

# Kids Are Different:

*Creating More Fair and Age-Appropriate  
Sentences for Children in New Mexico*

# Introduction



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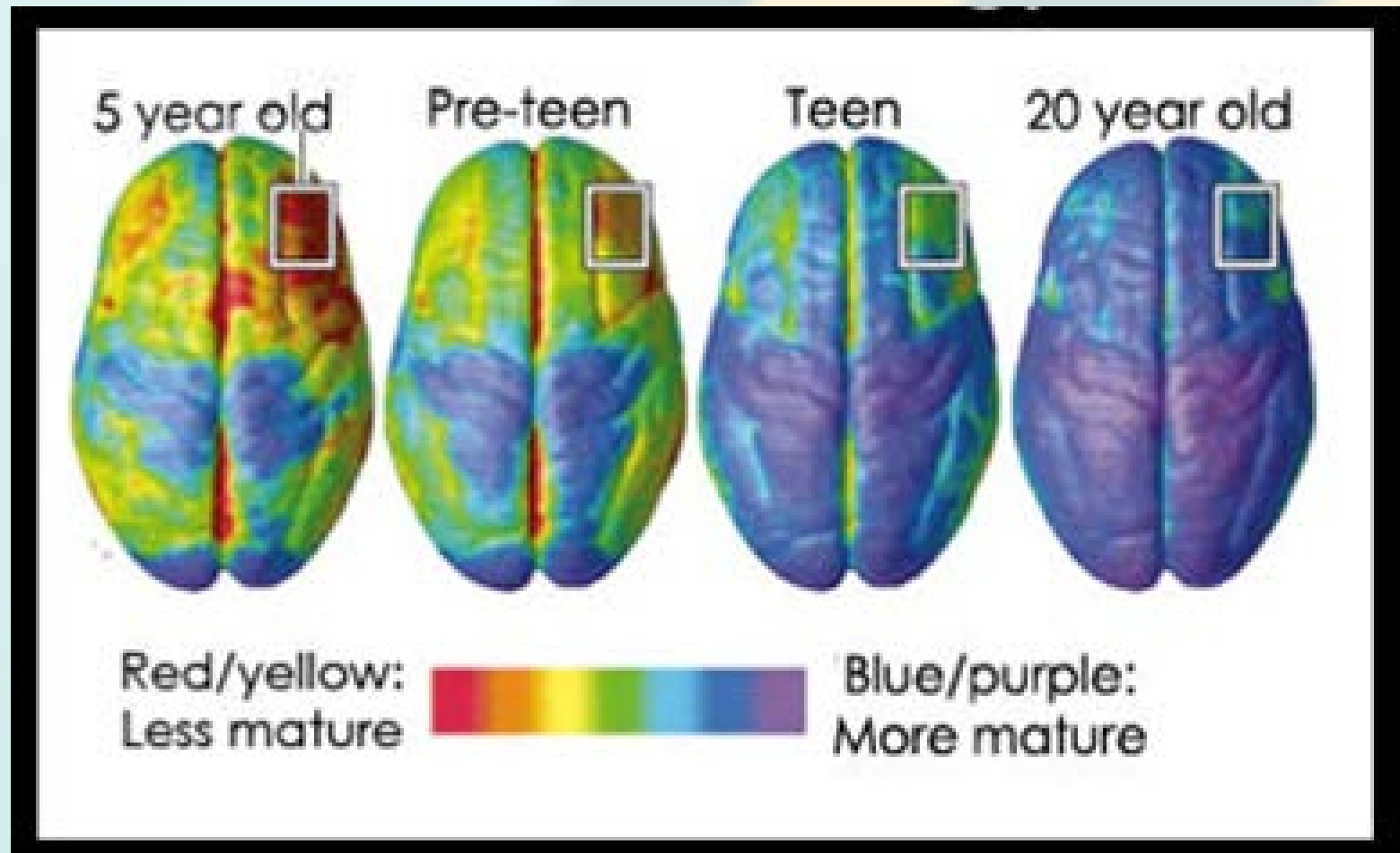
# About CFSY

*The Campaign for the Fair Sentencing of Youth is a national coalition and clearinghouse that coordinates, develops and supports efforts to implement just alternatives to the extreme sentencing of America's youth with a focus on abolishing life without parole sentences for all youth.*

# Background: The Myth of the Super Predators

- Theory advanced and later apologized for by academics that stated a new breed of super-predator children who were more violent and remorseless than ever before were coming of age;
- States responded by passing juvenile transfer laws making it easier to try kids as adults and opening them up to adult penalties, including extreme punishments.

