

Spring 2020

Juvenile Life Without Parole in North Carolina

Ben Finholt

Brandon L. Garrett

Karima Modjadidi

Kristen M. Renberg

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>



Part of the [Criminal Law Commons](#)

Recommended Citation

Ben Finholt, Brandon L. Garrett, Karima Modjadidi, and Kristen M. Renberg, *Juvenile Life Without Parole in North Carolina*, 110 J. CRIM. L. & CRIMINOLOGY 141 (2020).

<https://scholarlycommons.law.northwestern.edu/jclc/vol110/iss2/2>

This Article is brought to you for free and open access by Northwestern Pritzker School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern Pritzker School of Law Scholarly Commons.

JUVENILE LIFE WITHOUT PAROLE IN NORTH CAROLINA

**BEN FINHOLT, BRANDON L. GARRETT, KARIMA
MODJADIDI, & KRISTEN M. RENBERG***

Life without parole (LWOP) is “an especially harsh punishment for a juvenile,” as the U.S. Supreme Court noted in Graham v. Florida. The United States is the only country in the world that imposes juvenile life without parole (JLWOP) sentences. Many of these individuals were sentenced during a surge in LWOP sentencing in the 1990s. In the past decade, following several Supreme Court rulings eliminating mandatory sentences of LWOP for juvenile offenders, such sentencing has declined. This Article aims to empirically assess the rise and then the fall in JLWOP sentencing in a leading sentencing state, North Carolina, to better understand these trends and their implications.

We examine the cases of ninety-four North Carolina juveniles, aged thirteen to seventeen at the time of their offenses, who were sentenced to

* Ben Finholdt. Director, Just Sentencing Project, North Carolina Legal Services.

Brandon L. Garrett. L. Neil Williams, Jr. Professor of Law, Director, Center for Science and Justice, Duke University School of Law.

Karima Modjadidi. Post-doctoral fellow, Duke University School of Law.

Kristen M. Renberg. Ph.D. Candidate in the Political Science Department at Duke University.

Many thanks to James Markham for his assistance in locating corrections records; to the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice; to Sean Chen for his invaluable work scraping and formatting these data; and to North Carolina Prisoner Legal Services for sharing their data concerning juvenile life without parole sentencing. We are grateful for the comments we received at a presentation of this report at Duke University School of Law, and from readers of earlier drafts, including from David Andrews, Rep. Pricey Harrison, Jamie Lau, Kenneth Rose, and Kathryn VandenBerg. Payton Bock, Madison Mumma, Andrew Smith, and Defne Yorgancioglu provided invaluable research assistance. Empirical research presented in this Article was funded by a grant from the Charles Koch Foundation and the Center for Science and Justice at Duke. Data provided by North Carolina Prisoner Legal Services was collected with the support of a grant from the Vital Projects Fund. The views expressed are those of the authors and do not necessarily represent those of the funders.

*JLWOP.*¹ *Of those, forty-nine are currently serving LWOP sentences. In North Carolina, JLWOP sentencing has markedly declined. Since 2011, there have been only five of such sentences. Of the group of ninety-four juvenile offenders, forty-four have so far been resentenced to non-LWOP sentences—largely pursuant to the post-Miller v. Alabama legislation passed in North Carolina. These JLWOP sentences are primarily concentrated in a small group of counties. A total of 61% (fifty-seven of the ninety-four) JLWOP sentences in North Carolina were entered in one of the eleven counties that have imposed more than three JLWOP sentences. We find a path dependency to these sentences: once a county has imposed a JLWOP sentence, it has a higher probability of imposing a JLWOP sentence again in the future. In contrast, homicide rates are not predictive of JLWOP sentences. We question what goals JLWOP serves, given what an inconsistently used, uncommon, geographically limited, and costly sentence it has been in practice. In conclusion, we describe alternatives to JLWOP, including the model adopted in states such as California and Wyoming, in which there is periodic review of lengthy sentences imposed on juvenile offenders.*

INTRODUCTION.....	143
I. THE NORTH CAROLINA ADOPTION OF LWOP AND JLWOP.....	147
A. North Carolina’s Adoption of Juvenile Life Without Parole	147
B. Adolescent Brain Science and U.S. Supreme Court Rulings	148
C. The North Carolina “Miller Fix”	151
D. Post-Miller Litigation.....	152
E. Felony Murder and <i>State v. Seam</i>	154
II. ANALYSIS OF NORTH CAROLINA JLWOP SENTENCING DATA, 1994–2018	157
A. Trends in JLWOP Sentencing	157
B. Race and Juvenile Homicide Rates.....	158
C. County-Level Patterns.....	159
D. Post-Miller Reversals.....	163
E. Inertia Effect in JLWOP Sentencing.....	165
III. COST AND IMPLICATIONS OF MAINTAINING JLWOP IN	

¹ See *infra* Appendix A (listing each of these ninety-four cases). These data were generated analyzing data from the North Carolina Department of Public Safety available at: <http://www.doc.state.nc.us/offenders/INMT4AA1.zip> [<https://perma.cc/286Q-BKKZ>] and <http://www.doc.state.nc.us/offenders/OFNT3CE1.zip> (available on file with author).

NORTH CAROLINA	167
A. Costs of JLWOP	167
B. Legislative and Policy Changes to JLWOP.....	170
CONCLUSION.....	172
APPENDIX A: JLWOP SENTENCES IN NORTH CAROLINA ...	174
APPENDIX B: LOGIT RESULTS FOR COUNTY-PREDICTORS OF JLWOP SENTENCES	177
APPENDIX C: LOGIT RESULTS ON THE INERTIA EFFECT IN JLWOP SENTENCING.....	179

INTRODUCTION

Life without parole is “an especially harsh punishment for a juvenile,” as the U.S. Supreme Court noted in *Graham v. Florida*.² Ruling on the Eighth Amendment’s ban on cruel and unusual punishment, the Court emphasized that “a 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.”³ Indeed, the United States is the only country in the world that imposes juvenile life without parole sentences; such sentences are banned in every other country and prohibited by human rights treaties.⁴ In the United States, there are over two thousand people still serving life without parole (LWOP) sentences for homicides they committed as juveniles.⁵ Many of these individuals were sentenced during a surge in LWOP sentencing in the 1990s.⁶ In the past decade, however, following several Supreme Court rulings which culminated in finding mandatory sentences of LWOP for juvenile offenders unconstitutional, juvenile LWOP (JLWOP) sentencing has declined.⁷ Twenty-three states and the District of Columbia currently do not permit LWOP sentences for juvenile offenders.⁸ Additionally, many states have established methods for periodic review of sentences for persons who had

² 560 U.S. 48, 70 (2010).

³ *Id.*

⁴ Tera Agyepong, *Children Left Behind Bars: Sullivan, Graham, and Juvenile Life Without Parole Sentences*, 9 NW. J. INT’L HUM. RTS. 83, 84 (2010); Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. REV. 983, 989 (2008) (describing that at least 135 countries have rejected JLWOP sentences). All countries except the U.S. have ratified Article 37(a) of the United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁵ JOSH ROVNER, THE SENTENCING PROJECT, JUVENILE LIFE WITHOUT PAROLE: AN OVERVIEW 1 (2019).

⁶ See *infra* Part I.A.

⁷ *Id.*

⁸ ROVNER, *supra* note 5, at 1.

been sentenced to LWOP for juvenile offenses.⁹ This Article aims to empirically assess the rise and then the fall in JLWOP sentencing in a leading sentencing state, North Carolina, to better understand these trends and their implications.¹⁰

The sentence of LWOP was authorized in only seven states prior to 1971.¹¹ The use of LWOP rose as the viability of the death penalty was threatened in the mid-1970s,¹² but the sentence did not become ubiquitous until the 1990s.¹³ The federal government and many states enacted new statutes limiting or eliminating parole during this time period.¹⁴ In the middle of the 1990s, state and federal lawmakers became concerned with a perception that juvenile “superpredators” were disproportionately responsible for serious crimes, and they adopted a range of measures to try more juveniles in adult criminal courts.¹⁵ As a result, states enacted statutes

⁹ *Id.*

¹⁰ Two prior studies have examined numbers of persons serving JLWOP sentences in the United States and documenting race and geographic disparities. JOHN R. MILLS ET AL., THE PHILLIPS BLACK PROJECT, NO HOPE: RE-EXAMINING LIFETIME SENTENCES FOR JUVENILE OFFENDERS (2015), <https://static1.squarespace.com/static/55bd511ce4b0830374d25948/t/5600cc20e4b0f36b5caabe8a/1442892832535/JLWOP+2.pdf> [<https://perma.cc/PR7U-4R9F>]; John Mills et al., *Juvenile Life without Parole in Law and Practice: Chronicling the Rapid Change Underway*, 65 AM. U. L. REV. 535 (2016). One prior state-level study examined JLWOP sentences in Michigan. DEBORAH LABELLE ET AL., ACLU OF MICH., SECOND CHANCES: JUVENILES SERVING LIFE WITHOUT PAROLE IN MICHIGAN PRISONS (2004), <http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf> [<https://perma.cc/E2ZL-36DT>]. A second state-level study has examined Florida data. PAOLO G. ANNINO ET AL., JUVENILE LIFE WITHOUT PAROLE FOR NON-HOMICIDE OFFENSES: FLORIDA COMPARED TO NATION (2009).

¹¹ ASHLEY NELLIS, THE SENTENCING PROJECT, LIFE GOES ON: THE HISTORIC RISE IN LIFE SENTENCES IN AMERICA 29 (2013), <https://sentencingproject.org/wp-content/uploads/2015/12/Life-Goes-On.pdf> [<https://perma.cc/K7YX-2JBQ>] [hereinafter NELLIS, LIFE GOES ON]; ASHLEY NELLIS, THE SENTENCING PROJECT, STILL LIFE: AMERICA’S INCREASING USE OF LIFE AND LONG-TERM SENTENCES (2017) [hereinafter NELLIS, STILL LIFE]. See LIFE WITHOUT PAROLE: AMERICA’S NEW DEATH PENALTY? (Charles J. Ogletree Jr. & Austin Sarat eds., 2012), for a collection of perspectival essays on the rise of life without parole sentencing.

¹² See BRANDON L. GARRETT, END OF ITS ROPE: HOW KILLING THE DEATH PENALTY CAN REVIVE CRIMINAL JUSTICE 25–26 (2017) (describing *Furman v. Georgia* and state legislative responses to Supreme Court decisions regarding the death penalty in the 1970s).

¹³ NELLIS, STILL LIFE, *supra* note 11, at 7 fig. 1.

¹⁴ See GARRETT, *supra* note 12, at 95–96 (describing increasing adoption of life without parole statutes, with thirty-three states having done so by 1990 and most of the rest having done so by 2012).

¹⁵ Regarding the public outcry concerning supposed juvenile “superpredators,” see, e.g., David S. Tanenhaus & Steven A. Drizin, “Owing to the Extreme Youth of the Accused”: The Changing Legal Response to Juvenile Homicide, 92 J. CRIM. L. & CRIMINOLOGY 641, 642–43 (2002) (describing how “[s]tate and local prosecutors and crime conservatives jumped on the ‘superpredator’ bandwagon, adopting the rhetoric in a full-scale assault on the legitimacy of

permitting—and prosecutors increasingly sought—LWOP sentences for juveniles.¹⁶ A small subset of states have long accounted for the vast majority of those JLWOP sentences; nine states have accounted for more than 80% of such sentences.¹⁷ What is less understood is whether county-level patterns and local behaviors within states drive JLWOP sentencing.

