



Chief Justice Maureen O'Connor, Chair • Sara Andrews, Director

MEMORANDUM

To: Sara Andrews, Director

From: Jo Ellen Cline, Criminal Justice Counsel

Date: November 23, 2015

RE: Summary of Juvenile Life without Parole (JLWOP) Proposal

At its November 2015 meeting, the Ohio Criminal Sentencing Commission approved draft language regarding review of extended sentences for individuals originally sentenced prior to their eighteenth birthday (juveniles). This memorandum summarizes the background and language of the proposal.

Background

In 2014 the Ohio Criminal Sentencing Commission, along with other criminal justice partners (ODRC and the Ohio Judicial Conference) were approached by Senator Bill Seitz regarding review of juvenile extended sentences.

The United States Supreme Court has, in the last two decades, issued a line of decisions regarding juvenile offender sentencing. In *Roper v. Simmons*, 543 U.S. 551 (2005), the Court held that a state cannot impose the death penalty on a child. In 2010, the Court went further and said that a state cannot impose life without parole on juvenile non-homicide offenders because they must have a “meaningful opportunity for release”.¹ Two years later the Court, in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), said that there can be no mandatory life without parole for juvenile homicide offenders. Following up on this line of cases, the Ohio Supreme Court held in *State v. Long*, 138 Ohio St.3d, 478 (2014), that trial courts must consider the “mitigating qualities of youth” before sentencing a juvenile to discretionary life without parole for aggravated murder.

In response to the U.S. Supreme Court cases, California passed legislation, effective January 1, 2014, regarding review of sentences given to juveniles. The California law established a parole process with different criteria in cases where the offender was under the age of 18 at the time of the crime.² West Virginia also (HB 4210, 2014) banned life without parole entirely in their juvenile sentencing statutes, and now allows parole after 15 years.

¹ *Graham v. Florida*, 560 U.S. 48 (2010).

² The California law has since been expanded to allow for review of sentences of offenders who were 18, 19, 20, 21, and 22 when the crime was committed.



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Under current Ohio law a juvenile can be sentenced to life without parole for certain rape offenses. In addition, Ohio permits functional life without parole for all offenses and has no sentencing standards that comply with *Miller* for juvenile homicide offenses. Finally, Ohio has no regular procedural mechanism to bring challenges to non-death sentences based on new, retroactively applicable decisions of the U.S. Supreme Court.

An ad hoc committee of the Ohio Criminal Sentencing Commission was established to discuss review of extended sentences for both juveniles and adults. The ad hoc committee was comprised of judges, a prosecutor, juvenile public defenders, a court administrator, and representatives from both the Ohio Department of Youth Services and the Ohio Department of Rehabilitation and Correction. The ad hoc committee reviewed all relevant case law regarding juvenile extended sentences and drafted revisions to Ohio law for the Commission's consideration. The Commission voted 13 – 5 to approve the proposed language.

Proposal

The proposed language establishes a mechanism for juvenile offenders to seek review of their sentences in certain circumstances. It allows a prisoner who was under 18 at the time of their offense to seek review after serving fifteen years if their stated prison term totals at least 15 years. In addition, if the offender has a sentence that permits parole only after fifteen or more years, the prisoner is eligible to apply for review after serving fifteen years. Finally, a prisoner who is serving life without parole is eligible for review upon turning age forty.

Once the prisoner is eligible for review under the proposed statute the parole board will conduct a hearing to consider the prisoner's release onto parole supervision. In an effort to allow for greater transparency and representation for the prisoner, the prisoner is permitted to have counsel appear at the hearing. The proposed language also requires that, in addition to factors regularly considered by the parole board in making its determination on release, the board consider several specific factors related to juveniles, including the diminished culpability of youth and the prisoner's subsequent growth and increased maturity.

Because case law requires a meaningful opportunity for review, if the prisoner's release is not granted the board is required, under the language, to conduct a subsequent review at least every ten years after the denial.

According to the Department of Rehabilitation and Correction, as of January 1, 2015 they could identify 62 current inmates that would, at some point, be eligible to be reviewed. The Department would have some increased costs associated with conducting the review hearings, but could, potentially, realize some savings if prisoners are released onto parole.

The proposed language brings Ohio law into compliance with U.S. Supreme Court jurisprudence by giving juvenile offenders serving extended sentences a meaningful opportunity for review of their sentences after an appropriate period of incarceration.

Conclusion

The Ohio Criminal Sentencing Commission approved the proposed language for presentation to the General Assembly at its November 20, 2015 meeting.

2967.13(B) Review of Extended Sentences of Prisoners Convicted for Offenses Committed while Under the Age of Eighteen

(1) Scope & Application The provisions of this division apply to any prisoner serving a prison sentence as described by this division for an offense or offenses which occurred prior to the prisoner turning eighteen. Regardless of whether the prisoner's stated prison term includes mandatory time, the provisions of this division apply automatically and cannot be limited by the sentencing court.

(2) Eligibility and Timing Notwithstanding any provision of the Revised Code to the contrary, and regardless of when the offense or offenses were committed, a prisoner who was under the age of eighteen at the time of the offense for which he or she is serving a prison sentence is eligible for parole as follows:

(a) If the prisoner's stated prison term totals at least fifteen years, the prisoner is eligible for parole after serving fifteen years;

(b) If the prisoner has a sentence that permits parole only after fifteen or more years, the prisoner is eligible for parole after serving fifteen years;

(c) If the prisoner is serving a sentence of life without parole, the prisoner is eligible for parole upon turning age forty.