# Adolescent Development



# Why Brain Development Matters

We do not allow children to:

- Vote
- Enter into contracts
- Serve in the military
- Get married
- Buy alcohol or tobacco
- Work in Certain Industries

# U.S. Supreme Court Cases

- *Roper v. Simmons* (2005)
- *Graham v. Florida* (2010)
- *Miller v. Alabama* (2012)
- *Montgomery v. Louisiana* (2016)



# The Meaning of *Miller* as Explained by *Montgomery*:

**“Miller did bar life without parole**, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility...*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.”



# A Way Out: Montgomery's Legislative Solution

"A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.

Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment . . . Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller's* central intuition—that children who commit even heinous crimes are capable of change."

# Georgia Supreme Court:

*Veal v. State* (2016)

“The *Montgomery* majority explains, however, that by *uncommon*, Miller meant *exceptionally rare*, and that determining whether a juvenile falls into that exclusive realm turns not on the sentencing court’s consideration of his age and the qualities that accompany youth along with all of the other circumstances of the given case, but rather on a specific determination that he is “*irreparably corrupt.*””

# Chief Judge Bosson (Court of Appeals)

State v. Ira (2002)

- “[f]or one so young, this [91 ½ years] is effectively a life sentence. One who goes into prison a teenager and comes out a man at the age of retirement has forfeited most of his life.”
- “[i]f [Ira] had eventually killed his victim, perhaps to protect himself from prosecution for his other crimes, he could have received a life sentence as an adult, but would have become eligible for parole after a “mere” thirty years. Thus, although [he] commits crimes which, however gruesome, are less than first degree murder, he receives a sentence that is effectively fifty percent longer.”

# New Mexico Supreme Court:

*Ira v. Janecka* (2018)

“We conclude that Graham applies when a multiple term-of-years sentence will in all likelihood keep a juvenile in prison for the rest of his or her life because the juvenile is deprived of a meaningful opportunity to obtain release by demonstrating his or her maturity and rehabilitation.”

“Taken together, *Roper*, *Graham*, and *Miller* reveal the following three themes regarding the constitutionality of juvenile sentencing:

- First, Juveniles’ developmental immaturity makes them less culpable than adults because juveniles have an “underdeveloped sense of responsibility,” and an inability “to appreciate risks and consequences,” meaning juveniles’ violations are likely to be a product of “transient rashness” rather than “evidence of irretrievabl[e] deprav[ity].”
- Second, juveniles have a greater potential to reform than do adult criminals which makes it essential that they have a meaningful opportunity to obtain release based on demonstrated maturity and reform.
- Third, no penological theory—retribution, deterrence, incapacitation, and rehabilitation—justifies imposing a sentence of life without parole on a juvenile convicted of a non-homicide crime because juveniles are less culpable and more amenable to reformation.”

"The New Mexico Legislature is at liberty to enact legislation providing juveniles sentenced to lengthy term-of-years sentences with a shorter period of time to become eligible for a parole eligibility hearing . . . . Some studies conclude that a juvenile's brain does not fully develop until early adult years . . . . Perhaps evaluating the juvenile's maturity and rehabilitation once the juvenile's brain has presumably developed is the time frame required by the Eighth Amendment, but Roper and its progeny are of no assistance to us, nor is the record in this case . . . ."