In this Article, we examine JLWOP sentencing in North Carolina in order to better understand the patterns in sentencing and the costs of such sentences. We focus on North Carolina as a case study because, as we describe in Part I, North Carolina is one of the nine states that have imposed the majority of JLWOP sentences in the U.S. Further, North Carolina continues to retain LWOP for juvenile offenders.¹⁸ While LWOP is no longer mandatory as a result of 2012 legislation enacted following the U.S. Supreme Court’s ruling in *Miller v. Alabama*, the lower-age-limit for sentencing an individual to LWOP for homicide in North Carolina is thirteen years old.¹⁹ We describe the protracted litigation that can result from the appeals taken in these cases and the reversals, including in cases in which the defendant was not the shooter or where substantial mitigating evidence was presented on appeal. One striking figure is that over one third of the juveniles sentenced to LWOP, thirty-two individuals, were convicted under a felony murder theory.²⁰ For example, in the case of *State v. Seam*, a sixteen-year-old defendant rejected a plea. He was not the shooter, and the prosecution

the juvenile court”); Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, N.Y. TIMES, Feb. 9, 2001, at A19. During this time period, most states also increased numbers of children tried as adults and housed in adult prisons. See AMNESTY INT’L, BETRAYING THE YOUNG: HUMAN RIGHTS VIOLATIONS AGAINST CHILDREN IN THE US JUSTICE SYSTEM 12 (1998).

¹⁶ MILLS ET AL., *supra* note 10, at 9 (“The overwhelming majority of JLWOP sentences being served today were handed down during the 1990’s when a moral panic about violent youth led to a dramatic rise in harsh sentencing practices against juveniles, including expanding the use of JLWOP.”).

¹⁷ *Id.* at 6 fig. 2. Those states are California, Florida, Illinois, Louisiana, Michigan, Mississippi, Missouri, North Carolina, and Pennsylvania.

¹⁸ We note that, partially in response to these findings, lawmakers in North Carolina are currently considering H.B. 775, Gen. Assemb., 2019 Sess. (N.C. 2019) 775, which would be entitled, “An Act to Eliminate Life Without Parole for Juveniles and to Modify Parole Eligibility for Juveniles Sentenced to More than Fifteen Years Imprisonment.” For coverage of this study, when first released as a report in early 2019, see, e.g., Virginia Bridges, *Dozens of NC Juvenile Offenders Are Serving Life Terms in Prison. Should They Get Another Chance?*, NEWS & OBSERVER, Feb. 11, 2019, <https://www.newsobserver.com/news/state/north-carolina/article226082615.html> [<https://perma.cc/2833-538T>]; Amanda Magnus & Frank Stasio, *Legal Experts Say Life Without Parole Should End for Juveniles*, N.C. PUB. RADIO, Feb. 19, 2019.

¹⁹ N.C. GEN. STAT. §§ 7B-2200, 15A-1340.19A (2019); 567 U.S. 460 (2012).

²⁰ See *infra* Figures A and B.

theory was felony murder.²¹ After trial, the judge sentenced him to JLWOP, unlike the actual killer, who took a plea.²² Post-*Miller*, the lower-court judge readily concluded that Seam should have his sentence reduced, but two sets of hearings and three rounds of appeals ensued before the sentence was finally reduced to life with the possibility for parole.²³

In Part II of this Article, we examine the cases of the ninety-four juveniles in North Carolina who were sentenced to JLWOP from 1994 to present.²⁴ Their ages at the time of the offense ranged from thirteen to seventeen. Of those, forty-eight are currently serving LWOP sentences (one more currently has a new trial pending).²⁵ These cases are detailed in Appendix A. Of those juvenile offenders, forty-five have so far been resentenced to non-LWOP sentences, largely pursuant to the post-*Miller* legislation in North Carolina.²⁶ We analyze these cases using several methods: we provide detailed descriptive information about these JLWOP cases, we analyze trends in sentencing and litigation, and we undertake regression analyses of county-level patterns. First, we describe how JLWOP sentencing has declined in North Carolina markedly since its highwater mark in the late 1990s; beginning in 2011, there have been either one or no such sentences each year. Second, we describe how these JLWOP sentences were highly concentrated in a handful of counties. Such county-level research has been conducted regarding death sentences in the United States, but not regarding LWOP sentencing.²⁷ Third, we describe the race of defendants sentenced to JLWOP, and how it correlates with the demographics of all

²¹ See *infra* Part I.E.

²² *Id.*

²³ *Id.*

²⁴ See *infra* Appendix A (listing all ninety-four such cases). These cases were identified from North Carolina Department of Corrections and Department of Public Safety records.

²⁵ In contrast, 203 offenders sentenced for crimes committed when seventeen or younger are serving life with parole sentences and sixty-three are serving terms of over forty years. North Carolina Department of Public Safety, *Life and 40+ Year Sentences For Those Sentenced When 17 or Younger*, SR1901-02, Nov. 14, 2018 (on file with author). Terms of over forty years may often consist in de facto or virtual life without parole sentences, given prison life expectancies, if they are not reconsidered prior to the end of the term.

²⁶ However, of these forty-one, two will not be eligible for parole for fifty years and another is not eligible for sixty-three years.

²⁷ See generally GARRETT, *supra* note 12 (presenting statistical analysis of death sentencing from 1973 to 2016); Brandon L. Garrett et al., *The American Death Penalty Decline*, 107 J. CRIM. L. & CRIMINOLOGY 561 (2017); James S. Liebman & Peter Clarke, *Minority Practice, Majority's Burden: The Death Penalty Today*, 9 OHIO ST. J. CRIM. L. 255, 299 (2011); Robert J. Smith, *The Geography of the Death Penalty and Its Ramifications*, 92 B.U. L. REV. 227, 265–75 (2012) (examining county-level death sentencing from 2004 to 2009).

juvenile homicide offenders in North Carolina. Fourth, we examine the procedural posture of pending cases that still await resentencing hearings under the post-*Miller* legislation. It is likely that many more of the remaining forty-four cases will result in non-LWOP sentences. Fifth, we employ a set of statistical analyses to explore the existence of an “inertia effect,” to understand if the institutional memory of past JLWOP sentences predicts future JLWOP sentences.

In Part III, we conclude by examining the costs of continued use of JLWOP based on the evidence described in this Article, and by making estimates of future costs. We note the lack of recent or ongoing JLWOP sentencing, and the estimated cost of the hearings and litigation required by past JLWOP sentences. Millions of dollars are being spent on years of hearings and appeals—including in cases that are obviously not fit for such severe sentences, such as cases in which the defendant was not the shooter or presented substantial mitigating evidence. We ask whether it makes practical sense to retain JLWOP going forward, given what an unusual, geographically limited, and costly sentence it has become. In conclusion, we describe alternatives to the JLWOP regime of North Carolina, including the models adopted in states such as California, Virginia, and Wyoming—in which there is periodic review of lengthy sentences imposed on juvenile offenders. We also describe how more reasonable prosecution approaches, short of the enactment of new legislation, could address the defects in the current approach towards juvenile life without parole.

I. THE NORTH CAROLINA ADOPTION OF LWOP AND JLWOP

A. NORTH CAROLINA’S ADOPTION OF JUVENILE LIFE WITHOUT PAROLE

North Carolina originally adopted LWOP for adults and for juveniles in 1994 as part of the change from the prior sentencing scheme, termed “Fair Sentencing,” to a new scheme termed “Structured Sentencing.”²⁸ The new statute eliminated parole and defined all life sentences as “natural life” sentences with no possibility for parole.²⁹ The following year, the legislature

²⁸ For four years, until the provision was repealed in 1998, the North Carolina statute also provided a safety valve in the form of judicial review of LWOP sentences after twenty-five years of imprisonment; sentences entered during that window will be eligible for review beginning in 2019. N.C. GEN. STAT. § 15A-1380.5 (repealed 1998). For a detailed analysis of that process, which has not yet resulted in any reviews, see James Markham, *Twenty-Five Year Review of Sentences to Life Without Parole*, North Carolina Criminal Law Blog (May 19, 2016, 1:43 PM), <https://nccriminallaw.sog.unc.edu/twenty-five-year-review-sentences-life-without-parole/> [https://perma.cc/7STY-JFPD].

²⁹ H.R. 27, 1994 Gen. Assemb., Extra Sess. (N.C. 1994).

also lowered the age for the transfer of juveniles to adult court for non-homicide offenses to the age of thirteen.³⁰ By taking these steps, North Carolina joined almost every state in adopting harsher and more adult punishments for juveniles in the mid-1990s.³¹

The JLWOP statute was constitutionally challenged, including under the Eighth Amendment, and affirmed by the North Carolina Supreme Court. In its 1998 decision, *State v. Green*, the court held that JLWOP sentences under the Structured Sentencing statute were constitutional and a “reasonable” legislative response to crime rates.³² The court also concluded that the crime in the case, committed by a thirteen-year-old, was “not the type attributable to or characteristic of a ‘child.’”³³

B. ADOLESCENT BRAIN SCIENCE AND U.S. SUPREME COURT RULINGS

While criminal laws have traditionally made sharp distinctions between the treatment of juvenile and adult offenders, a growing body of scientific research regarding adolescent brain development has established that development progresses well into a person’s twenties and does not conclude when a person turns eighteen. Studies of human brain development have found that adolescents do not possess well-formed characters and are still

³⁰ N.C. GEN. STAT. § 7A-608 (1997); *see also* *State v. Green*, 477 S.E.2d 182, 187–88 (N.C. Ct. App. 1996), *aff’d*, 502 S.E.2d 819 (N.C. 1998).

³¹ Patricia Torbet & Linda Szymanski, U.S. Dep’t of Justice, *State Legislative Responses to Violent Juvenile Crime: 1996-97 Update*, 6–9 (1998), <https://www.ncjrs.gov/pdffiles/172835.pdf>. [<https://perma.cc/V2FX-UUUH>]; *see also* Sara Sun Beale, *You’ve Come a Long Way, Baby: Two Waves of Juvenile Justice Reforms as Seen from Jena, Louisiana*, 44 HARV. C.R.-C.L. L. REV. 511, 514 (2009). Regarding the myth of the juvenile “superpredator” at that time, *see, e.g.*, Jane Rutherford, *Juvenile Justice Caught Between The Exorcist and A Clockwork Orange*, 51 DEPAUL L. REV. 715, 720–21 (2002); John Dilulio, Jr., *The Coming of the Super-Predators*, THE WASH. EXAM’R (Nov. 27, 1995), <https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators> [<https://perma.cc/24A5-T2EH>]; Equal Just. Initiative, *The Superpredator Myth, 20 Years Later* (Apr. 7, 2014), <https://eji.org/news/super-predator-myth-20-years-later> [<https://perma.cc/H98Z-Z945>].

