
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 394 **Hearing Date:** March 21, 2017
Author: Lara
Version: February 15, 2017
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Parole: Youth Offender Parole Hearings*

HISTORY

Source: Human Rights Watch
Anti-Recidivism Coalition
Fair Chance Project
National Center for Youth Law
Pacific Juvenile Defender Center
Youth Justice Coalition

Prior Legislation: SB 261 (Hancock) Chapter 471, Stats. 2015
SB 260 (Hancock) Chapter 312, Stats. 2013
SB 9 (Yee) Chapter 828, Stats. 2012

Support: Alliance for Boys and Men of Color; Asian Law Alliance; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; Campaign for the Fair Sentencing of Youth; Center on Juvenile and Criminal Justice; Children's Defense Fund-California; Community Coalition; Felony Murder Elimination Project; John Burton Advocates for Youth; Juvenile Law Center; Legal Services for Prisoners with Children; Prison Law Office; Silicon Valley De-Bug; USC Gould School of Law, Post-Conviction Project; The Sentencing Project; The W. Haywood Burns Institute; #cut50; a number of individuals

Opposition: California District Attorneys Association

PURPOSE

This bill would make a person convicted of offense before he or she was 18 years of age for which a life sentence without the possibility of parole was imposed shall be eligible for parole under a youth parole hearing after his or her 25th year of incarceration.

Existing law provides, with some exceptions, that when a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has served at least 15 years of that sentence, the defendant may submit to the sentencing court a petition for recall and resentencing and sets forth the requirements for filing and granting such a petition. (Penal Code § 1170 (d) (2).)

Existing law creates the youth offender parole hearing which is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 23 years of age at the time of his or her controlling offense. (Penal Code § 3051)

Existing law provides that the timing for the youth offender parole hearing depends on the sentence: if the controlling offense was a determinate sentence the offender shall be eligible for release after 15 years; if the controlling offense was a life term less than 25 years then the person is eligible for release after 20 years; and, if the controlling offense was 25 years or more then the person is eligible for release after 25 years. (Penal Code § 3051 (b).)

Existing law provides that if the youth offender is found suitable for parole at the youthful offender parole hearing then the youth offender shall be released on parole. (Penal Code § 3051 (e).)

Existing law provides that in reviewing a prisoner's suitability for parole in a youthful offender parole hearing, the Board of Parole Hearings shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law. (Penal Code § 4801 (c).)

This bill provides that person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is life without the possibility of parole shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

This bill clarifies that it does not apply to those with a life without parole sentence who were older than 18 at the time of his or her controlling offense.

This bill gives the Board of Parole until July 1, 2020 to give a hearing to those sentenced to life without parole as juveniles who become entitled to a hearing on January 1, 2018.

COMMENTS

1. Need for This Bill

According to the author:

California law permits youth under the age of 18 to be sentenced to life in prison without the possibility of parole (LWOP). The US is the only country in the world to use this sentence for children. In *Miller v. Alabama* (2012), the U.S. Supreme Court ruled that the Eighth Amendment's prohibition against cruel and unusual punishment forbids the mandatory sentencing of life in prison without the possibility of parole for juvenile offenders. The Court held that sentencing courts are required to consider the constitutional differences between children and adults at sentencing.

This year in *Montgomery v. Louisiana* (2016), the U.S. Supreme Court ruled that Miller's prohibition on juvenile LWOP sentences applies retroactively and that

every person serving such a sentence is entitled to a new sentencing hearing or an opportunity for release on parole.

The U.S. Supreme Court offered two options for states to come into compliance with the ruling. The first, a resentencing hearing, which is time-consuming, expensive, and subject to extended appeals. The second option is to provide effected individuals the possibility of parole, citing Wyoming's law as an example. In Wyoming, juveniles sentenced to LWOP get a parole hearing after 22 years of incarceration. Other states, too, have chosen mandatory minimums or outright eliminated the juvenile LWOP sentence. In total, now 22 states have limited the use of LWOP for juveniles. More states are exploring changes to their laws in light of the recent *Montgomery* decision.

Existing law in California reflects both state and federal court opinions requiring resentencing hearings, and legislation passed in several years ago (SB 9, 2012) provided multiple chances for resentencing at 15, 20, and 24 years of incarceration. Each of these hearings can potentially result in appeals. Important note, courts have ruled the SB 9 process does not bring California into compliance with the *Montgomery* decision. SB 394 seeks to remedy the now unconstitutional juvenile sentences of life without the possibility of parole.

This bill would provide the roughly 300 individuals who are impacted by the court ruling are eligible for a Youth Offender Parole hearing and will bring California into compliance with federal law and eliminate the need for potentially multiple resentencing hearings and litigation.