“Other jurisdictions, in the wake of Graham, have amended their parole eligibility time frames for juveniles. Nevada enacted such a statute in 2015 providing a juvenile offender with a parole eligibility hearing after serving fifteen years of incarceration if the juvenile was convicted of an offense that did not result in the death of a victim . . . Washington requires juvenile offenders to serve twenty years in confinement before petitioning for parole eligibility . . . California provides for parole eligibility after a juvenile offender serves fifteen years if the juvenile was younger than twenty-five years old when the juvenile committed the offense for which the juvenile received the longest sentence.”



## The Ira Court:

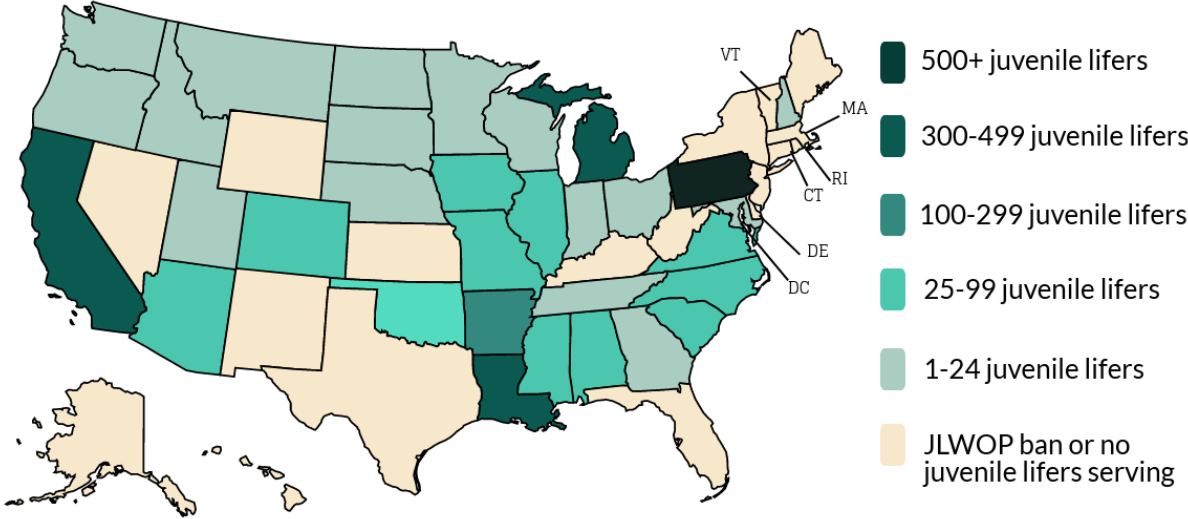
“Although we consider Ira’s opportunity to obtain release when he is 62 years old constitutionally meaningful, albeit the outer limit, we do not intend to discourage the legislature from adopting a shorter time period as have many other jurisdictions.”



