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## A&E's Kids Behind Bars: Life or Parole

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*Review:*

**A&E's Kids Behind Bars: Life or Parole**

*Lindsey Aranguren*<sup>1</sup>

**I. INTRODUCTION**

Currently, 8,600 people in the United States are serving life sentences for parole eligible offenses they committed as minors. A&E's two season documentary series *Kids Behind Bars: Life or Parole* follows seventeen stories of individuals trying to reclaim their freedom and vying for resentencing after decades in prison.

Several recent landmark Supreme Court cases have ruled that mandatory life without the possibility of parole is an unconstitutional cruel and unusual punishment for someone who committed a crime under the age of eighteen. Because the brain does not finish developing until age twenty-five, juveniles have diminished culpability, and have better success rates of reformation than adults.

Twenty-five states currently allow juvenile life without parole (JLWOP) sentences, but ten of those (including Illinois) currently do not have anyone serving a JLWOP sentence. The other twenty-five states have banned JLWOP sentences; twenty-two of those states do not currently have an individual serving a JLWOP sentence.

The United States is the only country that permits JLWOP sentences, sentencing children to die in prison, a punishment that the United Nations Convention condemned on the Right of the Child. The twenty-five states that still allow these sentences should ban them immediately, and the eighteen states that still have individuals serving JLWOP sentence should parole those individuals. The Supreme Court had an opportunity to restrict JLWOP in *Jones v. Mississippi* (2021) which could have resulted in the JLWOP sentences reserved only for those who were deemed to be "permanently incorrigible." Instead, the majority held that a finding of "permanently incorrigible" was not explicitly required to sentence a juvenile to life without parole, and instead a lower bar to impose a JLWOP sentence was acceptable.

**II. THE ADOLESCENT BRAIN**

According to Neuroscientist Frances E. Jensen, "very smart adolescents will do very stupid things in a very impulsive way." Relatively new research has shown that as youth are developing socially and physically, they are also developing their brain structure. The development of brain structure, along with the societal pressures that come with being a teenager (i.e., drinking, smoking, etc.) can lead to teenagers making extremely rash decisions they likely wouldn't have made under different circumstances. In the moment, youth cannot usually think of the long-term consequences of their actions, or think their decisions through with full accuracy.

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One study suggests that the human brain matures from back to front with age. Thus, the frontal lobe and cortex are the final sections to mature, and are not fully developed until a person's early twenties. The frontal lobe is responsible for emotions, impulses, high-level reasoning skills, and decision-making skills, which are the areas synonymous with criminal behavior.

### III. EVOLUTION OF THE CURRENT LAW

#### A. *Roper v. Simmons*, 543 U.S. 551 (2005)

*Roper v. Simmons* was the first case to issue a major opinion on JLWOP sentences, specifically whether juveniles can be subject to the death penalty. Before the *Roper* decision, twenty-two individuals were executed for their crimes as juveniles. In *Roper*, the five – four majority held that a minor cannot be sentenced to the death penalty under the 8<sup>th</sup> Amendment, considering this sentence “cruel and unusual punishment.” The Court cited overwhelming international opinion against death penalty for juveniles as well as the fact that it is extremely disproportionate due to their young age, and developing diminished brain capability. *Roper* was decided after eighteen states had already banned the death penalty as a punishment for those under eighteen. This decision saved seventy-two juveniles on death row in twelve states, and, as a result of this decision, life sentences without the possibility of parole were the harshest possible sentence for juveniles.

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

Five years later, the Supreme Court, in a 6-3 decision, held that JLWOP sentences were unconstitutional under the 8<sup>th</sup> Amendment as cruel and unusual punishment for offenses other than homicide. This decision recognized the fact that non-homicide offenses should not be punishable by the harshest possible option. The *Graham* decision affected at least 123 individuals, seventy-seven of whom were in Florida alone. This decision like *Miller*, does not guarantee a resentencing or release, but does guarantee a meaningful opportunity for release.