³² *State v. Green*, 502 S.E.2d 819, 832 (N.C. 1998).

³³ *Id.*

developing the ability to make well-reasoned decisions.³⁴ Juveniles are more susceptible to impulse and to outside influences.³⁵

The U.S. Supreme Court emphasized this research in its 2005 ruling in *Roper v. Simmons*, finding that the Eighth Amendment barred the imposition of the death penalty on persons who were juveniles at the time of the offense.³⁶ The American Medical Association (AMA) filed an amicus brief in the case, arguing that “[a]dolescents’ behavioral immaturity mirrors the anatomical immaturity of their brains,” and the American Psychological Association (APA) similarly filed a neuroscience brief.³⁷ The Court noted, and cited to amici for the proposition, that juveniles have a “lack of maturity” and an “underdeveloped sense of responsibility,” which “often results in impetuous and ill-considered actions and decisions.”³⁸ Juveniles also lack foresight and often cannot be deterred by criminal punishments, since they are “less likely to take a possible punishment into consideration when making decisions.”³⁹

³⁴ See generally ELKHONON GOLDBERG, *THE EXECUTIVE BRAIN: FRONTAL LOBES AND THE CIVILIZED MIND* (2001); PETER R. HUTTENLOCHER, *NEURAL PLASTICITY: THE EFFECTS OF ENVIRONMENT ON THE DEVELOPMENT OF THE CEREBRAL CORTEX* (2002); M. MARSEL MESULAM, *Behavioral Neuroanatomy*, in *PRINCIPLES OF BEHAVIORAL AND COGNITIVE NEUROLOGY 1* (M. Marsel Mesulam ed., 2d ed. 2000); Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 *PROC. NAT’L ACAD. SCI.* 8174 (2004); Kenneth K. Kwong et al., *Dynamic Magnetic Resonance Imaging of Human Brain Activity During Primary Sensory Stimulation*, 89 *PROC. NAT’L ACAD. SCI.* 5675 (1992).

³⁵ *Miller v. Alabama*, 567 U.S. 460, 477 (2012) (citing to “immaturity, impetuosity, and failure to appreciate risks and consequences”).

³⁶ 543 U.S. 551, 578–79 (2005).

³⁷ Brief of the American Medical Ass’n et al. as Amici Curiae in Support of Respondent at 10, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633), 2004 WL 1633549; Brief for the American Psychological Ass’n and the Missouri Psychological Ass’n as Amici Curiae Supporting Respondent at 9–12, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633), 2004 WL 1636447.

³⁸ *Roper*, 543 U.S. at 569.

³⁹ *Graham v. Florida*, 560 U.S. 48, 72 (2010); For detailed critical discussion of the *Roper* ruling, see, e.g., Deborah W. Denno, *The Scientific Shortcomings of Roper v. Simmons*, 3 *OHIO ST. J. CRIM. L.* 379 (2006); Elizabeth F. Emens, *Aggravating Youth: Roper v. Simmons and Age Discrimination*, 2005 *SUP. CT. REV.* 51 (2005); Aliya Haider, *Roper v. Simmons: The Role of the Science Brief*, 3 *OHIO ST. J. CRIM. L.* 369 (2006); Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 *NOTRE DAME L. REV.* 89, 176 (2009); Stephen J. Morse, *Brain Overclaim Syndrome and Criminal Responsibility: A Diagnostic Note*, 3 *OHIO ST. J. CRIM. L.* 397, 408 (2006) (“*Roper* has been the most important case to propose use of the new neuroscience to affect responsibility questions generally.”).

These features of adolescent brain development impact the accuracy, as well as the fairness, of juvenile convictions and sentences.⁴⁰ Juveniles are more vulnerable or susceptible to negative influences and outside pressures.⁴¹ They may face greater difficulty working with counsel and understanding the consequences of interrogations or legal choices and proceedings.⁴² This suggestibility also makes juveniles particularly vulnerable to wrongful conviction, because they are more likely to falsely confess during police questioning.⁴³ Studies have found that juveniles are disproportionately represented among exonerations—specifically, exonerations that resulted from false confessions—meaning they are more often wrongfully convicted.⁴⁴ For these reasons, in *J.D.B. v. North Carolina*, the Court noted that “time and time again” the Justices have “observed that children generally are less mature and responsible than adults, that they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them, that they are more vulnerable or susceptible to . . . outside pressures than adults, and so on.”⁴⁵

Rulings by the U.S. Supreme Court interpreting the Eighth Amendment’s ban on cruel and unusual punishment have impacted juvenile sentencing in North Carolina, as in other death penalty and JLWOP states. In *Roper v. Simmons*, as noted, the Court found juvenile death sentences unconstitutional.⁴⁶ Following that ruling, three juveniles in North Carolina—all seventeen years old at the time of the offense—that had been sentenced to

⁴⁰ Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009 (2003).

⁴¹ *Graham*, 560 U.S. at 68; *see also Roper*, 543 U.S. at 569.

⁴² *Miller v. Alabama*, 567 U.S. 460, 477–78 (2012) (“inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys”) (citing *Graham*, 560 U.S. at 78 (“[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings[.]”)).

⁴³ For example, in *In re Gault*, 387 U.S. 1, 48 (1967), the Supreme Court noted that “[w]ith respect to juveniles, both common observation and expert opinion emphasize that the ‘distrust of confessions made in certain situations’ . . . is imperative in the case of children from an early age through adolescence.”

⁴⁴ SAMUEL GROSS & MICHAEL SHAFFER, EXONERATION IN THE UNITED STATES, 1989–2012: REPORT BY THE NATIONAL REGISTRY OF EXONERATIONS 60 (2012) (finding that 42% of exonerated defendants younger than eighteen at the time of the crime had confessed); Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1094 (2010) (finding that one-third of DNA exonerations who had falsely confessed were juveniles); Brandon L. Garrett, *Confession Contamination Revisited*, 101 VA. L. REV. 395 (2015) (updating analysis).

⁴⁵ 564 U.S. 261, 272 (2011) (citations omitted).

⁴⁶ 543 U.S. at 555–79.

death received resentencing following the *Roper* ruling that capital punishment could not be imposed on juvenile offenders.⁴⁷

In 2010, *Graham v. Florida* found juvenile life without parole sentences for non-homicide offenses unconstitutional.⁴⁸ Again, the American Medical Association and American Psychological Association filed neuroscience-based briefs explaining adolescent brain development.⁴⁹ That ruling, however, did not impact North Carolina, as no such sentences had been entered in the state. Finally, the U.S. Supreme Court's ruling in *Miller v. Alabama* forbade mandatory life without parole sentences for juvenile homicide offenses and mandated that sentencing judges consider such offenders' "youth and attendant characteristics" before imposing "the harshest possible penalty" for juveniles.⁵⁰

C. THE NORTH CAROLINA "MILLER FIX"

Within weeks of the *Miller* ruling,⁵¹ North Carolina lawmakers responded by passing a new statute requiring the sentencing court to consider

⁴⁷ North Carolina had permitted juvenile offenders to be sentenced to death. See N.C. GEN. STAT. § 14–17 (2003). The three such offenders are LaMorris Chapman, Kevin Golphin and Fransisco Tirado. See *infra* Appendix A. On the broader impact of *Roper*, see Barry C. Feld, *A Slower Form of Death: Implications of Roper v. Simmons for Juveniles Sentenced to Life Without Parole*, 22 NOTRE DAME J. L. ETHICS & PUB. POL'Y 9, 12–13 (2008). For work after *Roper* asking whether it would impact JLWOP see Barry C. Feld, *Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences*, 10 J. L. & FAM. STUD. 11, 43–70 (2007); Hillary J. Massey, *Disposing of Children: The Eighth Amendment and Juvenile Life without Parole after Roper*, 47 B.C. L. REV. 1083, 1084, 1091–98 (2006); Brianne Ogilvie, Note, *Is Life Unfair? What's Next for Juveniles after Roper v. Simmons*, 60 BAYLOR L. REV. 293, 307, 313–14 (2008).

⁴⁸ *Graham v. Florida*, 560 U.S. 48, 82 (2010).

⁴⁹ Brief for the American Medical Ass'n and the American Academy of Child and Adolescent Psychiatry as Amici Curiae in Support of Neither Party, *Graham, v. Florida*, 560 U.S. 48 (2010) (No. 08-7412), 2009 WL 2247127; Brief for the American Psychological Ass'n et al. as Amici Curiae Supporting Petitioners, *Graham, v. Florida*, 560 U.S. 48 (2010) (No. 08-7412), 2009 WL 2236778.

⁵⁰ *Miller v. Alabama*, 567 U.S. 460, 469, 479, 483, 489 (2012).

⁵¹ N.C. GEN. STAT. §§ 15A-1340.19A–19D (2019). The statute was titled, "An act to amend the state sentencing laws to comply with the United States Supreme Court Decision in *Miller v. Alabama*." 2012 N.C. Sess. Law 713–14. The prior statute made LWOP sentences mandatory. See N.C. GEN. STAT. §§ 14–17 (2009) (providing that "any person who commits [murder in the first degree] shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to [N.C.] G.S. [§] 15A-2000, except that any such person who was under eighteen years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole"); N.C. GEN. STAT. § 15A-1340.19B(a) (2013) ("If the sole basis for conviction of a count or each count of first degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.").

“all the circumstances of the offense” as well as the “particular circumstances of the defendant” and “any mitigating evidence.”⁵² The North Carolina Supreme Court, in interpreting the statute for the first time, ruled that it creates no presumption in favor of LWOP.⁵³ However, the court also held that factfinders should select a sentence “in light of the United States Supreme Court’s statements in *Miller* and its progeny [that LWOP sentences] should be reserved for those juvenile defendants whose crimes reflect irreparable corruption rather than transient immaturity.”⁵⁴ In addition, lawmakers in 2013 removed JLWOP for felony murder.⁵⁵

D. POST-MILLER LITIGATION

Post-*Miller*, as we will detail in Part III, some defendants have been sentenced to a term of years or a life with parole sentence, while others have been resentenced again to LWOP, and the rest are in the process of being resentenced.⁵⁶ Most recently, in *State v. Williams*, the North Carolina Court of Appeals highlighted again that under *Miller*, life without parole is “reserved for those juvenile defendants who exhibit such irretrievable depravity that rehabilitation is impossible.”⁵⁷ Montrez Williams was seventeen when he fatally shot two individuals in Mecklenburg County. He was convicted and sentenced to JLWOP in 2011.⁵⁸ The Court of Appeals reversed the trial court, noted that the trial judge had not found him irredeemable, and concluded, “There is no certain prognosis of Defendant[']s possibility of rehabilitation. The speculation of Defendant’s ability to be

⁵² N.C. GEN. STAT. §§ 15A-1340.19B, 15A-1340.19C (2019). The mitigating factors to be considered in sentencing include: (1) the offender’s age at the time of offense; (2) immaturity; (3) ability to appreciate the risks and consequences of the conduct; (4) intellectual capacity; (5) prior record; (6) mental health; (7) familial or peer pressure exerted upon him; (8) likelihood that he would benefit from rehabilitation in confinement; and (9) other mitigating factors and circumstances. § 15A-1340.19B.

