

JANUARY 25, 2020

# MONTGOMERY V. LOUISIANA ANNIVERSARY



## FOUR YEARS SINCE THE U.S. SUPREME COURT DECISION IN MONTGOMERY V. LOUISIANA

On January 25, 2016, the United States Supreme Court decided *Montgomery v. Louisiana*, giving hope and a chance for life outside of prison to individuals sentenced to life without parole for offenses committed as children.

In *Montgomery*, the Supreme Court applied its prior decision in *Miller v. Alabama* (2012) retroactively, which held that life without parole is unconstitutional for the vast majority of youth convicted of homicide—all but those incapable of positive growth and change.

When the Supreme Court decided *Montgomery*, over 2,800 individuals in the U.S. were serving life without parole for crimes committed as children—a sentence that the United States alone is known to impose on children. In the four years since *Montgomery* was decided, the number of individuals serving life without parole for crimes committed as children has been reduced by nearly 75 percent.



The **CAMPAIGN** for the  
**FAIR SENTENCING**  
of **YOUTH**

# RAPID REJECTION OF LIFE WITHOUT PAROLE FOR CHILDREN POST-MONTGOMERY

- Fewer than 100 individuals have been resentenced to life without parole to date, which is less than 5 percent of all individuals whose sentences have been modified to date. And a number of those cases are on appeal.
- Since *Montgomery*, close to 600 individuals have been released from prison who formerly were sentenced to life without parole as children, and that number continues to grow.
- When *Montgomery* was decided, Pennsylvania was the national leader in imposing life sentences on children, with more than 500 individuals serving the sentence. Today, fewer than 65 people in Pennsylvania are serving life without parole for crimes committed as children, and resentencings are still underway.
- Today 22 states and the District of Columbia ban life-without-parole sentences for children, and in at least four additional states, no one is serving life without parole for a crime committed as a child. Therefore more than half the country has rejected life-without-parole sentences for children in law or in practice.

## MONTGOMERY IMPLEMENTATION IS REVERSING 1990S SENTENCING POLICY

Before the 1980s, life without parole was imposed on children infrequently. However, an uptick in crime in the 1980s and 1990s inspired harsher sentencing policies for both children and adults. And the rise in violent crime coincided with the rise of the “superpredator” myth in the 1990s, which inspired harsher sentencing policies specific to children, and children of color in particular.

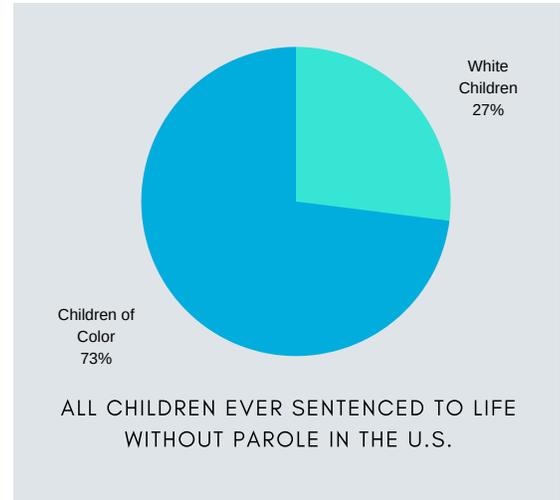
Although the superpredator myth was entirely fabricated, state legislatures responded to increased levels of crime and fear of superpredator teenagers in the 1990s with harsher mandatory sentencing laws, and the rate of children sentenced to life without parole spiked. Over 75 percent of the over 2,800 children ever sentenced to life without parole in the United States were sentenced in the 1990s or later.



# MONTGOMERY IMPLEMENTATION IS A RACIAL JUSTICE ISSUE

Over 70 percent of all youth ever sentenced to life without parole are people of color—primarily Black and Latinx.

Strikingly, racial disparities in the imposition of life without parole on children continue to worsen. The Supreme Court in *Miller* and *Montgomery* guaranteed all children an individualized sentencing hearing before life without parole can be imposed. Yet despite the now-discretionary nature of life without parole, and the Supreme Court's unequivocal language that the penalty may be imposed only if a child has no capacity for rehabilitation, racial disparities have increased under this new framework.



Of new cases tried since *Montgomery*, approximately 70 percent of children sentenced to life without parole have been Black—as compared to approximately 61 percent before *Montgomery*.

## CONTINUING CHALLENGES POST-MONTGOMERY

- Over 2,000 individuals serving life without parole for crimes committed as children have been afforded some form of review (judicial and/or parole review), yet over 700 still have not. And in the states where life without parole remains a sentencing option for children, there remains a risk that individuals will be resentenced to life without parole and that children will continue to be sentenced to life without parole in new cases going forward.
- With little guidance from the Supreme Court in *Miller* and *Montgomery* on the specifics of the resentencing process, states have varied significantly in the procedural protections afforded. This patchwork of interpretations raises a high risk that resentencings to life without parole will be arbitrary, based more on the jurisdiction and the idiosyncrasies of individual judges than on whether the individual is capable of positive change.
- Some states—including Georgia, Louisiana, Ohio, and Michigan—have continued to sentence children to life without parole in new cases at a rate that far outpaces the rest of the country, and in contravention of the constitutional mandate established in *Miller* and *Montgomery* that the sentence be uncommon.
- Approximately 1,600 of the individuals whose sentences have been modified following *Montgomery* will go before a parole board, and the likelihood of release through the parole process varies greatly by state. For example, Henry Montgomery—who was deemed a model prisoner by the Supreme Court in *Montgomery v. Louisiana*—has been denied parole twice by the Louisiana parole board.
- For the approximately 2,000 individuals whose life-without-parole sentences have been altered through legislative reform or judicial resentencing to date, the median sentence nationwide is 25 years before parole or release eligibility, and many more children have been and continue to be sentenced to decades in prison.