# SECOND LOOK

## FOR JUSTICE, SAFETY & SAVINGS

## QUICK GUIDE

Over the past three decades, punishments in the U.S. became **165% more harsh**, despite declining crime rates. Youth were not exempt from the expansion of overly harsh punishments and long sentence lengths, as states across the country enacted more punitive laws to respond to juvenile offenses, embracing the false "superpredator" theory.

'The only victim in this case is dead': *Mourning for 5-year-old Eric*

CRIME

**'Superpredators' Arrive**

Should we cage the new breed of vicious kids?

By Peter Annin

On Oct. 13, 1994, 5-year-old Eric Morse and his 8-year-old brother, Derrick, ran into two of the toughest bullies their South Side Chicago neighborhood had to offer. The intimidating boys lured the brothers to a vacant

where is the state supposed to put these two killers? A judge is scheduled to rule in the case next week. Around the country, other states are watching. They have their own predators to worry about.

It wouldn't be a problem if Illinois's special 30-bed "kiddie prison" weren't still un

As more people have come to realize that **extreme sentencing for youth is overused, expensive, and ineffective at reducing recidivism**, the justice system has moved toward more developmentally appropriate continuums of care, which provide a more individualized response to juvenile crime. However, **every year for decades, Texas youth have been— and continue to be— prosecuted as adults and excluded from juvenile court jurisdiction**, therefore not benefitting from these advancements.

## THE PROBLEM: TEXAS IS A HARSH OUTLIER ON YOUTH SENTENCING

In Texas, sentencing laws ignore scientific evidence on adolescent development and neuroscience, and the state's current parole system provides no viable mechanism for reviewing a case after a young person has rehabilitated and matured. In 2009, Texas banned life without parole (LWOP) sentences for youth aged 16 and younger and, four years later, banned LWOP sentences for 17-year-olds as well. Unfortunately, when the Texas Legislature made this change, they failed to consider a broader range of punishments and more individualized sentencing for youth. As a result, **children as young as 14 who are convicted of certain serious crimes can be sentenced to a de facto life sentence—where there is no opportunity for parole until they have served, in many cases, at least 40 years behind bars.**

## Hannah Overton

**WRONGFULLY INCARCERATED IN A TEXAS PRISON FOR SEVEN YEARS UNTIL SHE WAS DECLARED FACTUALLY INNOCENT IN 2015 – SHARES THE STORY OF HER FRIEND, IRENE.**

"When I first walked through those prison gates, I was scared and lonely and so depressed! I wasn't eating or sleeping. Irene looked at me and saw her younger self, a very young teenager when she entered the same prison gates. Irene took care of me, and she convinced some of her friends to take care of me, too. She helped me start eating again and get the essentials I needed. She was a friend to me when no one wanted to be my friend. When Irene was in middle school, she began being bullied by another girl. The bullying went on for years and, in high school, Irene and this same girl got into a fight over a boy. This time, Irene was determined she wouldn't let the girl bully her anymore. The fight got physical and, although Irene only intended to stand her ground, the girl tragically died. Irene, a scared teenager, was immediately charged as an adult, convicted of murder, and sent to a maximum-security prison. Irene has now spent 25 years in prison. She made one bad decision as a kid, and in the past 25 years she has grown up and matured. Irene has so much to offer the world, if she could just get a second chance."

Texas has the harshest parole eligibility of all states that have banned juvenile LWOP. According to the U.S. Sentencing Commission, a sentence of 470 months (just over 39 years) constitutes a de facto life sentence based on the average life expectancy of someone incarcerated for such an extreme length of time. Therefore, **Texas' requirement that some youth must serve a minimum of 40 years before eligibility for even the *consideration* of parole serves as a de facto LWOP sentence and is contrary to the U.S. Supreme Court's position that juvenile LWOP deprives young people of a chance for "fulfillment outside prison walls" and for "reconciliation with society."**

Even in the event that a youth sentenced to such an extreme prison term in Texas survives their incarceration, lives long enough to become eligible for parole, and is actually granted parole by the governor-appointed Board of Pardons and Paroles, **the opportunity remaining for a meaningful life is likely nonexistent.** Youth incarcerated for multiple decades are necessarily locked up during the period when people typically start a career, obtain financial independence, and start a family.