⁵³ *State v. James*, 813 S.E.2d 195, 207 (N.C. 2018).

⁵⁴ *Id.*

⁵⁵ N.C. GEN. STAT. §§ 14–17(a), 15A-1340.19B (2013) (“If the sole basis for conviction of a count or each count of first-degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.”).

⁵⁶ *See, e.g., James*, 813 S.E.2d at 195 (remanding for further resentencing proceedings). For another case in process, see *State v. Sims*, 818 S.E.2d 401 (N.C. Ct. App. 2018), *cert. granted*, 820 S.E.2d 809 (N.C. 2018). The North Carolina Court of Appeals recently rejected a challenge to a pre-*Miller*-fix JLWOP sentence based on a felony murder theory of first-degree homicide. *State v. Seam*, 823 S.E.2d 605 (N.C. Ct. App. 2018).

⁵⁷ *State v. Williams*, 820 S.E.2d 521 (N.C. Ct. App. 2018). For a case in which the Court of Appeals upheld LWOP at resentencing under the post-*Miller* statute, see *Sims*, 818 S.E.2d at 401.

⁵⁸ *Williams*, 820 S.E.2d at 522.

rehabilitated can only be given minimal weight as a mitigating factor.”⁵⁹ The ruling in *Williams* cemented the serious weight that must be given to mitigating evidence during review of JLWOP sentences in North Carolina.

Derrick McRae’s case provides another example in which litigation of mitigation evidence resulted in a reversal. Before McRae’s trial, when he was tried for first degree murder as a sixteen-year-old, the prosecutors offered him a plea deal for which he would serve a sentence of eight to ten years. McRae rejected the deal, against the advice of his counsel.⁶⁰ The jury was hung with eight favoring acquittal. There was no physical evidence linking McRae to the crime, and the eyewitness accounts of the murder were mixed.⁶¹ The prosecutor then offered McRae a voluntary manslaughter sentence, which would require at most only thirteen more months in prison—a plea which McRae again refused, contending his innocence.⁶² At the second trial, the evidence largely consisted of the testimony of a co-defendant and a jailhouse informant.⁶³ Meanwhile, McRae had an unsympathetic demeanor during the trial, which the prosecutor commented on in closing argument, noting that McRae was “uncaring, unfeeling, not paying attention and unremorseful.”⁶⁴ McRae had schizophrenia at the time of the crime as well as the trial, and he did not receive his monthly Haldol injection to treat the symptoms before the trial.⁶⁵ McRae was convicted at the second trial and sentenced to LWOP in 1998.⁶⁶

In 2017, the Superior Court reversed the JLWOP sentence imposed on McRae, citing to a range of mitigating evidence.⁶⁷ First, the Court did not believe that the defendant was “irreparably corrupt or permanently incorrigible.”⁶⁸ One factor was the defendant’s age at the time of the crime (sixteen years and seven months).⁶⁹ As experts testified at the hearing, adolescent brains are not developed to weigh consequences, appreciate risks

⁵⁹ *Id.*

⁶⁰ John H. Tucker, *Did a Prosecutor and Police Send an Innocent Teenager to Prison for Murder?* INDY WK., Jan. 7, 2015, <https://indyweek.com/news/prosecutor-police-send-innocent-teenager-prison-murder/> [<https://perma.cc/9UQB-L63T>].

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Transcript of Evidentiary Hearing on Motion for Appropriate Relief at 424, *State v. McRae*, No. 96 CRS 1576, 2015 N.C. Super. LEXIS 486, at *1 (Sup. Ct. Richmond Cty. Feb. 4, 2015).

⁶⁸ *Id.*

⁶⁹ *Id.*

and benefits, or resist impulsive behavior.⁷⁰ Specifically, an expert clinical psychologist testified as to how adolescent brains are structurally and chemically different from adult brains, making them more sensitive to dopamine and more likely to engage in riskier behavior.⁷¹ The court focused on the mitigating factors of the defendant's immaturity, "attributable first to his brain not having been fully developed at this point," "the onset of schizophrenia," and "a very poor home environment."⁷² All adolescents are too immature to be evaluated as adults, and McCrae's immaturity was exacerbated by the early stages of schizophrenia and a poor home environment with a lack of parental guidance or control.⁷³ The judge also discussed the inability of the defendant to appreciate risks and the consequences of his actions. The judge found the defendant to be "more impaired than most adolescents at that age as a result of his level of cognitive ability, his limited exposure to positive influences during his childhood, and the emerging psychotic symptoms associated with his schizophrenia."⁷⁴ These symptoms were present at the time of the crime.⁷⁵ In addition, McCrae's intellectual capacity was also considered as a mitigating factor, as he had two IQ tests scores of 76 and 77.⁷⁶ Lastly, the defendant's behavior in prison, with very little aggressive behavior during his twenty years of incarceration, and progress in treating schizophrenia, informed the Superior Court judge's finding that he posed a low risk of reoffending.⁷⁷ Due to these factors, the defendant was resentenced to life with a possibility of parole, with parole eligibility beginning in 2021.⁷⁸

E. FELONY MURDER AND *STATE V. SEAM*

JLWOP cases have resulted in protracted litigation, including numerous trial court hearings and multiple rounds of appeals. For an example, take the case of Sethy Seam, who was sentenced in North Carolina in 1999 to LWOP for a murder and attempted robbery committed when he was sixteen.⁷⁹ He

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 426.

⁷⁵ Christine S. Carroll, *Judge Grants Possibility of Parole*, Daily Journal (Richmond County), Sept. 28, 2017, <https://www.yourdailyjournal.com/news/76046/judge-grants-possibility-of-parole> [<https://perma.cc/2R7X-CYPY>].

⁷⁶ Transcript of Evidentiary Hearing on Motion for Appropriate Relief at 426, *State v. McCrae*, No. 96 CRS 1576.

⁷⁷ *Id.*

⁷⁸ *Id.* at 428–29.

⁷⁹ *State v. Seam*, 552 S.E.2d 708 (N.C. Ct. App. 2001).

was not the shooter; the prosecution sought this charge under a felony murder theory.⁸⁰ This was surprisingly common in North Carolina JLWOP cases. Just over one third of the juveniles sentenced to LWOP, thirty-two individuals, were convicted under a felony murder theory.⁸¹ The State presented evidence that Seam and his friend, Freddie Van, went into a Superette convenience store in Lexington, North Carolina.⁸² The State further presented evidence that it was Van who pulled out the pistol, demanded money, and after a fist-fight ultimately shot the convenience store clerk three times; the wounds were fatal.⁸³ Both defendants unsuccessfully tried to open the cash register and then fled.⁸⁴ The State also presented evidence that the two discussed not telling anyone what had happened and that Seam hid the murder weapon in the woods and helped Van try to sell the weapon the next day.⁸⁵

In a statement he made to police shortly after the crime, Seam told officers that he did not know that his friend had intended to rob or shoot the convenience store clerk.⁸⁶ The State did not present evidence that Seam was aware that his friend had a gun prior to entering the store, and the defendant contended that he was not aware.⁸⁷ Indeed, perhaps because he was not the shooter, the State had offered Seam a plea deal that would have entailed a sentence of eighteen years.⁸⁸ The co-defendant, who was the shooter, took a plea offer and did not receive a life sentence.⁸⁹ However, Seam turned down the plea, and at trial the judge imposed a LWOP sentence.⁹⁰

Twelve years later, in 2011, a Superior Court judge granted a hearing in the case, following the enactment of the post-*Miller* legislation in North Carolina.⁹¹ In 2013, the Superior Court held hearings and determined that

⁸⁰ *Id.*

⁸¹ *See infra* Figures 1 & 2.

⁸² *State v. Seam*, 805 S.E.2d 302, 303 (N.C. 2001).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Witnesses Say Teen Tried to Sell Pistol After*, GREENSBORO NEWS AND RECORD, Sept. 30, 1999, at B2.

⁸⁷ Brief for the State at 15, *State v. Seam*, 823 S.E.2d 605 (N.C. Ct. App. 2018) (No. COA18-202) (describing defendant's "claims that he did not know his co-defendant had a gun and did not know that he planned to rob the convenience store" and responding by stating that defendant was "present" in the store when the gun was "pulled").

⁸⁸ Order, *State v. Seam*, 97 CRS 21110-21111 (May 5, 2011).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

Seam's sentence was not constitutional and ordering a resentencing.⁹² This ruling was appealed to the North Carolina Supreme Court, which affirmed in a summary opinion in December 2016.⁹³ Also in December 2016, the trial judge resentenced Seam to a sentence of 183 to 229 months.⁹⁴ The judge emphasized that Seam was convicted under the felony murder doctrine, explaining that “[w]hen compared to an adult murder, a juvenile who did not kill or intend to kill has a twice diminished moral culpability.”⁹⁵ The judge also noted that Seam deserved to be sentenced to a lesser term than the “actual killer,” who took a plea offer.⁹⁶

The State again appealed—successfully this time—arguing that the judge, by deciding the matter before the Supreme Court mandate issued (in order to decide the case before he retired), did not yet have jurisdiction.⁹⁷ A second resentencing hearing was held in 2017, and Seam was resentenced to life with the possibility of parole.⁹⁸ This time, the district attorney conceded that a non-LWOP sentence was appropriate.⁹⁹ In 2013, the legislature had enacted a statute providing, “If the sole basis for conviction of a count or each count of first degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.”¹⁰⁰

Seam continued to appeal, seeking a term-of-years sentence and arguing that the statute was unconstitutional as applied to felony murder convictions and to himself. In this third round of appeals, the Court of Appeals found the life with the possibility of parole sentence to be constitutional.¹⁰¹

The case illustrates the protracted litigation that occurs in post-*Miller* North Carolina, even in the cases in which current substantive law does not permit JLWOP sentences. The Sections that follow detail patterns in JLWOP sentencing in North Carolina, as well as rulings in post-*Miller* litigation regarding such sentences.

⁹² Order, *State v. Seam*, 97 CRS 21110-21111 (Aug. 8, 2013).

⁹³ *State v. Seam*, 794 S.E.2d 439 (N.C. 2016).

⁹⁴ Order, *State v. Seam*, 97 CRS 21110-21111 (Dec. 30, 2016).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *State v. Seam*, 805 S.E.2d 302 (N.C. Ct. App. 2017).

⁹⁸ Order, *State v. Seam*, 97 CRS 21110-21111 (Oct. 11, 2017).

⁹⁹ *Id.*

¹⁰⁰ N.C. GEN. STAT. § 15A-1340.19B(a) (2017).

¹⁰¹ *State v. Seam*, 823 S.E.2d 605 (N.C. Ct. App. 2018).

II. ANALYSIS OF NORTH CAROLINA JLWOP SENTENCING DATA, 1994–2018

In the Sections that follow, we analyze data collected on JLWOP sentences in North Carolina. Data was obtained from the North Carolina Department of Public Safety and compared with data collected by North Carolina Prisoner Legal Services.¹⁰² We detail the ninety-four cases in which juveniles have been sentenced to LWOP to date and analyze: (A) trends in such cases over time, (B) data concerning race, (C) data concerning county-level patterns, (D) the procedural status of these cases, including reversals and pending hearings, and (E) a possible inertia effect in counties where JLWOP sentencing is observed.