#### C. *Miller v. Alabama*, 567 U.S. 460 (2012)

Arguably, the most influential decision in juvenile sentencing is *Miller v. Alabama*. With a 5-4 majority the Court ruled that mandatory life without parole sentences were unconstitutional as cruel and unusual punishment. Justice Kagan, writing for the majority reasoned that the sentencing authority must be able to consider the characteristics of juvenile defendants to be able to assert a fair and individualized sentence for each juvenile. She wrote that adolescence is plagued with “immaturity, impetuosity, and failure to appreciate risks and consequences.”

This decision affected approximately 2,500 individuals at the time it was decided, all of whom were serving mandatory life-sentences for homicide offenses they committed as juveniles.<sup>2</sup>

***D. Montgomery v. Louisiana 577 U.S. 190 (2016)***

In a six—three decision, four years after the historic decision in *Miller v. Alabama* the Supreme Court ruled that their decision in *Miller v. Alabama* – mandatory JLWOP sentences are unconstitutional – applied retroactively. Until this decision, states across the country had been applying the *Miller* decision inconsistently, some applying it retroactively and some not. Justice Kennedy wrote for the majority stating that the proper remedy for a sentence that was deemed unconstitutional by *Miller v. Alabama* is the requirement of a new parole hearing, not necessarily a resentencing hearing.

***E. Jones v. Mississippi 141 S. Ct. 1307 (2021)***

After the decision in *Montgomery*, *Jones* presented the question whether the sentencing authority was required to make the finding of “permanent incorrigibility” before imposing a JLWOP sentence, or instead, if a JLWOP sentence was a discretionary decision for the sentencing authority. The Court, in a 6-3 decision decided that this finding was not necessary before imposing the sentence. Justice Kavanaugh, writing for the majority, stated that a discretionary sentencing system was both necessary and sufficient to allow a JLWOP sentence.

The Court determined that a finding of “permanent incorrigibility” is not strictly required to sentence a juvenile to life without the possibility of parole. Permanent incorrigibility means incapable of reform, permanently and irreparably corrupt. By holding that this finding was not strictly required to sentence a JLWOP, the Court did not further extend its prior decisions. Since this finding is no longer strictly required, courts can sentence a JLWOP sentences without explicit cause.

#### **IV. STORIES: KIDS BEHIND BARS**

***A. Their Stories: The Kids Behind Bars***

*Kids Behind Bars: Life or Parole* is an A&E docuseries which covers the stories of (now) adults who were sentenced to life without the option of parole decades ago as juveniles. After the landmark decision in *Miller v. Alabama*, which held that mandatory JLWOP sentences were unconstitutional under the 8<sup>th</sup> Amendment, and the supporting decision *Montgomery v. Louisiana* which held that *Miller v. Alabama* applied retroactively, the men whose stories the series follows, along with thousands of others, began applying for resentencing hearings.

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<sup>2</sup> It is important to note that JLWOP sentences are still constitutional in certain circumstances, *Graham v. Florida Miller v. Alabama* only held unconstitutional mandatory JLWOP sentences.

Each of the men interviewed for the docuseries was sentenced to mandatory life without the possibility of parole as a juvenile. Each story is covered more in depth below in two sections: those whose life sentence was reaffirmed, or appeal was denied, and those who have been paroled since appeal, or will be eligible for parole in the near future.

### ***B. Sentences: Reaffirmed***

Aaron Schmidt (Season 1, Episode 1) was convicted of the malice murder of his girlfriend Alana Calahan. He committed the murder in January of 2011, at the age of fourteen, and was sentenced to life without parole. After *Miller v. Alabama* was decided, Aaron appealed for a new sentencing hearing. This appeal was denied, and Aaron is currently serving his life prison in Georgia, a state that still allows JLWOP sentences.

