

Giving Youth Offenders a Second Chance:
How California's Senate Bill 9
Addresses Juvenile Life Without Parole

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April 5, 2013

On September 30, 2012, Governor Jerry Brown signed the Fair Sentencing for Youth Act – Senate Bill 9 – to amend the California Penal Code and allow prisoners sentenced to life without parole while under the age of 18 to request a new sentence of 25 years to life with the opportunity of parole. According to the bill, prisoners who meet the specified criteria may submit a “petition for recall and resentencing” and ask the court to reduce their sentence based on their active work towards rehabilitation and expressed remorse for their crime. Prisoners who tortured their victim or killed a public safety official while they were on duty would not be eligible to file a petition (California Senate Bill 9, 2012). Juvenile Life Without Parole (JLWOP) is an important issue to address, especially since a variety of researchers have found harsh sentences to have a no deterrent effect on juvenile violent crime. While the Fair Sentencing for Youth Act is a step in the right direction for addressing the issue of JLWOP, a more proactive policy, one that stops JLWOP sentences from being implemented in the first place, would be more effective.

California has one of the highest rates of JLWOP in the United States (Nellis & King, 2009). The prevalence of JLWOP in the U.S. increased in the late 1980s when the belief in juvenile “superpredators” overtook the criminal justice system. Butler (2010) explains that the media’s increased emphasis on juvenile crime, mixed with an increase in youth homicide rates in the late 1980s and early 1990s, led to many states easing the process of transferring youth offenders to adult court. According to Nellis & King (2009) California has the second highest population of JLWOP prisoners (N = 239) with a total of 1,755 cases of JLWOP in the United States as a whole. Most of these offenders were sentenced to life without parole due to automatic sentencing laws that did not allow for any judge discretion (Nellis & King, 2009). While only 7.7% of the life-sentenced population were sentenced as juveniles, ethical concerns and the

discrediting of the juvenile superpredator theory have brought juvenile sentencing practices into question.

An increase in juvenile violent crime and the notion of the juvenile superpredator led many states to create legislation that allows more juvenile offenders to receive sentences originally intended for adults (*Jackson v. Hobbs*, 2012; *Miller v. Alabama*, 2012). In an amicus brief submitted to the United States Supreme Court in response to *Jackson v. Hobbs* (2012) and *Miller v. Alabama* (2012) the *amici curiae* – forty-six academics – report that no research has been found to support the belief that stricter punishments, including Juvenile Life Without Parole, deter juveniles from committing violent crimes. No causal relationship between increased juvenile incarceration rates and reductions in juvenile violent crimes that occurred after the implementation of harsher punishments for juvenile offenders has been found (*Jackson v. Hobbs*, 2012; *Miller v. Alabama*, 2012). The lack of evidence to support the supposed deterrent effects of harsher juvenile sentences suggests that JLWOP may be an ineffective way to address juvenile violent crime..

While research shows that harsh incarceration practices do not influence the behavior of violent juvenile offenders, this alone does not debunk the theory of the juvenile superpredator. In the early 1990s juvenile superpredators were labeled sociopaths with no moral conscience or concern for the consequences of their actions (*Jackson v. Hobbs*, 2012; *Miller v. Alabama*, 2012). However, this view of violent juvenile offenders has found no support in empirical research and has been labeled a “myth” by the criminal justice community. In fact, the author that coined the term “juvenile superpredator” joined his colleagues in speaking out against JLWOP in the 2012 Amicus Brief mentioned above. The theory of the juvenile superpredator claimed that antisocial youths could not change but research has demonstrated that environmental factors

such as employment or marriage can help violent youths grow out of their deviant behavior (Jackson v. Hobbs, 2012; Miller v. Alabama, 2012).

The findings of the Amicus Brief (2012) support the argument made by many supporters of Senate Bill 9: juvenile offenders have the capacity to change. According to Jody Kent Lavy (2012), director of the Campaign for the Fair Sentencing of Youth, the juvenile justice system was created in response to the belief that juvenile offenders could be rehabilitated. Supporters of the Bill argue that by placing juveniles in the same category as their adult counterparts the California Welfare and Institutions Code ignores this capacity for rehabilitation. Senator Leland Yee, the bill's author, argues that Senate Bill 9 "recognizes what the research shows: 'that children have a greater capacity for rehabilitation than adults' and should be given a second chance" (Small, 2012).