A. TRENDS IN JLWOP SENTENCING

About one-third of the juveniles who had been sentenced to LWOP in North Carolina, in total thirty persons, were sentenced from 1994 to 1999. From 2000 to 2009, fifty-two juvenile offenders were sentenced to LWOP. From 2010 to the present, just twelve juvenile offenders were sentenced to LWOP. These data include cases in which there have been post-*Miller* resentencing, and the individual has received a non-LWOP sentence or has already been provided a non-LWOP sentence.

Figure 1. JLWOP Sentences in North Carolina, 1994–2018¹⁰³



One can readily see how JLWOP sentencing has declined; after 2011, there were only five such sentences in North Carolina. It should be noted that these figures do not include cases in which defendants were convicted of first-degree homicide pursuant to the 2012 post-*Miller* legislation and a life with parole or term of years sentence was imposed, because the trial judge

¹⁰² See *infra* Appendix A.

¹⁰³ The 2018 data is current through August 2018 and thus does not include all sentences entered in that year. We do not include 2019 data, but there were no JLWOP sentences in North Carolina. We have updated all procedural information about these cases through the end of 2019.

determined under the statute that no LWOP sentence was warranted. These figures also do not capture cases in which prosecutors charged first-degree homicide in juvenile cases, but negotiated lesser charges—resulting, for example, in second-degree murder pleas by juvenile offenders.¹⁰⁴

That group of cases, in which juveniles received non-LWOP sentences, also sheds light on the wide range of outcomes that result when JLWOP charges are sought, but not obtained. There have been thirty-five murder prosecutions of juveniles in North Carolina since the *Miller* ruling.¹⁰⁵ Of those, twenty-five defendants were white, eight were black, and one Latinx. Of those cases, eleven cases were dismissed without leave, and in two more a no true bill was returned, when the grand jury did not indict, for a total of 37% (thirteen of thirty-five) dismissal of the cases. In two of the cases, 6%, there was a plea to first degree murder. In eleven cases, 31%, there was a plea to second degree murder. The remaining cases involved pleas to voluntary manslaughter (five cases) and accomplice to second degree murder (one case). Two cases went to trial and did not result in LWOP sentences; one case resulted in a first-degree murder conviction while the other resulted in a manslaughter conviction. Just three of these thirty-five cases resulted in first degree murder convictions.¹⁰⁶

B. RACE AND JUVENILE HOMICIDE RATES

Researchers have observed that there are “highly disparate rates of imposing JLWOP on persons of color,” ranging from 68% to 88% of JLWOP sentences, and, astoundingly, 100% of those convicted in Texas when the penalty was available.¹⁰⁷ In North Carolina, we observe that among the ninety-four individuals who were sentenced to JLWOP sentences, all but three are male. 8.5% (eight of ninety-four) are white; 81% (seventy-six of ninety-four) are black; 5% (five of ninety-four) are Latinx, 3% (three of ninety-four) are Asian; and 2% (two of ninety-four) are Native American. Thus, the vast majority, or 91.5% of those sentenced to JLWOP, are people of color or members of minority groups. Of the forty-five defendants who

¹⁰⁴ For an example of such a case, see William F. West, *McDonald Pleads Guilty, Gets 25–31 Years*, DAILY ADVANCE, May 22, 2018, at <http://www.dailyadvance.com/News/2018/05/22/McDonald-pleads-guilty-gets-25-31-years.html> [<https://perma.cc/FCV2-X2RT>].

¹⁰⁵ See *infra* Appendix A.

¹⁰⁶ These data reflect information collected by North Carolina Prisoner Legal Services.

¹⁰⁷ See MILLS ET AL., *supra* note 10, at 11 (“All of those serving JLWOP in Texas are persons of color. Other states also have highly disparate rates of imposing JLWOP on persons of color, including North Carolina (88% of the JLWOP population), Pennsylvania (80% of the JLWOP population), Louisiana (80% of the JLWOP population), Illinois (78% of the JLWOP population), Mississippi (68% of the JLWOP population), and South Carolina (68% of the JLWOP population).”).

have received sentences of less than LWOP post-*Miller*, three were white, one is Native American, three were Latinx, and two were Asian. The other thirty-six were black.¹⁰⁸

These data reflect underlying racial demographics of homicides in North Carolina. Since 1994, juvenile murders have generally declined nationwide.¹⁰⁹ The FBI's Supplemental Homicide Reports for the years 1994 through 2016 describe demographics of juvenile homicide offenders, of which there were 925.¹¹⁰ Among those offenders, 217 were white, while 681 were black (and twenty-one were Asian, Native American, or other—with the rest being unknown).¹¹¹ The homicide commission rate by black juveniles in North Carolina from 1994 to 2016 was 74%. The white juvenile homicide rate during that time period was 23%. The FBI does not have a Latinx category for data reporting during that time period.¹¹² The national data concerning juvenile murder offenders similarly disparate, with the disparity greatest in the 1990s, when almost twice as many juvenile murders were committed by black as opposed to white offenders.¹¹³

C. COUNTY-LEVEL PATTERNS

In the death penalty context, researchers have found stark differences in county-level patterns in sentencing, using nationwide data. For example, researchers have found that the race of the victim was a strong predictor of death sentencing patterns.¹¹⁴ They have also found that there was a shift over time from rural to urban counties in death sentencing, for reasons that may include the cost of seeking death sentences and resources available for prosecution and defense in capital cases.¹¹⁵ While there is a large literature

¹⁰⁸ See *infra* Appendix A.

¹⁰⁹ Offending by Juveniles, Federal Bureau of Investigation. *Supplementary Homicide Reports* for the years 1980–2016, *OJJDP Statistical Briefing Book* (August 22, 2018). <https://www.ojjdp.gov/ojstatbb/offenders/qa03101.asp?qaDate=2016> [https://perma.cc/MDK6-75DB].

¹¹⁰ OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, EASY ACCESS TO THE FBI'S SUPPLEMENTARY HOMICIDE REPORTS: 1980–2016, <https://www.ojjdp.gov/ojstatbb/ezas/hr/> [https://perma.cc/Q94W-3PX5].

¹¹¹ Federal Bureau of Investigation, *OJJDP Statistical Briefing Book, Supplementary Homicide Reports* for the years 1980–2016, <https://www.ojjdp.gov/ojstatbb/offenders/qa03101.asp?qaDate=2016> (released on August 22, 2018) [https://perma.cc/MDK6-75DB].

¹¹² ERICA L. SMITH & ALEXIA COOPER, BUREAU OF JUSTICE STATISTICS, HOMICIDE IN THE U.S. KNOWN TO LAW ENFORCEMENT, 2011 16 (December 2013) (“Due to the lack of reporting of ethnicity by submitting law enforcement agencies, homicide rates by Hispanic or Latinx origin were not calculated.”).

¹¹³ *Id.*

¹¹⁴ Garrett et al., *supra* note 27, at 606.

¹¹⁵ *Id.*

on geographic disparities in death sentencing, no one has previously studied county-level patterns in the use of LWOP or JLWOP.

We see a strong county-level concentration of JLWOP sentencing in North Carolina. There are 100 counties in North Carolina. Figure 2 displays the number of JLWOP sentences in North Carolina, by county, in the eleven counties with three or more such sentences. A total of 61%, fifty-seven of the ninety-four LWOP sentences in North Carolina, were entered in these 11 counties in North Carolina. Just taking the five top counties—Cumberland, Wake, Mecklenburg, Guilford, and Forsyth—one sees thirty-eight sentences, 40% of all JLWOP sentences, during that time period.

Figure 2. JLWOP Sentences in Top Counties, 1994–2018

County	Number of LWOP Sentences
Cumberland	11
Wake	8
Mecklenburg	7
Guilford	6
Forsyth	6
Robeson	4
Durham	3
Cleveland	3
Johnston	3
Wilson	3
New Hanover	3
Total	57

The figures below show how some of these county-level patterns have persisted over time, even as JLWOP sentences have declined.

Figure 3. North Carolina JLWOP Sentences by County, 2010–2018

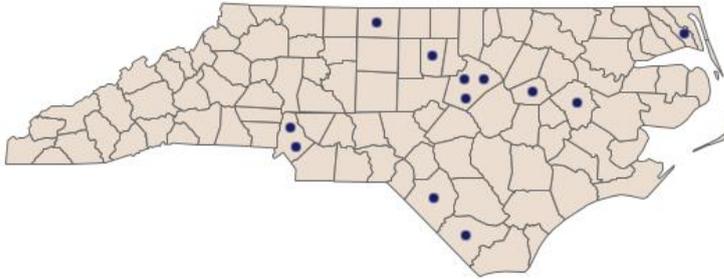


Figure 4. North Carolina JLWOP Sentences by County, 2000–2009

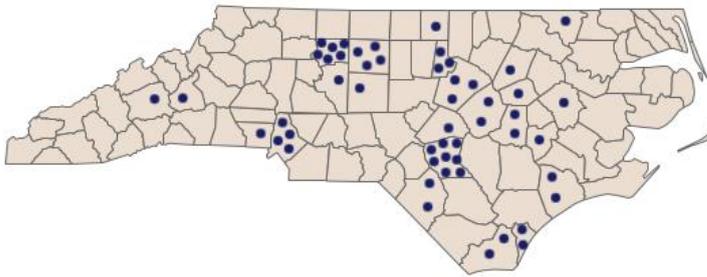
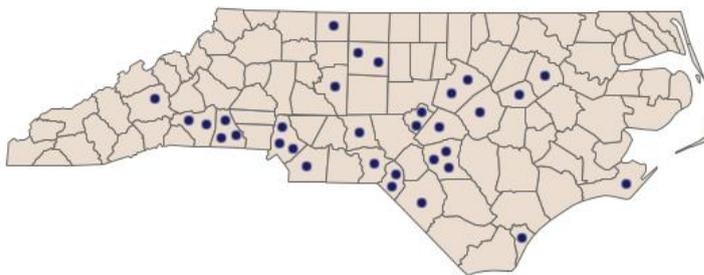


Figure 5. North Carolina JLWOP Sentences by County, 1995–1999



We conducted statistical testing to identify the contributing factors in juvenile JLWOP sentencing. These tests were intended to identify possible variables that would increase or decrease the likelihood of a JLWOP sentence

being imposed on an individual defendant. The JLWOP data was transformed into a county-year dyad format. Since there are 100 counties in North Carolina and our JLWOP sentencing data covers twenty-four years (1995 to 2018), there are 2,400 observations. Around 97% of the county-year dyads report no observed JLWOP sentences.¹¹⁶ A Logit regression was used in order to understand how county-level effects correlate with the presence of a JLWOP sentence. The dependent variable *JLWOP Sentence* was valued at one if there had been at least one JLWOP sentence in the given county and year. A number of covariates were also included in the model.¹¹⁷ The homicide rate, measured as the number of homicides per 100,000 in each county-year, was provided by the FBI's Homicide Reports.¹¹⁸ The percent of the population in each county that is black was provided by the U.S. Census Bureau.¹¹⁹ The density of each county's population was also provided by the Census Bureau. Population density is measured as the number of people per square mile of land within a county.¹²⁰ The poverty rate in each county was again provided by the Census Bureau and is defined as the percent of families in poverty.¹²¹ The results of the regression are displayed in Appendix C.