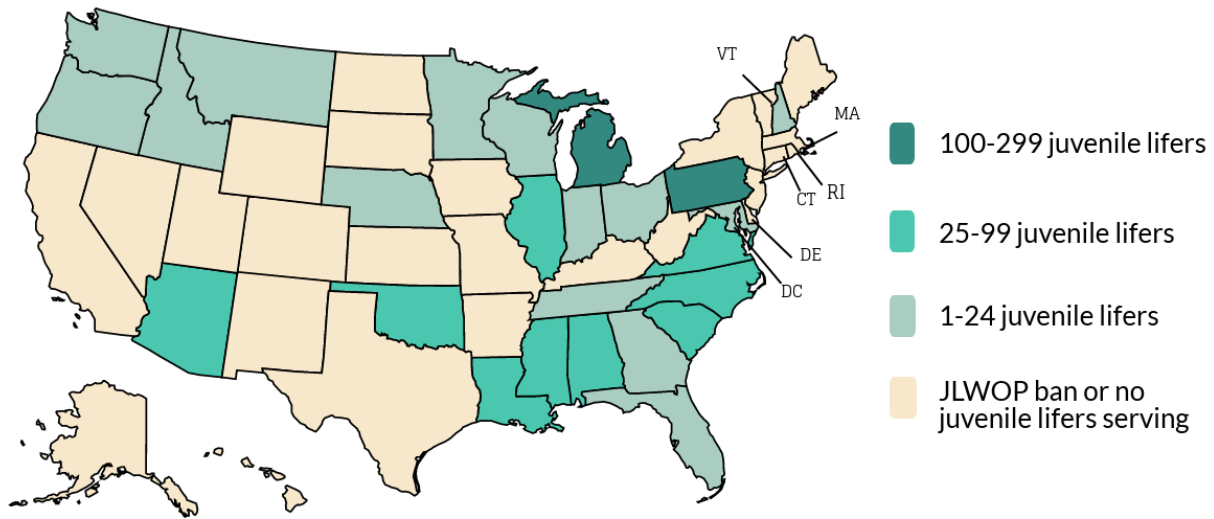
## Evolving Standards of Decency

- In the past 2 years, 7 States and D.C. have passed legislation banning juvenile life without parole and **1,300 individuals** who were sentenced to die in prison as children have had their sentences changed to parole eligible terms through legislation or re-sentencing hearings.

# JLWOP Population January 25, 2016



# JLWOP Population January 25, 2018



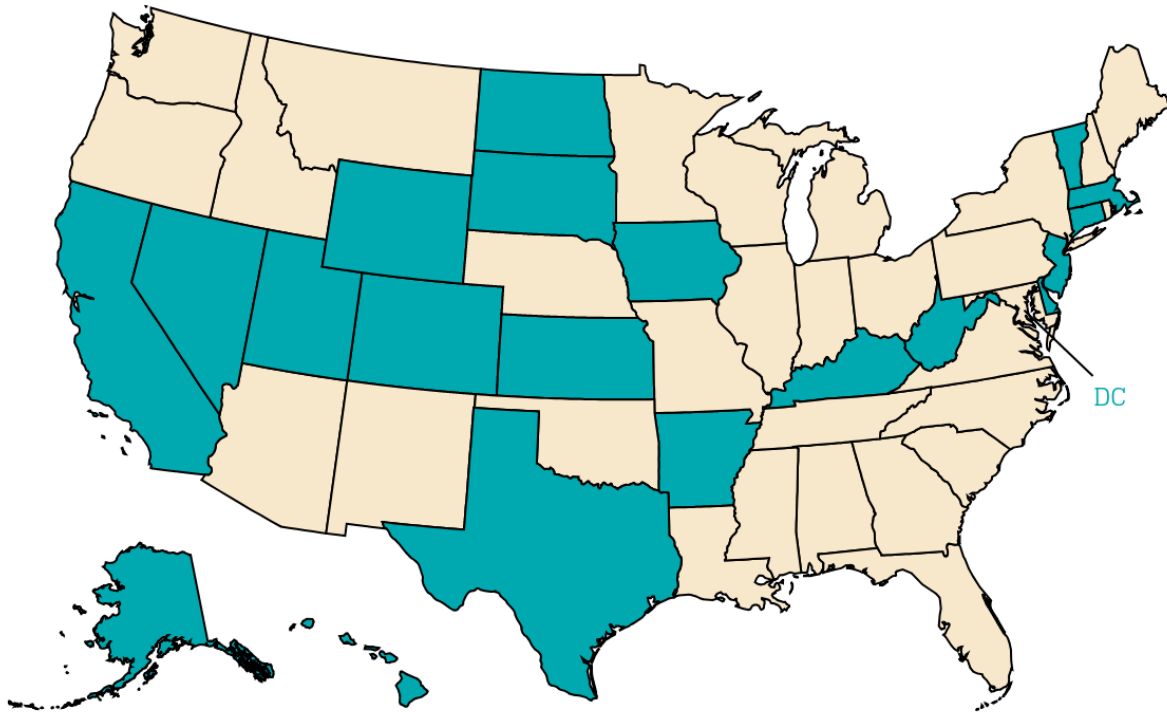
# Six Years Ago

Five states ban  
life-without-  
parole sentences  
for children  
under 18



# Legislative Reform Today

2018



Twenty states and the District of Columbia ban life-without-parole sentences for children under 18

# Red States Lead the Way

- In the last 5 years, 15 states and D.C. have passed legislation banning life-without -parole sentences for children under 18
- Republican legislators sponsored almost two-thirds of these bills
- Half were signed into law by Republican governors
- In 10 legislatures, bills passed through at least one chamber unanimously.
- In 13 of 16 legislatures, these bills passed with over 80% support.