Moreover, when people are incarcerated long term they suffer from "accelerated-aging," including early development of chronic illnesses and disabilities. Upon release, they typically return to a weakened or nonexistent social and emotional support system since connections to family and friends tend to erode with lengthy terms of incarceration.

**ROPER V. SIMMONS (2005)**

Citing scientific research establishing general differences between youth and adults, the U.S. Supreme Court held the death penalty unconstitutional for youth.

**GRAHAM V. FLORIDA (2010)**

Citing advances in psychology and neuroscience, the U.S. Supreme Court held the developmental shortcomings of youth mean that a sentence of life without the possibility of parole (LWOP) cannot be constitutionally proportional for a youth convicted of a nonhomicide offense.

**MILLER V. ALABAMA (2012)**

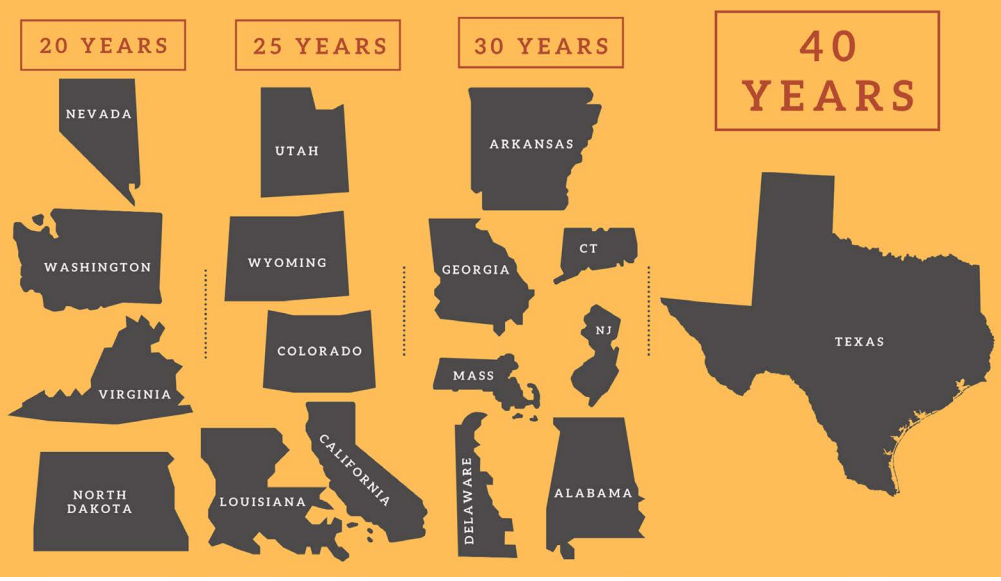
The U.S. Supreme Court took the reasoning of *Graham* a step further, holding the 8th Amendment limits imposition of LWOP sentences on youth, regardless of their crime.

**MONTGOMERY V. LOUISIANA (2016)**

The U.S. Supreme Court held that its decision in *Miller* applied retroactively, requiring that people serving mandatory LWOP sentences for offenses committed as youth must be either re-sentenced or granted meaningful parole consideration.

## STANDARD PAROLE ELIGIBILITY FOR JUVENILES SENTENCED TO LIFE WITH PAROLE

TEXAS IN THE NATIONAL LANDSCAPE




It is no surprise that people imprisoned early in life and released in old age tend to be the most dependent on public benefits and the most likely to live in shelters or transitional housing programs. Young people who must serve extremely long sentences before their first opportunity for parole are deprived of the qualitative benefits of life in free society — not only during incarceration but upon release as their lengthy prison terms leave them disadvantaged.