¹¹⁶ Negative Binomial regression models are typically used to model over-dispersed count outcomes. An alternative regression model for count dependent variables is derived from the Poisson distribution. A Poisson regression assumes there is no over-dispersion and the mean and standard deviation are equal. J. Scott Long, *Regression Models for Categorical and Limited Dependent Variables*, in 7 *ADVANCED QUANTITATIVE TECH. IN THE SOC. SCI.* 1 (1997). However, given the rarity of observing a JLWOP sentence, where the mean number of sentences is 0.04, and the standard deviation is 0.22, we decided that modeling the dependent variable, JLWOP Sentence, as a binary variable and applying Logistic regression was a more computationally sound approach.

¹¹⁷ Fixed effects for years and counties was also included in each model to control for unobserved and heterogenous relationships within the data.

¹¹⁸ See, e.g., Uniform Crime Reporting Program, Supplemental Homicide Reports Data: 2014, NATIONAL ARCHIVE OF CRIMINAL JUSTICE DATA, <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/36393/version/1> [<https://perma.cc/EJ8R-GU9L>]; U.S. CENSUS BUREAU, INTERCENSAL ESTIMATES, <http://www.census.gov/popest/data/historical/index.html> [<https://perma.cc/FDK4-E8CD>]; U.S. CENSUS BUREAU, 2016 FIPS CODES, <https://www.census.gov/geographies/reference-files/2016/demo/popest/2016-fips.html> [<https://perma.cc/FDK4-E8CD>].

¹¹⁹ U.S. CENSUS BUREAU, COUNTY POPULATION TOTALS AND COMPONENTS OF CHANGE: 2010–2018, <https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html> [<https://perma.cc/Z8Y4-995B>]; U.S. CENSUS BUREAU, INTERCENSAL ESTIMATES, <https://www.census.gov/programs-surveys/popest/data.html> [<https://perma.cc/2TL9-MKSN>].

¹²⁰ See, e.g., U.S. CENSUS BUREAU, DENSITY USING LAND AREA FOR STATES, COUNTIES, METROPOLITAN AREAS, AND PLACES, <https://www.census.gov/population/www/censusdata/density.html> [<https://perma.cc/7P5A-MYMA>].

¹²¹ In alternative specifications we included a count of previous death penalty sentences, a one-year lag of the homicide rate, and a one-year lag of the count of death penalty sentences.

The results of the regression suggest that the homicide rate and population density within a county do not have a statistically significant relationship with observing at least one JLWOP sentence.¹²² We also specified the homicide rate within the black population and the homicide rate in the white population for each county in separate models and again found no statistically significant results. This suggests the homicide rate in a county, regardless of the victim's race, does not correlate with the likelihood of observing a JLWOP sentence within the county.

We found that the percent of the population in a county that is black and the poverty rate within a county do have statistically significant relationships with observing at least one JLWOP sentence. For every 1% increase in the black population within a county, the odds of observing a JLWOP sentence (versus not observing a JLWOP sentence) increase by a factor of 1.036. For every 1% increase in the poverty rate within a county, the odds of observing a JLWOP sentence (versus not observing a JLWOP sentence) decrease by a factor of 0.22.

To summarize, the results of this analysis suggest that we are more likely to observe JLWOP sentences in North Carolina counties with a black population that is above average (20.9%) and in counties where the poverty rate is below average (16.1%). This is highly consistent with recent patterns in death sentencing, in which counties with higher income, but also larger black populations, have imposed more death sentences.¹²³ In contrast, the homicide rate and population density of these counties does not provide predictive information for observing a JLWOP sentence.¹²⁴

D. POST-MILLER REVERSALS

As described, 48% (forty-five of ninety-four) JLWOP sentences in North Carolina have been reversed. They have almost all been resentenced to life sentences with parole. In addition, one of the ninety-four is currently pending a new trial.¹²⁵ Although seven years have passed since the post-

¹²² See *infra* Appendix, Section B for results with reported standard errors.

¹²³ These findings are consistent with analyses of death sentencing, in which death sentences are more common in counties with a larger black population; in that context, however, death sentences were more common in counties with greater population density, and there was no statistically significant finding regarding income. See Garrett et al., *supra* note 27, at 593–94. A study examining death sentences from 1982 through 1999 in five states found an association between death sentencing and lower-income counties. Theodore Eisenberg, *Death Sentence Rates and County Demographics: An Empirical Study*, 90 CORNELL L. REV. 347, 359 (2005).

¹²⁴ These findings do not reflect the pattern seen in death sentencing regarding population density and homicide rates. See Garrett et al., *supra* note 27, at 593–94.

¹²⁵ See Figure A.

Miller legislation was adopted in North Carolina, in many cases, as displayed in Figure A, hearings have not yet been held. Thus, it is likely, given the outcomes to date, that far more JLWOP sentences will be reversed in the years to come. The figure below displays the results in the forty-nine post-Miller hearings so far held in North Carolina as well as cases in which no hearing has yet been held.

Figure A. Results in Post-Miller Hearings

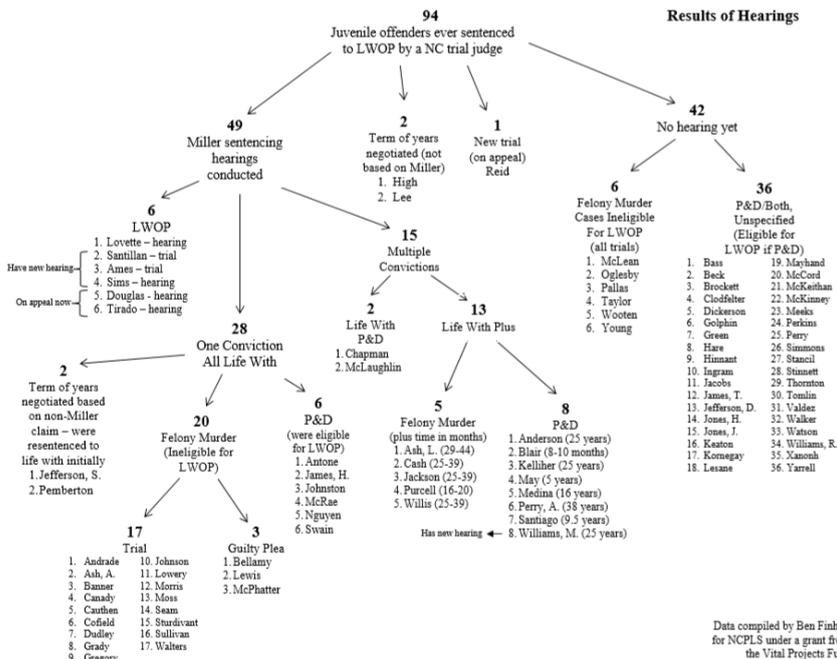
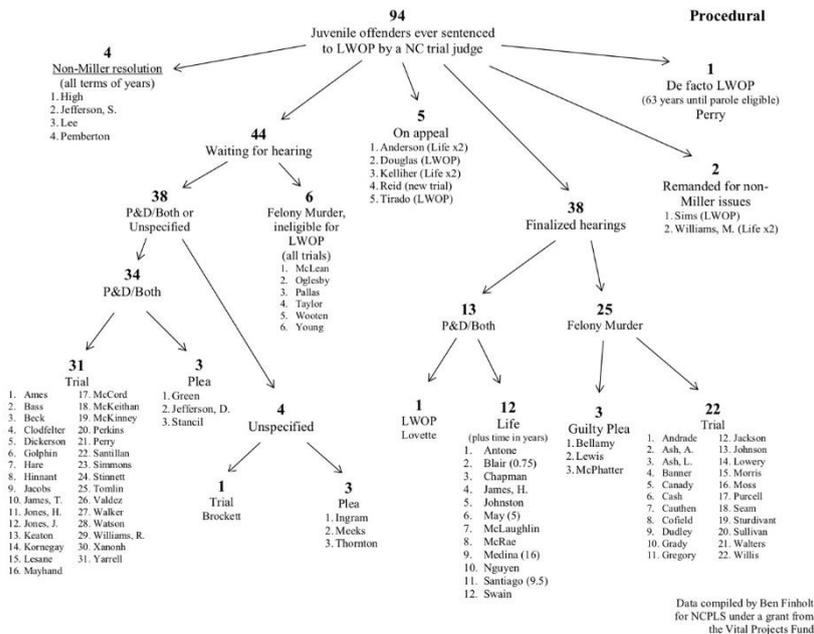


Figure B displays the current procedural posture of juvenile life without parole cases in North Carolina. Of the fifty-two cases requiring resolution, forty-six are still waiting for a hearing. Again, given the outcomes in the cases that have had hearings thus far, it is likely that many of the remaining JLWOP cases in North Carolina will result in reversals in the years to come.

Figure B. Procedural Posture of North Carolina JLWOP Cases



E. INERTIA EFFECT IN JLWOP SENTENCING

In the empirical literature on death sentencing, researchers have identified an “inertia” or “muscle memory” effect; once a county starts using a sentence, it continues to do so more often.¹²⁶ An inertia effect implies there is some kind of institutional memory. A selection model was implemented across our county-year data in order to assess if there is an inertia effect for JLWOP sentences in North Carolina counties.¹²⁷ Here, we observe the same county characteristics as before (i.e., poverty rate, population density, black

¹²⁶ See GARRETT, *supra* note 12, at 149–50 (describing findings concerning county-level concentration and inertia for death sentences from 1990–2016); Lee Kovarsky, *Muscle Memory and the Local Concentration of Capital Punishment*, 66 DUKE L.J. 259 (2016) (describing increasing concentration of death sentences at the county-level); Garrett et al., *supra* note 27, at 567 (“[T]he entrenched practices or ‘muscle memory’ of a county matters a great deal in death sentencing. We found that across a range of measures, inertia in county death sentencing practices, or prior death sentences, is strongly associated with death sentencing.”).

¹²⁷ The results of the first stage of the selection model are presented: the model utilized a Logistic regression. The second stage of the selection model has an outcome variable that is the count of JLWOP sentences observed. The results of the second stage are not shown, as they are not the focus of this subsection.

population share), and we also include a count of previous JLWOP sentences and a count of previous death penalty sentences.¹²⁸ These regression results are displayed in Appendix C.

The result of this regression indicates that as the number of past JLWOP sentences increases, the more likely we are to observe a county imposing a JLWOP sentence in subsequent cases.¹²⁹ The results also suggest that as the number of prior death penalty sentences increases, the likelihood we observe a county applying a JLWOP sentence decreases; however, this is a very small effect. For example, if there had been five previous death penalty sentences in a county, with all else being equal, the probability we observe a JLWOP sentence decreases by 1.8%.

To fully interpret the results, the predicted probability of observing a county applying a JLWOP sentence is estimated while varying the number of previous JLWOP sentences (zero to seven). All other variables in the model were held at their mean values.¹³⁰ This estimation process suggests the following: when there has never been a JLWOP sentence in a county, there is a 55.9% probability of observing a JLWOP sentence. However, when there have been two prior JLWOP sentences, this probability rises to 62.1%. When there have been seven prior JLWOP sentences, the probability of observing a JLWOP sentence in this county rises to 72.7%.

