	Sentences	County Population as % of Total U.S. Population in 2014	% of Total JLWOP Sentences Nationally
Philadelphia, PA	214	0.5%	9.3%
Los Angeles, CA	112	3.1%	4.9%
Orleans, LA	72	0.1%	3.1%
Cook, IL	65	1.6%	2.8%
St. Louis City, MO	41	0.1%	1.8%

Table 1. Concentration of Sentences by County 1953–2015²¹

Table 2 shows that JLWOP sentences in the last decade have followed a similar trend, with a handful of counties being responsible for a fifth of all sentences.

Six Counties Account for 21.1% of JLWOP Sentences Imposed in the Last Decade

County, State	Sentences	County Population as % of Total U.S. Population	% of Total JLWOP Sentences 2006–2015
Los Angeles, CA	29	3.1%	6.6%
Philadelphia, PA	18	0.5%	4.1%
Miami-Dade, FL	13	0.8%	2.9%
Orleans, LA	11	0.1%	2.5%
Sacramento, CA	11	0.5%	2.5%
Harris, TX	11	1.4%	2.5%

Table 2. Concentration of Sentences by County 2006–2015²²

Table 3 shows that JLWOP sentences in the last five years have followed the same trend, with one quarter of all JLWOP sentences being isolated in seven counties.

having twenty-two inmates serving a JLWOP sentence. The federal government has approximately thirty-eight persons serving JLWOP. See *The Campaign for Fair Sentencing of Youth, Federal Stats: Juveniles Serving Life Without Parole Sentences in the Federal System* (June 2011) available at <http://fairsentencingofyouth.org/the-issue/federal-stats>.

21. Mills, et al., *supra* note 4.

22. *Ibid.*

Seven Counties Account for 26.1% of All JLWOP Sentences in the Last Five Years

County, State	Sentences	County Population as % of Total U.S. Population	% of Total JLWOP Sentences 2011–2015
Los Angeles, CA	9	3.1%	6.0%
Orleans, LA	7	0.1%	4.7%
Jefferson, LA	6	0.1%	4.0%
Miami-Dade, FL	5	0.8%	3.3%
Philadelphia, PA	4	0.5%	2.7%
Tulare, CA	4	0.1%	2.7%
East Baton Rouge, LA	4	0.1%	2.7%

Table 3. Concentration of Sentences by County 2011–2015²³

The overwhelming majority of JLWOP sentences being served today were handed down during the 1990’s when a moral panic about violent youth led to a dramatic rise in harsh sentencing practices against juveniles, including expanding the use of JLWOP.

23. Ibid.

THE ORIGINS OF JLWOP: THE SUPERPREDATOR ERA AND ITS POLICIES

The superpredators never arrived, but states responded with widespread and harsh sentencing policies.

In the early 1990s, a Princeton academic, John DiIulio, coined the term “superpredator” amid growing hysteria over a coming generation of amoral youthful outlaws,²⁴ and he developed various measures to “prove” that a wave of young killers was on the horizon. JLWOP sentencing policies were greatly expanded in response to this pseudo-science myth of the superpredator, which reinforced already existing racial biases and fears within many communities.

The superpredators never arrived, but states responded with widespread and harsh sentencing policies. These changes expanded the authorization of JLWOP sentences, often making it mandatory for certain offenses. They also frequently expanded prosecutors’ discretion, taking away the decision-making power of judges to proceed with such cases in juvenile court. DiIulio himself has now disavowed the superpredator myth.²⁵ Nevertheless, superpredator era policies, and many of the JLWOP sentences handed down during that period, remain in place today.

Disparate Impact on Persons of Color

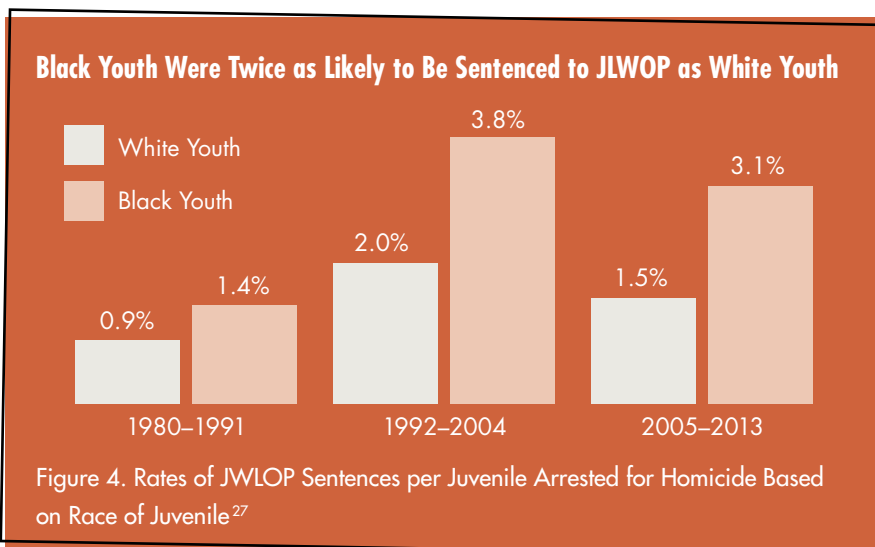
A sentence can be outside our standards of decency if it tends to be used disproportionately against persons of color. Nationwide, JLWOP is imposed unfairly on persons of color. Starting in 1992, the height of the superpredator panic, a black juvenile arrested for homicide has been twice as likely to be sentenced to LWOP as his white counterpart. This difference was found to be statistically significant, when controlling for other variables.²⁶