Important to note, the possibility of parole does not mean release. The Supreme Court noted in *Montgomery*, "A State may remedy [this] violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them...Those prisoners who have shown an inability to reform will continue to serve life sentences."

2. Juveniles cannot be sentenced to life without parole.

The U.S. Supreme Court in *Miller v. Alabama*, 567 U.S. ___ (2012) held that "a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing." (*Montgomery v. Louisiana* 577 U.S. ___ (2016)) The Court further found in *Montgomery v. Louisiana* that *Miller* stated a substantive rule and thus is retroactive. The Court understood that this could mean that a great number of people who were sentenced as juveniles may be being held unconstitutionally stating:

Miller's conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.

Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received a mandatory life without parole. A State may remedy a *Miller* violation by permitting

juvenile homicide offenders to be considered for parole rather than by resentencing them. See, e.g., Wyo. Stat. Ann §6-10-301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crime reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment. (*Montgomery v. Louisiana* 577 U.S. ___(2016))

3. Current System of Submitting a Petition to Resentence

SB 9 (Yee) Chapter 828, Statutes 2012 created a process for a person sentenced as a juvenile to life without parole (LWOP) to submit a petition to the sentencing court for recall or resentencing. A court must find by preponderance that statements in the petition are true and then can grant a hearing. The court then at the hearing has the discretion whether or not to grant the resentencing to 25 to life. (Penal Code Section 1170 (d)(2))

Because of the multi-step requirements, the process in created in SB 9 (Yee) does not actually guarantee a person sentenced as a juvenile to a parole hearing and it is not likely it would meet with the requirements in *Miller* and *Montgomery*.

4. Applying Youth Offender Parole Provisions to LWOP

California already has a parole process that can be applied to juvenile LWOP as suggested by the Court in *Montgomery*. In the youth offender parole process created by SB 260 (Hancock) Chapter 312, Statutes 2013 a person who was sentenced to an offense before the age of 23 has an opportunity for parole after 15, 20 or 25 years of incarceration depending on their controlling offense. At the parole hearing, the board shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth and subsequent growth and increased maturity of the prisoner in accordance with relevant case law. (Penal Code Section 4801 (c))

This bill would apply the youth offender parole process to juveniles sentenced to LWOP. It would provide that they become eligible for a hearing after serving 25 years of incarceration. This would bring California into compliance with the constitutional requirements of *Miller* and *Montgomery*.

The bill makes clear that unlike other youth offender parole provisions which apply to a person sentenced before the age of 23, the provisions applying to juvenile LWOP apply only to those sentenced before the age of 18.

5. Support

In Support the National Center for Youth Law States:

The United States is the only country in the world that imposes life without parole on youth under the age of 18. We support SB 394 because we believe the US should comply with international human rights laws and norms. In the United States, there are more than 2,500 youth who have been sentenced to life without parole; here in California there are at least 300. In the rest of the world combined,

there are none. This extreme punishment is a violation of international law and fundamental human rights.

Punishment should be proportionate to culpability –it must reflect the capacity of young people to change and mature, and it should promote rehabilitation. Youth who commit crimes should be held accountable. However, when California condemns a young person to a life behind bars, it disregards the human capacity for rehabilitation, the enhanced ability of young people to grow and change, and the very real physical and psychological differences between children and adults. Senate Bill 394 ensures that youth offenders will face severe punishment for their crimes, but it also gives them hope and the chance to work toward the possibility of parole.

California’s use of life without parole sentences for youth is particularly unjust. Racial disparities in the imposition of this sentence are among the worst in the country. In California, African American youth are sentenced to life without parole at a rate that is 18 times that of white youth. In this state, in 56% of the cases in which a youth is sentenced to life without parole had an adult codefendant, the adult got a lesser sentence than the youth. Finally, in 45% of California cases surveyed, youth sentenced to life without parole did not physically commit a murder, but instead were convicted of their role under the felony murder rule or aiding and abetting law.

The Pacific Juvenile Defender Center notes:

SB 394 is not a “get out of jail free” card. It requires that the person serve 25 years in prison before even becoming eligible for parole. In other words, a 17 year-old would be 42 years old before becoming qualified for a hearing. Even then, the Parole Board might well decide that they still pose a danger to the public and should not be released. This will remain an astoundingly long sentence for a teenager, but having the SB 394 provision for eventual parole hearings will give young people some hope and incentive to work toward release. As the Supreme Court observed, “The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential. (*Graham v. Florida* (2010) 560 US 48, 79) SB 394 would provide that opportunity.

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