# Thoughts from State Legislators Around the U.S.

## **Senator Missy Irvin (R-AR):**

“I do not believe that there is such a thing as a ‘throwaway child.’ But death-in-prison sentences tell us that some children are disposable and unworthy of love.”

## **Assemblyman John Hambrick (R-NV):**

“When we sentence a child to die in prison, we forestall the possibility that he or she can change and find redemption.”

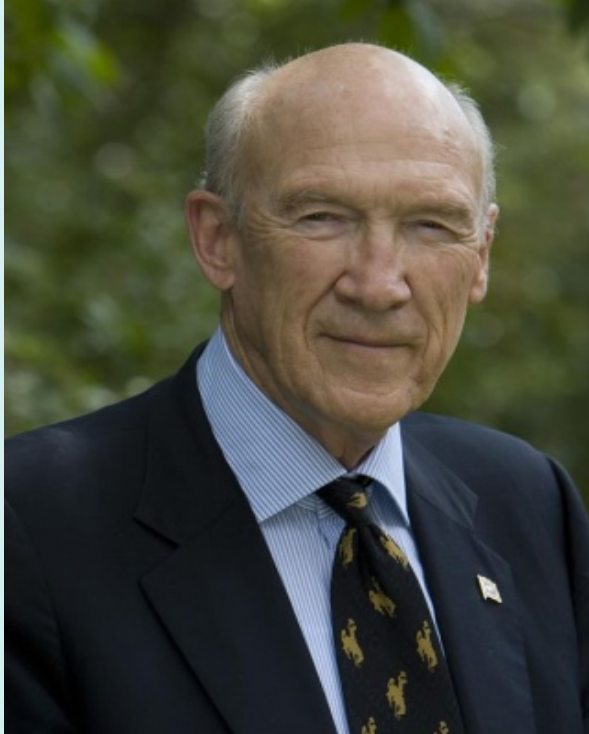
## **Representative Craig Tieszen (R-SD):**

“I believe that children, even children who commit terrible crimes, can and do change. And I believe they deserve a chance to demonstrate that change and become productive citizens. In the end, I gathered a very diverse set of legislators from across the political spectrum and passed the bill with solid margins.”

## **Representative V. Lowry Snow (R-UT):**

“Utah’s criminal justice system has long recognized the fundamental difference between children and adult offenders. Passage of HB 405 is an expression of that important recognition and it provides a clear statement of Utah’s policy regarding the treatment of children placed in custody for serious offenses.”

# The Moral Argument



“We are all sinners, but salvation and redemption is there for all of God’s children. Forgiveness, tolerance, rehabilitation and restoration are at the core of our beliefs and those of most major religions. We know most every human is worth more than the worst thing they have ever done . . .

We must remember that mercy is justice too and that if our children are not deserving of our mercy, then who amongst us is?”