(3) Release Review. Once a prisoner is eligible for parole pursuant to division (B) of this section, the parole board shall, within a reasonable time after the prisoner becomes eligible, conduct a hearing to consider the prisoner's release onto parole supervision. The hearing shall be conducted in accordance with Chapters 2930., 2967., and 5149. of the Revised Code, and in accordance with policies and procedures established by the parole board, provided that such policies and procedures shall permit the prisoner's privately retained counsel or the Ohio Public Defender to appear at the prisoner's hearing to make a statement in support of the prisoner's release.

The parole board shall ensure that the prisoner is provided a meaningful opportunity to obtain release. In addition to the factors in OAC 5120:1-1-07, the board shall also take into consideration as mitigation the age of the offender at the time of the offense; the diminished culpability of youth; the hallmark features of youth, including immaturity and the failure to appreciate risks and consequences; the family and home environment of the offender at the time of the offense; and any subsequent growth and increased maturity of the prisoner during incarceration.

(4) Conditions of parole. The parole board shall in accordance with section 2967.131 of the Revised Code, impose appropriate terms and conditions of release upon each prisoner granted a parole under this division.

(5) Subsequent Review. If the parole board denies release pursuant to this division, the board shall conduct a subsequent release review pursuant to this division no more than ten years after release was denied.

(6) Notice to Ohio Public Defender In addition to any notice to any other person required by rule or statute, the parole board shall notify the Ohio Public Defender of a prisoner's eligibility for review under this division at least sixty days before the board begins any review or proceedings of that prisoner under this division.

Sec. 5149.101 Full board hearings.

(A) (1) A board hearing officer, a board member, or the office of victims' services may petition the board for a full board hearing that relates to the proposed parole or re-parole of a prisoner, including, but not limited to, any prisoner described in division (B) of section 2967.13 of the Revised Code. At a meeting of the board at which a majority of board members are present, the majority of those present shall determine whether a full board hearing shall be held.

Uncodified Law

R.C. 2967.13(B) is intended to implement the decisions of the Supreme Court of the United States in *Miller v. Alabama*, U.S. , 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) and *Graham v. Florida*, 560 U.S. 48, 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010). R.C. 2967.13(B) shall apply retroactively.

age at commitment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	15	2	3.2	3.2	3.2
	16	14	22.6	22.6	25.8
	17	46	74.2	74.2	100.0
	Total	62	100.0	100.0	

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		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	40.00	15	24.2	24.2	24.2
	41.00	4	6.5	6.5	30.6
	42.00	7	11.3	11.3	41.9
	43.00	4	6.5	6.5	48.4
	44.00	2	3.2	3.2	51.6
	45.00	5	8.1	8.1	59.7
	46.00	1	1.6	1.6	61.3
	47.00	2	3.2	3.2	64.5
	48.00	3	4.8	4.8	69.4
	49.00	5	8.1	8.1	77.4
	50.00	2	3.2	3.2	80.6
	51.00	1	1.6	1.6	82.3
	52.00	2	3.2	3.2	85.5
	53.00	1	1.6	1.6	87.1
	54.00	2	3.2	3.2	90.3
	55.00	1	1.6	1.6	91.9
	56.00	2	3.2	3.2	95.2
	57.00	2	3.2	3.2	98.4
	59.00	1	1.6	1.6	100.0
	Total		62	100.0	100.0

most serious offense of conviction

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	AGG MURDER	37	59.7	59.7	59.7
	MURDER	8	12.9	12.9	72.6
	VOL. MANSLAUGHTER	1	1.6	1.6	74.2
	INVOL MANSLAUGHTER	1	1.6	1.6	75.8
	KIDNAPING	1	1.6	1.6	77.4
	RAPE	4	6.5	6.5	83.9
	AGG. ROBBERY	5	8.1	8.1	91.9
	ROBBERY	1	1.6	1.6	93.5
	AGG. BURGLARY	3	4.8	4.8	98.4
	BURGLARY	1	1.6	1.6	100.0
Total		62	100.0	100.0	

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		Frequency	Percent	Valid Percent	Cumulative Percent	
Valid	36.00	1	1.6	1.6	1.6	
	84.00	2	3.2	3.2	4.8	
	120.00	3	4.8	4.8	9.7	
	132.00	1	1.6	1.6	11.3	
	168.00	2	3.2	3.2	14.5	
	180.00	14	22.6	22.6	37.1	
	186.00	1	1.6	1.6	38.7	
	198.00	1	1.6	1.6	40.3	
	204.00	1	1.6	1.6	41.9	
	240.00	13	21.0	21.0	62.9	
	246.00	1	1.6	1.6	64.5	
	264.00	1	1.6	1.6	66.1	
	324.00	1	1.6	1.6	67.7	
	360.00	4	6.5	6.5	74.2	
	384.00	1	1.6	1.6	75.8	
	460.00	2	3.2	3.2	79.0	
	528.00	2	3.2	3.2	82.3	
	660.00	1	1.6	1.6	83.9	
	696.00	1	1.6	1.6	85.5	
	726.00	1	1.6	1.6	87.1	
	960.00	1	1.6	1.6	88.7	
	10666.56	7	11.3	11.3	100.0	
	Total		62	100.0	100.0	