These results suggest that inertia matters more than homicide rates. The results imply that a county's prior use of JLWOP is far more predictive of JLWOP sentencing than a county's crime rates. Regardless of whether we study homicide rates per 100,000 in each county-year, homicides rates within the black population of each county, or homicide rates within the white population, the homicide rate does not have a statistically significant correlation with use of JLWOP. In sum, once a county has used a JLWOP sentence, that county has a higher probability of using a JLWOP sentence again in the future. Institutional inertia appears to be a source of the sentences, possibly due to preferences of prosecutors, law enforcement, or receptivity of jurors to such sentences, driving the initial JLWOP sentencing decisions.¹³¹

¹²⁸ Once again, fixed effects for year and counties were included in the regression.

¹²⁹ Please refer to Appendix C for results with reported standard errors.

¹³⁰ The county fixed effect was set to Wake County and the year fixed effect was set to 2016.

¹³¹ See Garrett et al., *supra* note 27, at 600 ("This path dependency may reflect practices of prosecutors who make the charging decisions whether to seek the death penalty, but it may also capture defense lawyering, judges, jurors, and other features of a county that make it more likely to continue to death sentence over time.").

There is anecdotal evidence supporting this finding of an inertia effect. In North Carolina, prosecutor's offices have taken policy positions on seeking JLWOP. For example, the former Mecklenberg District Attorney sought LWOP in every single one of the JLWOP cases that were eligible for re-sentencing post-*Miller*, suggesting a blanket policy towards JLWOP.¹³² If so, then this is another important area in criminal justice in which local-level decision-making, which may not be formal or stated in policy or public statements, affects serious sentencing decisions more so than crime rates or other factors. Future research should examine this phenomenon in other states and for other sentences.

III. COST AND IMPLICATIONS OF MAINTAINING JLWOP IN NORTH CAROLINA

A. COSTS OF JLWOP

We have described a process in which JLWOP sentences were used primarily in a small set of counties in the 1990s, before fading in their imposition. During the post-*Miller* period, 40% were reversed, and hearings are pending in most of the remaining cases. These findings raise the question of what the cost is of retaining JLWOP going forward, given its rare imposition since 2011 and the large number of resource-intensive hearings that must still be conducted. What is the cost to the court system, defense attorneys, and prosecutors of conducting the review of JLWOP cases? These *Miller* hearings are expensive due to the retrospective focus on mitigation evidence, including the entire social and medical history of the defendant, and the accompanying need to retain, on both sides, a range of experts.¹³³ Hearings will then produce appeals, and sometimes the result will be re-hearings.

Little is known about the full set of expenses associated with that process, but some estimates are available. In Louisiana, one estimate posited that defense costs for hearings could run \$50,000 to \$70,000 per case.¹³⁴ That

¹³² Herbert L. White, *Throw Away the Key: Kid Killers, Restorative Justice and the Law*, CHARLOTTE POST (Oct. 17, 2018, 11:37 AM), <http://www.thecharlottepost.com/news/2018/10/17/local-state/throw-away-the-key-kid-killers-restorative-justice-and-the-law/> [https://perma.cc/2KBS-AYRF].

¹³³ For an overview, see Antoinette Kavanaugh & Thomas Grisso, *Prospects for Development of Expert Evidence in Juvenile "Montgomery" Resentencing Cases*, 22 PSYCHOL. PUB. POL'Y & L. 235 (2016).

¹³⁴ Bryn Stole, *With New Law on the Books, Louisiana Courts Prepare to Re-Sentence Hundreds of Juvenile Murderers*, THE ADVOCATE (July 23, 2017, 2:00 PM), https://www.theadvocate.com/baton_rouge/news/courts/article_dc5ae4c2-6f28-11e7-9633-2bee1fbaf113.html [https://perma.cc/WT3K-XNPR].

estimate may be a real understatement. The defense must look to the type of mitigation obligations applicable to counsel in death penalty cases. Trial guidelines include litigation teams with qualified defense counsel, an investigator, a mitigation specialist, and, if appropriate, an interpreter.¹³⁵ The defense must interview people who have known the defendant for the person's entire life, including family members, teachers, prison staff, probation officers, counselors, doctors, neighbors, co-workers, friends, and mental health professionals.¹³⁶ Records from the relevant agencies must be collected, including from schools, work, foster care, mental health care, hospitalization, prison records, and more.¹³⁷ Expert psychological and psychiatric evaluations may need to be done, as well as—where applicable—assessments regarding child trauma, sexual and physical abuse, neurological development, substance abuse, traumatic brain injury, and other conditions.¹³⁸ In death penalty cases, those costs can run into the hundreds of thousands of dollars, and even the millions.¹³⁹ The cost of incarceration for life is far larger. A fifty-year sentence for a sixteen-year-old has been estimated, based on national average costs, as costing approximately \$2.25 million.¹⁴⁰

North Carolina legislation introduced in 2019, which would replace JLWOP with life with parole sentences and parole eligibility after twenty-five years for first degree murder convictions, and parole eligibility after fifteen years for persons convicted of other offenses and sentenced to more than fifteen years, has been accompanied by cost estimates concerning its adoption.¹⁴¹

Authors of this article, in a fiscal impact letter regarding the legislation, noted that the legislation results in earlier parole eligibility for eighty-seven prisoners who were under eighteen at the time they committed crimes leading

¹³⁵ See *Trial Defense Guidelines: Representing Child Client Facing Possible Life Sentence*, CAMPAIGN FOR FAIR SENTENCING OF YOUTH (2015), <http://fairsentencingofyouth.org/wp-content/uploads/2015/03/Trial-Defense-Guidelines-Representing-a-Child-Client-Facing-a-Possible-Life-Sentence.pdf> [<https://perma.cc/UYE5-R4LJ>].

¹³⁶ For an overview of mitigation work in capital cases, see GARRETT, *supra* note 12, at 127–30; regarding the obligation to conduct such work in capital cases, see *id.* at 71.

¹³⁷ *Id.* at 57.

¹³⁸ *Id.* at 22–23.

¹³⁹ For an overview of studies on cost in the death penalty context, see Death Penalty Information Center, *State and Federal Cost Studies*, at <https://deathpenaltyinfo.org/costs-death-penalty> [<https://perma.cc/CY7B-FD6N>].

¹⁴⁰ ROVNER, *supra* note 5, at 1.

¹⁴¹ H.B. 775, Gen. Assemb., 2019 Sess. (N.C. 2019), available at <https://www.ncleg.gov/Sessions/2019/Bills/House/PDF/H775v1.pdf> [<https://perma.cc/A9RJ-NY5H>].

to their life sentences.¹⁴² Those prisoners are currently either ineligible for parole or will not become eligible for more than twenty-five years. Suppose these prisoners were fairly promptly released on parole (to be sure, we do not know how quickly they would be granted parole, should the new legislation be adopted). The cost of five years of parole is as follows: the North Carolina Department of Public Safety estimates that supervising one inmate on parole for one year costs the state \$1,938, based on the fiscal year ending June 30, 2017.¹⁴³ Thus, it would cost approximately \$10,000 per inmate for the five years of parole supervision (and perhaps more if there are infractions or additional treatment and services). We noted that the cost to house one inmate for one year, based on the fiscal year ending June 30, 2018, is an average of \$36,219.¹⁴⁴ We estimated, at a conservative inflation rate of 2%, that in fifty years the annual cost to house an inmate will be \$95,575.¹⁴⁵ In North Carolina, the average life expectancy is seventy-eight years.¹⁴⁶ The eighty-seven inmates affected by this litigation are, on average, thirty-six years old and will spend at least 2,280 more years in prison combined.¹⁴⁷ The minimum cost to house these eighty-seven prisoners until death or their earliest parole release will be approximately \$163.6 million.¹⁴⁸ If these prisoners earned parole release under the new legislation, they would serve 624 more years combined. The cost of their incarceration would be only \$34.7 million, with a potential savings to North Carolina of \$129 million.¹⁴⁹

We noted that this cost estimate does not include the cost of incarcerating any juveniles that would be sentenced to LWOP in the future, absent this statutory change, nor cost savings for changes to non-first-degree-homicide sentences or Fair Sentencing Act sentences to juveniles.¹⁵⁰ Further, costs of incarceration continue to rise. In Massachusetts, for example, costs increased by almost 16% from 2010 to 2014.¹⁵¹ Nor does that cost estimate

¹⁴² Brandon L. Garrett, *Fiscal Impact Summary: House Bill 775*, May 22, 2019 (on file with authors).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Ames Alexander, *Study: Where you Grow Up in North Carolina Affects Your Life Span*, THE CHARLOTTE OBSERVER, May 26, 2015, <https://www.charlotteobserver.com/news/local/article22193088.html> [<https://perma.cc/N6LE-CMS4>].

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Margaret E. Leigey & Doris Schartmueller, *The Fiscal and Human Costs of Life Without Parole*, 99 PRISON J. 241, 247 (2019).

include the cost of litigating JLWOP challenges in hearings that will occur if this legislation is not enacted.

These findings suggest the post-*Miller* legislation may have provided an expensive and time-consuming way to re-assess JLWOP sentences. It would certainly be more cost-effective and direct to eliminate JLWOP entirely rather than incur costs for a prolonged review process. And it must be acknowledged that in many cases the practical difference, in terms of years served, may not be great if juvenile convicts are repeatedly denied parole.

B. LEGISLATIVE AND POLICY CHANGES TO JLWOP

Many states have reconsidered JLWOP post-*Miller*, with some states abolishing the practice in recent years, others creating periodic review of such sentences, and others adopting discretionary standards like in North Carolina.¹⁵² As of February 2019, twenty-three states have through legislation removed JLWOP, including twelve states that have enacted legislation in the past decade; additional states ban such sentences in most, but not all, cases.¹⁵³ Several other states have legislation pending or have recently introduced such legislation, including: Arizona, Illinois, New Jersey, North Carolina, South Carolina, Tennessee, and Virginia.¹⁵⁴ Nevertheless, some states that do not permit JLWOP sentences still permit aggregation of consecutive sentences that create functional life without parole sentences.¹⁵⁵ The North Carolina legislation introduced in 2019 would replace JLWOP with life with parole sentences and parole eligibility after twenty-five years for first degree murder convictions, and parole eligibility after fifteen years for persons convicted of other offenses and sentenced to more than fifteen years.¹⁵⁶

¹⁵² For a detailed survey, see Associated Press, *A State-by-state Look at Juvenile Life Without Parole*, July 30, 2017, <https://apnews.com/9debc3bdc7034ad2a68e62911fba0d85/A-state-by-state-look-at-juvenile-life-without-parole> [<https://perma.cc/9SQV-T68M>].

¹⁵³ For a complete list, see *States That Ban Life Without Parole for Children*, Campaign for the Fair Sentencing of Youth (2018) (Oregon recently enacted law banning JLWOP bringing the number of states banning JLWOP to 23), <https://www.fairsentencingofyouth.org/media-resources/states-that-ban-life/> [<https://perma.cc/64AJ-8EDZ>].