24. House Committee on Economic and Educational Opportunities, Subcommittee on Early Childhood, Youth and Families, *Hearings on the Juvenile Justice and Delinquency Prevention Act*, Serial No. 105-68, 104 Cong., 2d sess., 1996, p. 90, available at <http://babel.hathitrust.org/cgi/pt?id=pst.000026223315;view=1up;seq=96> (statement of Rep. Bill McCollum, chairman, Subcommittee on Crime, House Judiciary Committee).

25. Brief of Jeffrey Fagan, et al., Jackson v. Hobbs, Nos. 10-9646, 10-9647.

26. Mills, et al., *supra* note 4.

27. *Ibid.*



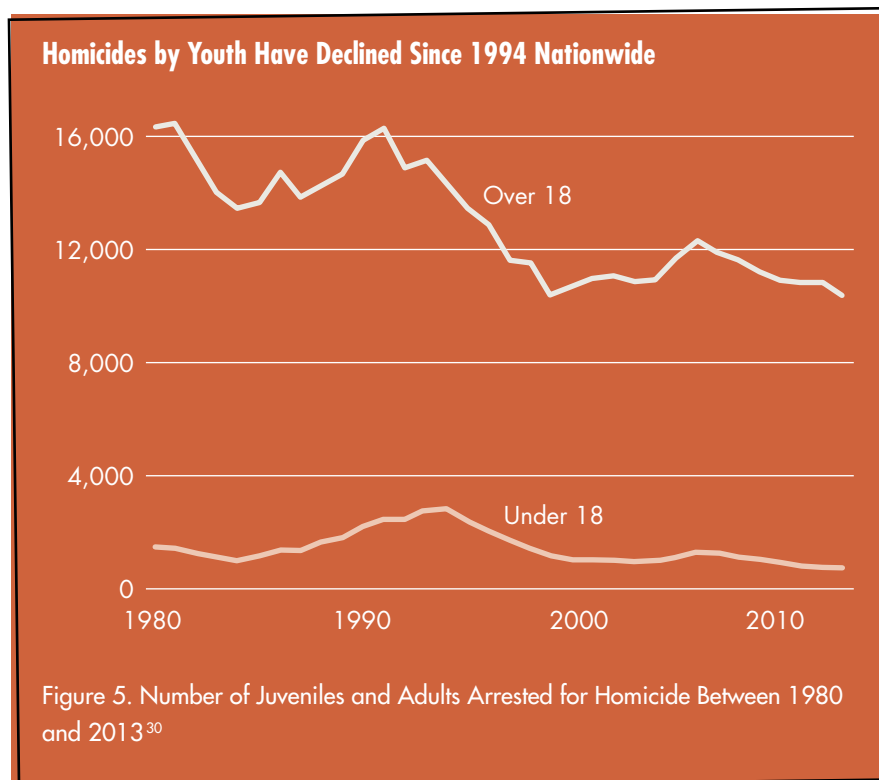
In many individual states the disparities are even worse. *All* of those serving JLWOP in Texas are persons of color.²⁸ Other states also have highly disparate rates of imposing JLWOP on persons of color, including North Carolina (88% of the JLWOP population), Pennsylvania (80% of the JLWOP population), Louisiana (80% of the JLWOP population), Illinois (78% of the JLWOP population), Mississippi (68% of the JLWOP population), and South Carolina (68% of the JLWOP population).

These disparities may be attributable to decisions by prosecutors, juries, and sentencers (usually judges). Because many of the superpredator era reforms removed sentencing discretion from judges and juries, prosecutors' charging decisions are the most likely source of the disparity. The impact of JLWOP policies, emerging from a period of racial fears and the superpredator myth, has predictably been borne by persons of color.

Juveniles Serving JLWOP Today Are the Recipients of Superpredator Era Policies

The JLWOP sentences currently being served are overwhelmingly the product of superpredator inspired policies. From 1992 to 1999, forty-five states adopted laws expanding the adult court jurisdiction over juveniles, thereby expanding the applicability of JLWOP in those states.²⁹ This period saw marked increases in JLWOP sentences, despite a *drop* after 1994 in homicides committed by juveniles (see Figs. 5-7 below).