### Rethinking "Violence"

"IT IS IMPORTANT TO RECOGNIZE THAT THE TERM 'VIOLENCE' HAS BEEN EXPANDED GREATLY IN THE PAST THREE DECADES. IT CAN INCLUDE CRIMES WHERE NO OTHER PERSON IS INVOLVED, AND DEFINITIONS VARY BY JURISDICTION. HIGHER INCARCERATION RATES HAVE BEEN SHOWN NOT TO CORRELATE WITH LOWER INCIDENCE OF VIOLENT CRIME, AND THE MOST 'SERIOUS' OFFENSES OFTEN ARE ASSOCIATED WITH THE LOWEST RECIDIVISM RATES."

*SOURCE: CAMPAIGN FOR YOUTH JUSTICE, "IF NOT THE ADULT SYSTEM, THEN WHERE?"*

## SOLUTION: PROVIDE A SECOND LOOK

Texas law should allow for parole eligibility at no more than 20 years for a person whose offense was committed when they were younger than 18 years old, and the Texas parole board should be required to consider a specialized set of factors when determining whether to grant parole to such persons (e.g., growth, maturity, rehabilitation, the hallmark features of youth, and youthfulness at the time of the offense). Importantly, **"Second Look" legislation would not *mandate* the release of a single incarcerated person; rather, it would simply provide an opportunity for parole consideration for individuals who were sentenced as youth to extreme terms but have rehabilitated and matured.**

## Jermaine

### LIFE SENTENCE AT 15 YEARS OLD.

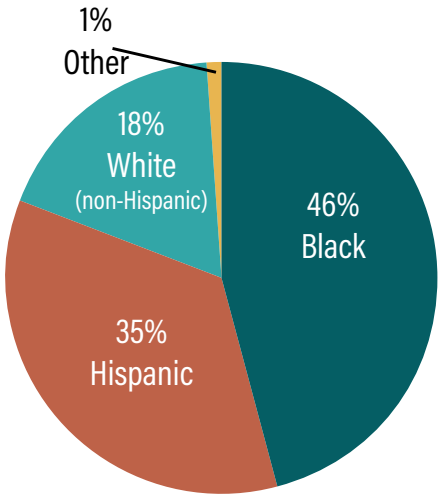
"In 1994, I was charged with capital murder. Even though I was not the killer in this crime, I was convicted and given a life sentence. We as humans are destined to make mistakes. As children, we have all fallen victim to our mistakes. We have all been accused of doing wrong, and finally, in God's eyes, we are all sinners. In his eyes also, we receive redemption through his love and grace. This exists for us all. So too, our society and laws should offer redemption for those who have discovered resilience and rehabilitation out of their moment of making a mistake. Here in prison, where I compose these very thoughts, it can be hard for those of you to acknowledge my redemption. You can't read my mind, feel my heart, or see my daily walk, but somewhere in this demonstration, I hope you find my seriousness towards my atonement."