Despite research that debunked the juvenile predator myth and found no causal relationship between JLWOP and decreases in juvenile crime, many people remain opposed to Senate Bill 9 (Schill, 2012). Christine Ward, executive director of the Crime Victims Action Alliance, argues that the court is already giving leniency to juvenile murders. She claims these juvenile offenders are committing crimes that would have been eligible for the death penalty if the offenders were adults (Schill, 2012). Opponents of the bill argue that these juveniles must be punished for their crimes and that the Fair Sentencing for Youth Act relieves offenders of their rightful punishment.

The California District Attorney's Association encouraged Governor Brown to not sign the bill. According to chief deputy district attorney Dave Greenberg, the association believes the appropriate sentences have already been given to these offenders (Burke & Cavanaugh, 2012). He explains that judges can already partake in the process laid out in Senate Bill 9 and pointed out that special cases can be commuted through already established legal means. According to

UCLA's *Policy Brief on California Senate Bill 9*, opponents argue that this unnecessary measure is expensive and would increase state costs for appeal hearings. Some groups estimate each petition would cost the state \$127,000 (Bell and Abrams, 2012 p. 4).

The important thing to remember when evaluating Senate Bill 9 is whether or not it will have the impact it is expected to have on the criminal justice system. The bill does not officially change anything; juveniles can still be sentenced to life without parole in California. However, in *Miller v. Alabama* (2012) and *Jackson v. Hobbs* (2012) the Supreme Court deemed automatic life without parole sentences for juveniles unconstitutional and judges are required to evaluate the circumstances of each case before sentencing a juvenile to life without parole. The prisoners who qualify for the petition and are granted a hearing are still not guaranteed a reduced sentence. A reduction of their sentence rests at the discretion of a judge who may also be faced with addressing the family of the victim killed in the case along with the scrutiny of prosecutors who fought to keep Senate Bill 9 out of legislation.

Even if the judge does grant the sentence reduction to the prisoner, the resentencing is not a get out of jail free card. The resentencing simply grants the prisoner 25 years to life with the chance of parole. This means they will still have to go before a parole board that will decide whether or not they have served their time and behaved in a manner deserving of parole. This is what Jody Kent Lavy (2012) meant when she called Senate Bill 9 a "modest" policy. While it shows California moving in the direction of leniency toward juvenile offenders tried as adults, it does not immediately grant juveniles a more lenient sentence like policies recently passed in other states. Some prisoners may have their sentence reduced but still never be released by the parole board.

The down side to implementing this policy lies in the financial costs and the amount of

time it requires from an already overworked court system. Prosecutors would have to review the petitions and decide if they meet the requirements for a hearing. If they meet the requirements, the court will then need to hold a hearing, which requires a prosecutor, defense attorney, judge and other court officials (California Senate Bill 9, 2012). If the judge resents the prisoner then the case adds to the workload of the parole board. If the prisoner is subsequently put on parole, that increases the workload of the parole officers in California. This extra work is worth it if prisoners are justly given parole based on rehabilitation and remorse. However, with the many processes the prisoners must get through to reach parole and the amount of discretion that goes into each decision, it is hard to predict how effective this policy will be in releasing prisoners deserving of a second chance. Senate Bill 9 is a reactive policy so it will not stop more JLWOP sentences in the California prison system.

Senate Bill 9 has been an incredibly controversial policy in California with strong opinions on both sides of the argument. While rooted in good intentions, an in-depth analysis of the Fair Sentencing for Youth Act highlights the disadvantages of the policy. Implementation of Senate Bill 9 will cost the state of California over \$100,000 per case and still does not guarantee any change in the JLWOP prisoner's sentence (Bell & Abrams, 2012). Research shows JLWOP is not the best response to juvenile crime. While Senate Bill 9 addresses these findings and may be a beneficial way to change the sentence of those currently serving time for juvenile offenses, it is a modest, retroactive policy. A policy that addresses the issue before a JLWOP sentence is given would be more cost effective and more directly address the issue of juvenile life without parole in California.

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