Preston Chavers (Season 1, Episode 3) was convicted of first-degree murder for the death of another teenager. Preston and his friends planned to rob the teenager under the guise of wanting to buy drugs, and after things went south, Preston shot the teenager in cold blood. Preston was sentenced to life without parole. After *Miller*, Preston appealed and was granted resentencing. However, in August of 2018 however the court sentenced him again to life in prison, with the possibility of review in twenty-five years. Preston is currently incarcerated in Florida, which still allows JLWOP sentences.

James Whiley (Season 1, Episode 6), at age fifteen, deliberately murdered his stepmother and three stepbrothers in 1990. James was sentenced to life without parole after he was convicted of three counts of first-degree murder and one count of second-degree murder. James' petition for resentencing was denied and he is still currently incarcerated in Wyoming.

Otis Daniels (Season 1, Episode 7) was sentenced to life in prison without the possibility of parole at sixteen after his involvement in a murder/robbery in 1998. Otis appealed his sentence after the decision in *Miller* but was again sentenced to life in prison. Otis is currently incarcerated in Georgia which allows JLWOP sentences.

Ronald Bell (Season 1, Episode 8) was sentenced to death in 1999 for the abduction and murder of a man in Florida. Ronald's sentence was changed to JLWOP after the Roper decision in 2005. After the *Miller* decision in 2012, Ronald appealed again and won his appeal for resentencing, but the second sentencing trial returned the same verdict – life without parole. Ronald is currently incarcerated in Florida, which still allows JLWOP sentences.

### ***C. Sentences: Paroled***

Curtis Brooks (Season 1, Episode 2) was convicted of first-degree murder for the death of a car-jacking victim. He maintained that he did not actually commit the murder but was sentenced to life without parole in 1997. After *Miller*, Curtis appealed for a

resentencing, and in December of 2018 was granted clemency by the then-Governor of Colorado, John Hickenlooper. Curtis currently lives a free man in Maryland.

Bobby Gonzales (Season 1, Episode 4) was convicted of the murder of his girlfriend's mother' in 1992 when he was fifteen. Bobby's girlfriend lied to him, and claimed her parents were abusing her, so Bobby took matters into his own hands and entered their house and killed his girlfriend's mother and critically injured her father. Bobby was tried as an adult and sentenced to life in prison. Bobby is still currently incarcerated in Texas and is eligible for parole in 2027.

Brandon Moore (Season 1, Episode 5), at age sixteen, along with three other teenagers attempted to rob a college student in Ohio. The robbery escalated into the assault and rape of the student. Brandon was convicted and sentenced to 141 years in prison. After several sentencing revisions and appeals Brandon's sentence was reduced to fifty years with the possibility of release after forty-seven years in 2018. A new law passed in January of 2021 that made Brandon eligible for parole, but he has not yet been paroled and is currently incarcerated in Ohio.

## V. CONCLUSION

Scientists and psychologists alike have proven that human's brains, specifically the frontal lobe, do not fully develop until the mid-twenties. Because of this, juveniles are more likely to get in to trouble, make rash decisions, and participate in group crime activities they otherwise would not have if their brains were fully developed. Almost all the men featured on the show participated in group crime activities in their early teens. The original purpose of most of these crimes were monetarily motivated and not intending to cause death or physical harm.

The Supreme Court must reconsider their decision in *Jones v. Mississippi*. Only a finding of "permanent incorrigibility" should allow a JLWOP sentence. Otherwise, the weight of a life sentence is much more damaging to a teenager, compared to an adult who has already had the opportunity to live as an adult in society. The twenty-five states which still allow JLWOP sentences, along with the federal government and the Supreme Court, need to ban JLWOP sentences from our juvenile criminal justice system. This change would follow in the footsteps of the rest of the world and the United Nations in considering these sentences inhumane punishment.

*A&E's Kids Behind Bars: Life or Parole* is just a glimpse into the criminal justice system and the appeals process. Similarly, it just scratches the surface of those who have been sentenced to JLWOP, and of those who are still working to appeal their unconstitutional mandatory JLWOP sentence, ten years after the historic decision in *Miller v. Alabama*.

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