# WHY SHOULD TEXAS GIVE CHILDREN A SECOND LOOK?

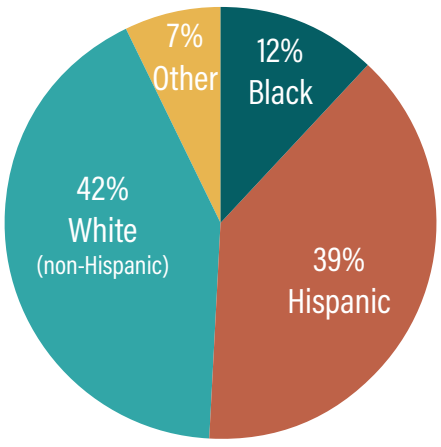
## For Justice

- **Children are different from adults.** Research in neuroscience and psychology accepts that youths' brains are inherently different from adult brains. Youth are immature and have an underdeveloped sense of responsibility; they are more vulnerable and susceptible to negative influences and outside pressures, including peer pressure; and their character is still developing, meaning risky or antisocial behaviors are fleeting."
- **Many youth serving extreme sentences were sentenced under the "law of parties."** In addition to having diminished culpability as a result of their young age at the time of the offense, many "Second Lookers" are serving extreme sentences — including life sentences for capital murder — despite having never physically harmed anyone. This is the alarming result of Texas' overly broad accomplice liability law, known as the "law of parties," which allows a youth to be held culpable for criminal acts they took no part in and never intended, provided those acts were a "reasonably foreseeable outcome" of some underlying criminal act in which the youth did participate.
- **Extreme sentencing for youth disproportionately impacts youth of color, particularly Black youth.** In Texas, Black youth — already disproportionately impacted throughout the justice system — are overrepresented among the Second Look population. Comprising only 12 percent of Texas' overall population, Black individuals account for 46 percent of those who would be impacted by Second Look legislation. Furthermore, people incarcerated in Texas with sentences of at least 50 years for crimes committed as youth are disproportionately people of color, with approximately 80 percent being either Black or Latinx. And a 2015 study found that 100 percent of those serving juvenile LWOP in Texas were people of color.

### TEXAS' SECOND LOOK POPULATION BY RACE/ETHNICITY




### TEXAS' GENERAL POPULATION BY RACE/ETHNICTY




- **Highly vulnerable youth tend to receive the harshest penalties in the criminal justice system.** Several studies show that youth treated most punitively have been raised in poor neighborhoods, have limited education, have mental disabilities, and have been victims of physical and sexual violence.

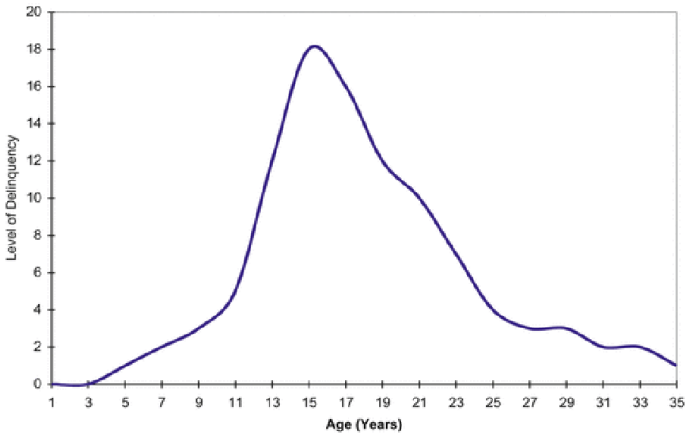
## Aaron

### 50-YEAR SENTENCE AT 17 YEARS OLD.

"In the throes of rage, sorrow, and youthful ignorance, I took the law into my own hands. I shot a man after he was released on bail following his arrest for the murder of my childhood friend, Omar. Several months thereafter, Omar's killer was convicted of his murder and was sentenced to thirty years. Yes, you read that correctly; Omar's murderer was sentenced to thirty years for killing him and I was sentenced to fifty years for shooting him for killing Omar. I cannot defend my act of vengeance, but even so, it is hard to fathom the injustice of these two sentences. Since the years of impetuous immaturity have faded away, I have often found myself contemplating the thoughtless decision I made at that young age and how it not only changed the course of my life, but also altered the lives of all of the people who love me. The thought seems to always linger of where we would all be in life had I not taken the law into my own hands. Would those who love me have been proud of the man I would have become? Would I have found an amazing wife to love? Would I have been blessed with children? Would I have had something greater to live for? Though there is certainty in nothing in life, the possibilities are endless of what might have been."

## For Public Safety

- **Young people are likely to "age out of crime."** The part of the youth brain that controls risk and reward is still developing until a person's mid-to-late 20s, after which individuals begin to age out of crime, and a sharp drop-off in criminal behavior occurs. The age-crime curve reflects that many youth are "immediate desisters," meaning that an individual's first offense is also their last offense.




- **Research shows that "people previously convicted of a violent offense are *less* likely to return to prison for any reason, and they are very unlikely to return for another serious crime."** Historically, people convicted of capital offenses who were later released from prison exhibited the lowest rates of reoffending across all offenses.

- **States across the country have safely reduced extreme sentences for youth.**
  - Before the U.S. Supreme Court's decision in *Montgomery v. Louisiana* (2016), **Pennsylvania** incarcerated more juvenile lifers than any other state; after the decision, it became the nation's leader in releasing them. In the following years, those individuals **proved to be remarkably successful in the free world**. As of September 2019, out of over 200 people who were released, six have faced new charges and only one has been convicted of a new crime (contempt), for an incredibly low recidivism rate of 3 percent (compared to an overall state recidivism rate of 40 percent).