**-Former U.S. Senator Alan Simpson (R-WY)**

# JLWOP & Adverse Childhood Experiences (ACES)

**Experienced childhood trauma both at home and in their communities.**

54% witnessed domestic violence as a child

47% were physically abused as a child

20.5% were sexually abused

54.1% witnessed weekly violence in their neighborhoods

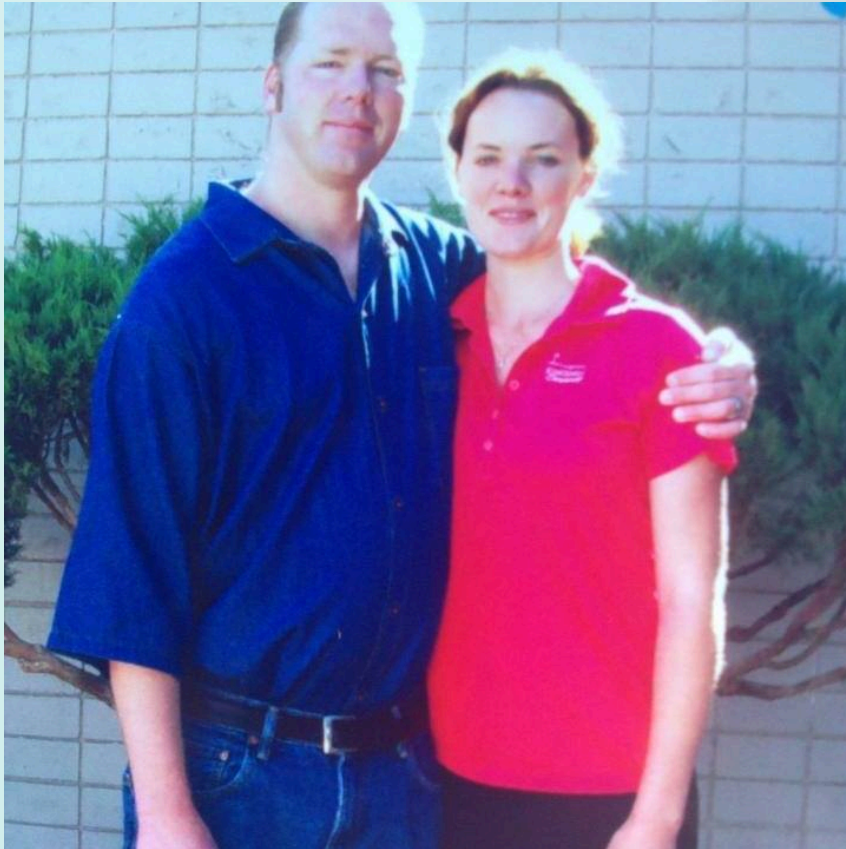
**Girls in particular experienced high levels of trauma.**

79.5% of girls were physically abused as a child

77.3% of girls reported histories of sexual abuse



# The Power of Hope



*“AB 267 has enabled me to truly see hope; hope in what was an impossibly hopeless set of circumstances that I had realized as my life; hope that even though I spent three years on Death Row and the last 20 years serving life without parole, that all was not lost, as I now have the hope of a future life outside of prison.”*

*-Christopher Williams*

# Children Grow & Change

## Eric Alexander

Youth Justice Advocate

The Campaign for the  
Fair Sentencing of Youth



# Children Grow & Change:



Francesca Duran-Lopez

Incarcerated Children's Advocacy Network

# Miller/Montgomery Compliance: A Case Study

Arkansas SB 294, now Act 539:

- Prohibits the use of the death penalty and life without parole sentences from being used on individuals who were under 18 at the time of their crime.
- Sets parole eligibility for children after no more than 20 years for non-homicide offenses, 25 years for first degree murder, and 30 years for capital murder.
- Requires youth-specific mitigating factors to be considered during parole hearings and that such hearings provide juvenile offenders with “a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”



# From Life in Prison to Helping Others: 32 Years Behind Bars for Murder



"At first I felt hopeless," says Laura Berry, "but then I got in there and I felt like, I'm not willing to settle for this to be my life."

She got her GED and educated herself, even working inside prison until finally she got a break.

"They passed a law which made anybody who was a juvenile that was sentenced to life in prison eligible for parole after 25."

In December of 2017, after 32 years, she got her freedom.

Her priority however, is to stop young people from getting into the system, by sharing her story.

"Who better to do that than somebody that did it themselves," says Berry.

# From Legislation to Implementation: The Arkansas Model

Arkansas Inmates  
sentenced to life in prison  
as kids are released thanks  
to new law (SB 294)



# Legislative Recommendations:

## Federal Judicial Review Model (Pending Legislation):

- S. 1917 (2017) - Senator Grassley – (R-IA)
- H.R. 6011 (2018) – Congressman Westerman (R-AR)

## Parole Review Model (WV, NV, AR):

- HB 4210 (2014) – West Virginia
- AB 267 (2015) – Nevada
- SB 294 (2017)- Arkansas

# Question & Answer

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