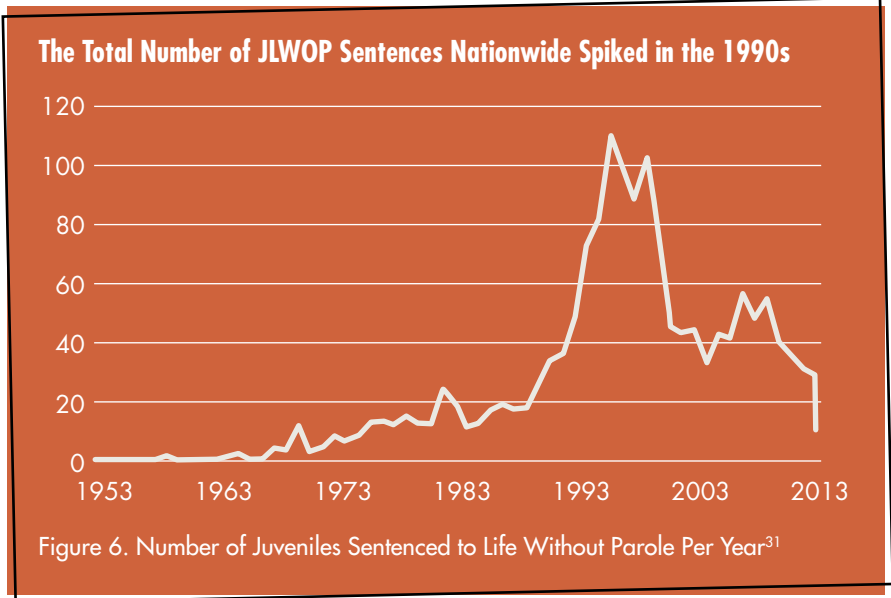
Figure 5 shows that after 1980, homicides by juveniles peaked in 1994 and have steadily declined since. Furthermore, they have always been a small portion of the total homicides committed.



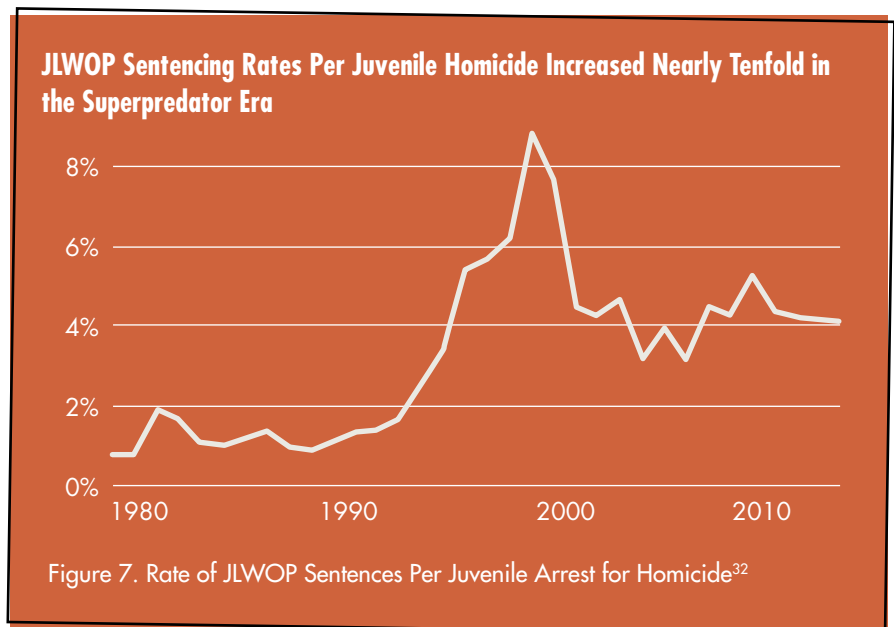
28. Before abolishing JLWOP, Texas imposed it on fifteen people: eleven are black and four are Hispanic.

29. Jessica Short & Christy Sharp, *Disproportionate Minority Contact in the Juvenile Justice System* 7 (2005), available at <http://66.227.70.18/programs/juvenilejustice/disproportionate.pdf>.

30. Puzzanchera, C., Chamberlin, G., and Kang, W., Office of Juvenile Justice and Delinquency Prevention, *Easy Access to the FBI's Supplementary Homicide Reports: 1980-2013* (2015) available at <http://www.ojjdp.gov/ojstatbb/ezashr>.



Despite the drop in homicides starting in 1994, most JLWOP sentences came after superpredator era policies were enacted, with a large upswing in JLWOP sentences for homicide beginning in 1993 and a marked dropping off by the end of the decade



The superpredator era was marked by much more frequent use of JLWOP, with a nearly tenfold increase in its use per homicide between 1990 and 1999. Following this period, the rate of JLWOP sentences dropped significantly and remains comparatively low today.

JLWOP sentences, both in aggregate and as a proportion of all juvenile homicides, are overwhelmingly the product of superpredator era policies.

31. Mills, et al, *supra* note 4.

32. *Ibid.*

CONCLUSION

The growing dissatisfaction with life without parole sentences for juveniles is evident in the rapid abolition of the practice by states and the reluctance of remaining jurisdictions to use it. Even among those states that have retained it, JLWOP is being used far less frequently. Only a handful of counties and states are responsible for nearly all JLWOP sentences. Moreover, youth of color are gravely overrepresented in the JLWOP population, raising questions about the rationality of the punishment. The policy's suspect origins and implementation require rigorous examination to determine whether it serves any legitimate penological purpose.

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