The Texas Criminal Justice Coalition (TCJC) surveyed 86 people whose loved ones are currently serving a lengthy adult prison sentence in Texas for an offense committed as a child, and who would be eligible for earlier parole under Second Look legislation. The survey results mirror the findings of other studies.

Survey Findings:

- 67% were living in poverty at the time of their offense.
- 72% had to rely solely on a court-appointed attorney for representation.
- 78% did not complete their education past the 10th grade (understandable considering 60% were 16 years old or younger at the time of the commission of the offense for which they are currently incarcerated).
- 40% have an immediate family member who has been incarcerated.
- 34% have been physically abused.
- 23% have been sexually abused or assaulted.
- 38% have been diagnosed with a mental health disorder.
- 20% spent time in foster care prior to their incarceration.

- In 2013, in the wake of the Supreme Court's decision in *Miller v. Alabama* (2012), **California** passed legislation creating specialized "youth offender parole hearings" for people convicted of sentences longer than 15 years for offenses committed when they were younger than 18. From the time the law took effect until June 2015, approximately 150 of the 465 people granted a hearing were approved for parole and released. Per one analysis, **not *one* of those individuals had returned to prison** by July 31, 2017.
- **Michigan** has had similar positive results. According to Deborah LaBelle, human rights lawyer and founding board member of the Youth Justice Fund, 91 juvenile lifers had been released in Michigan as of March 2019: **"There has not only been zero percent recidivism, but there has not been a single issue — folks are in college, working as advocates, starting businesses, and are engaged in community payback projects."**

"NUMEROUS STUDIES CONDUCTED OVER THE PAST TWO DECADES BY CRIMINOLOGISTS, PSYCHOLOGISTS, AND SOCIOLOGISTS DEMONSTRATE THAT YOUNG PEOPLE WHO GET INVOLVED IN CRIMINAL ACTIVITY — INCLUDING THE MOST SERIOUS OFFENSES, SUCH AS HOMICIDE — AGE OUT OF THIS CONDUCT BY THEIR MID-20S. BECAUSE RESEARCH SHOWS THAT WE CANNOT KNOW WHETHER A YOUTH'S CRIMINAL CONDUCT IS TRANSIENT, THE U.S. SUPREME COURT HAS HELD YOUTH MUST HAVE AN OPPORTUNITY FOR RELEASE SO THAT THOSE WHO HAVE GROWN AND CHANGED ARE NOT SERVING EXTREME SENTENCES."

*SOURCE: "FALSE HOPE: HOW PAROLE SYSTEMS FAIL YOUTH SERVING EXTREME SENTENCES," ACLU.*

## Megan

### 99-YEAR SENTENCE AT 15 YEARS OLD.

"Here I sit, now a 30-year-old woman, at the Lane Murray Unit in Gatesville Texas. In the past 14 ½ years, many things have become clear and many lessons have been learned. Among the things I've grown to see clearly is the fact that prison is not meant to rehabilitate. Prison is punitive at best and dysfunctionally abusive at worst. Somehow the children, like myself, must wade through the muck and chaos of prison to find out who we are how we'll rise above. Sadly, I've seen many young people lose their true essence to conform to the dysfunction of their surroundings. Amazingly, on the other side of the spectrum are those who, like myself, recognize the dysfunction for what it is and learn to soar. It's the second group who decide early on that we will succeed; not because of our limitations but in spite of them. Children, regardless of circumstance are still kids. Vulnerable and in need of nurturing. Prison does not solve the problem."

## For Cost Savings

- **Incarcerating a person for life requires decades of public expenditures.** A Tulane University and UC Berkeley study found that California spent between $66 and $83 million between 1990 and the mid-2000s to incarcerate youth sentenced to LWOP.
- **In Texas, it costs approximately $2.5 million to incarcerate a youth for life** — an enormous expense considering that most young people are likely rehabilitated long before their 40-year parole eligibility date. Comparatively, it costs taxpayers approximately $625,720 to incarcerate a person for 20 years.
- **Early release for those demonstrating sufficient rehabilitation and maturity could save Texas taxpayers approximately $1,874,280 *per person*.** Additionally, a child incarcerated at age 16 who is paroled after 20 years could contribute approximately $164,010 in tax revenue by working until age 66.
- **If Second Look becomes law, Texas could save between $3.9 and $12 million in the first two years following implementation.** This cost estimate considers only the actual cost to detain a person; it does not include additional costs, like the treatment of medical and mental health issues that are exacerbated in a prison setting, especially among older and aging individuals (including many Second Lookers who have been incarcerated for 30 years or more).
- **Despite decreases in Texas' prison population, publicly funded prison health care costs are surging.** Per one analysis, "The state spent over $750 million on prison health care during the 2019 fiscal year, a 53 percent increase from seven years earlier, when that cost was less than $500 million." This is the result of an aging prison population where the number of people incarcerated who are 55 and

EARLY RELEASE FOR THOSE DEMONSTRATING SUFFICIENT REHABILITATION AND MATURITY COULD SAVE TEXAS TAXPAYERS APPROXIMATELY **$1,874,280** PER PERSON. IF SECOND LOOK BECOMES LAW, TEXAS COULD SAVE BETWEEN **$3.9 and $12 million** IN THE FIRST TWO YEARS FOLLOWING IMPLEMENTATION.

older increased by 65 percent from 2012 to 2019; this group now accounts for one-eighth of the total prison population in Texas, but one-half of the system's hospitalization costs. This aging prison population includes many Second Lookers who have already been incarcerated for decades and whose release would help lessen costs without compromising public safety.

## Linda White

### CRIME SURVIVOR FROM HOUSTON, TEXAS

"In 1986 my world was turned upside down. My 26-year-old daughter Cathy was brutally raped and murdered by two 15-year-old boys. Some people may find it strange that 34 years after this loss, I spend my time advocating for second chances for young offenders. Yet, my own experience has shown me that individuals who commit heinous acts as youth are capable of change. After being incarcerated for 23 years, Gary Brown, one of the two teens responsible for my daughter's death, has become a law-abiding, productive citizen. He was released from prison in 2009, though his original sentence would have kept him there until he turned 70."

*Source: Austin-American Statesman, "Opinion: Youth Deserve Second Chances, Not the Death Penalty"*

SECOND LOOK LEGISLATION HAS BIPARTISAN SUPPORT IN TEXAS. ACCORDING TO A 2018 POLL BY THE TEXAS SMART-ON-CRIME COALITION, WHICH SURVEYED MORE THAN 600 TEXAS REPUBLICAN PRIMARY VOTERS, **75% of Texas GOP voters support Second Look.**

## TEXAS IS READY FOR SECOND LOOK

**Second Look legislation can be easily and safely implemented, as Texas organizations and employers have the capacity to support Second Lookers as they are released from prison.** Epicenter, a nonprofit dedicated to rebuilding Texas families with children serving extreme sentences in adult prisons, has developed a reentry plan that has been approved by the Texas Department of Criminal Justice, and it has plans to expand the program into nine prison units. Epicenter has also partnered with transitional centers and employers across the state to create a network of support for Second Lookers as they are released.

**In state after state where people sentenced as children have been given a meaningful second chance, these former lifers have proved to be remarkably successful in the free world and are evidence that keeping children locked up for lengthy prison terms is a counterproductive use of limited tax dollars.** Lawmakers can no longer afford to unnecessarily incarcerate people decades beyond what is reasonably defensible.

Providing a meaningful opportunity for release for those who can demonstrate that they have sufficiently matured and rehabilitated recognizes the capacity of youth to change. By granting parole eligibility after, at most, 20 years served and including standards that guarantee youthfulness is viewed as a mitigating factor, Texas will provide people sentenced as youth with that **meaningful opportunity for release, meet the constitutional standards established by the U.S. Supreme Court, and save millions of taxpayer dollars each year.**