¹⁵⁴ See H.B. 2193, 53d Leg., 2d. Reg. Sess. (Ariz. 2018); S.B. 3228, 100th Gen. Assemb. (Ill 2018); Leg. B. 875, 105th Leg., 2d Sess. (Neb. 2018); Assemb. B. 1233, 218th Leg. (N.J. 2018); H.B. 775, Gen. Assemb., 2019 Sess. (N.C. 2019); S.B. 112, 57th Leg., 1st Sess. (Okla. 2019); H.B. 3919, 123d Sess. (S.C. 2019); H.B. 0852, Gen. Assemb. (Tenn. 2019); S.B. 890, Gen. Assemb., 2018 Sess. (Va. 2018).

¹⁵⁵ ROVNER, *supra* note 5, at 1; see also Doriane Lambelet Coleman & James E. Coleman, Jr., *Getting Juvenile Life Without Parole “Right” After Miller v. Alabama*, 8 DUKE J. CONST. L. & PUB. POL’Y 61, 68–69 (2012).

¹⁵⁶ H.B. 775, Gen. Assemb., 2019 Sess. (N.C. 2019), available at <https://www.ncleg.gov/Sessions/2019/Bills/House/PDF/H775v1.pdf> [<https://perma.cc/H65M-ZR5C>].

Any statutory scheme replacing JLWOP should offer an ongoing, meaningful opportunity for review, so that it does not result in “virtual LWOP” for juvenile offenders—in which a formal opportunity for release exists on paper but is extremely unlikely in practicality. One model is the Fair Sentencing for Youth legislation enacted in California, which permits all juvenile offenders, whether convicted of a homicide or not, to obtain review after a time period between fifteen and twenty-five years.¹⁵⁷ Another model is the legislation enacted in Wyoming which creates eligibility for commutation after twenty-five years.¹⁵⁸ Virginia recently adopted legislation creating eligibility for parole at twenty years, for juveniles who had been sentenced to LWOP or any sentence longer than twenty years.¹⁵⁹ Such approaches have the benefit that they apply consistently to all juvenile sentencing. They eliminate the sentencing disparity often seen between those sentenced to concurrent or consecutive terms.

Any such change to provide for parole eligibility must also be accompanied by criteria to govern the review process, so that the review satisfies U.S. Supreme Court rulings regarding meaningful opportunity for review, and so that the process is in fact a meaningful consideration of the merits of each case. Thus, “[e]liminating juvenile life without parole does not suggest guaranteed release of these offenders,” as the Sentencing Project has put it.¹⁶⁰ “Rather, it would provide that an opportunity for review be granted after a reasonable period of incarceration, one that takes into consideration the unique circumstances of each defendant.”¹⁶¹

The overall goal of the U.S. Supreme Court’s Eighth Amendment jurisprudence in this area is to offer “the juvenile offender a chance to demonstrate growth and maturity.”¹⁶² Whether LWOP sentences for juveniles are eliminated, or recurring review is structured in legislation,

¹⁵⁷ See CAL. PENAL CODE § 1170(d)(2)(A)(i); see also *id.* at (d)(2)(h) (permitting subsequent parole review after serving twenty, twenty-four and twenty-five years of an LWOP sentence).

¹⁵⁸ WYO. STAT. ANN. § 6-10-301(c) (2013) (“A person sentenced to life imprisonment for an offense committed before the person reached the age of eighteen (18) years shall be eligible for parole after commutation of his sentence to a term of years or after having served twenty-five (25) years of incarceration”).

¹⁵⁹ VA CODE § 53.1-165.1 (“any person sentenced to a term of life imprisonment for a single felony or multiple felonies committed while the person was a juvenile and who has served at least 20 years of such sentence shall be eligible for parole and any person who has active sentences that total more than 20 years for a single felony or multiple felonies committed while the person was a juvenile and who has served at least 20 years of such sentences shall be eligible for parole.”).

¹⁶⁰ ROVNER, *supra* note 5, at 4.

¹⁶¹ *Id.*

¹⁶² *Id.* at 73.

legislation should aim to guarantee such meaningful opportunities for review after reasonable amounts of time, because juvenile offenders have “diminished moral responsibility” and may also have more rehabilitative potential, as “incurability is inconsistent with youth.”¹⁶³

Alternatively, prosecutors could litigate juvenile sentences very differently, without a legislative change. Such an across-the-board defense of JLWOP sentences does not reflect the law; the U.S. Supreme Court and North Carolina courts have been clear that such sentences should be reserved for unusual cases. Instead, prosecutors could themselves more rigorously consider the factors relevant to whether a JLWOP sentence is appropriate internally.

If the prosecutors in the small set of counties responsible for most of these sentences changed their approach towards defending JLWOP sentences, costly litigation could be avoided. Earlier parole eligibility could result from a more reasonable and consistent litigation posture among prosecutor’s offices. There is no reason that there should, for example, be lengthy consecutive sentences imposed, extending the amount of time juveniles must wait until there is a possibility of parole. This problem could be addressed at the local level by changes in prosecution policy. In the past, these cases have been litigated by prosecutors, over many years, even in cases like felony murder cases in which defendants most clearly deserve and typically obtain relief from JLWOP sentences. Local election of prosecutors permits each district to adopt its own policies and approaches towards prosecution, but that localism also permits counties to impose real costs, in the form of extremely lengthy sentences, on the state. A discussion of the costs JLWOP impose is particularly ripe, as states increasingly reconsider permitting such sentences.

CONCLUSION

In this Article, we examine JLWOP sentencing in North Carolina. We describe the population of ninety-four persons in North Carolina, who were sentenced to LWOP as juveniles. Of those, forty-eight remain sentenced to LWOP and forty-five have so far been resentenced to non-LWOP sentences, largely pursuant to the post-*Miller* legislation in North Carolina. We describe how JLWOP sentencing has declined since its late 1990s height in North Carolina. Beginning in 2011, there have been either one or no such sentences each year. We describe how these LWOP sentences are highly concentrated in a handful of counties. We statistically demonstrate the presence of a strong

¹⁶³ *Graham v. Florida*, 560 U.S. 48, 72–73 (2010) (quoting *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky. App. 1968)).

inertia effect, in which prior JLWOP sentences are strongly correlated with the imposition of JLWOP in counties. These analyses suggest that factors relating to past practices and local preferences influence JLWOP sentencing.

Finally, we explore the procedural posture of this cohort of cases, focusing on the post-*Miller* review of these sentences. As we detail, forty-five prisoners have so far been resentenced—but most of the remainder have not yet had *Miller* hearings. There will be at least forty-two additional resentencing hearings in the years to come. This means there will be substantial additional costs in litigating JLWOP sentences that are likely to be largely overturned. Over almost two and a half decades, half of these sentences have been vacated, at great cost, after multiple rounds of appeals and hearings—all for a penalty that has been almost entirely discontinued. Indeed, the penalty is now barred in the cases of one-third of this group, who were sentenced under felony murder theories.

In a time in which JLWOP sentences are not permitted in any other country in the world, and in which JLWOP sentencing has greatly declined in the U.S., it is time to reconsider the use of JLWOP where it remains, as many states have already done. In North Carolina, prior sentences are being reversed at a high rate, and the use of such sentences does not appear fair, warranted, or consistent. These findings provide an empirical case for reconsidering the use of JLWOP in North Carolina. Rather than impose rigid sentences on juveniles, which Eighth Amendment rulings have already called into question, alternatives that rely on periodic review of lengthy juvenile sentences should be considered.

APPENDIX A: JLWOP SENTENCES IN NORTH CAROLINA¹⁶⁴

Last Name	First Name	Gender			Date of Offense	Conviction Date	County of Conviction	Sentence Status*
		Race/Ethnicity	Age at Offense					
Ames	Kamani	M	Black	17	9/27/15	1/19/18	Camden	LWOP
Anderson	Darrell	M	Black	17	12/3/02	8/4/03	Davidson	Life With x2
Andrade	Jesus	M	Latinx	17	8/12/05	1/11/07	Forsyth	Life With
Antone	Marquice	M	Black	16	4/13/12	3/25/14	Columbus	Life With
Ash	Antwan	M	Black	16	10/28/05	6/15/07	Brunswick	Life With
Ash	Lawrence	M	Black	17	6/26/00	11/17/03	Cumberland	Life With + 29-44
Banner	Rayshawn	M	Black	14	11/15/02	8/19/04	Forsyth	Life With
Bass	Lamar	M	Black	17	12/26/05	1/25/07	Durham	LWOP
Beck	Johnny	M	Black	16	2/25/95	9/8/95	Wake	LWOP
Bellamy	Lakeith	M	Black	15	7/15/98	4/5/99	Lee	Life With
Blair	Cameron	M	Black	16	10/9/03	6/14/05	Mecklenburg	Life With + 8-10
Brockett	Jacobie	M	Black	16	3/6/05	10/31/05	Pitt	LWOP
Canady	Joseph	M	Black	17	8/22/97	5/4/99	Wilson	Life With
Cash	Nelson	M	Black	16	5/16/97	3/11/98	Rutherford	Life With + 25-39
Cauthen	Nathaniel	M	Black	15	11/15/02	8/19/04	Forsyth	Life With
Chapman	Lamorris	M	Black	17	7/9/00	10/29/01	Johnston	Life With
Clodfelter	Dwight	M	White	17	9/27/05	9/15/08	Forsyth	LWOP
Cofield	Demetrius	M	Black	17	11/6/95	10/11/96	Edgecombe	Life With
Dickerson	Jerome	M	Black	17	7/19/03	7/27/06	Forsyth	LWOP
Douglas	Tameika	F	Black	15	8/17/98	9/7/00	Cumberland	LWOP
Dudley	Michael	M	Black	16	12/7/99	11/30/00	Guilford	Life With
Golphin	Kevin	M	Black	17	9/23/97	5/13/98	Cumberland	LWOP

¹⁶⁴ These names and sentences were generated analyzing data from the North Carolina Department of Public Safety available at <http://www.doc.state.nc.us/offenders/INMT4AA1.zip> [<https://perma.cc/286Q-BKKZ>] and <http://www.doc.state.nc.us/offenders/OFNT3CE1.zip> (on file with author and Journal).

Grady	Lakendra	F	Black	17	1/23/06	7/17/06	New Hanover	Life With
Green	Dustin	M	White	16	11/14/97	10/12/98	Rutherford	LWOP
Gregory	Joseph	M	Black	17	3/5/08	4/28/09	New Hanover	Life With
Hare	Ryan	M	White	17	11/30/08	9/24/10	Wake	LWOP
High	Nathanael	M	White	15	2/10/02	5/24/04	Gaston	Term Of Years
Hinnant	Danny	M	Black	17	1/4/10	1/19/11	Wilson	LWOP
Ingram	Ellsworth	M	Black	15	7/3/97	9/21/98	Montgomery	LWOP
Jackson	Willie	M	Black	15	5/24/01	10/24/02	Northampton	Life With + 25-39
Jacobs	Christopher	M	Indian	16	12/15/95	1/15/99	Scotland	LWOP
James	Harry	M	Black	16	5/12/06	6/10/10	Mecklenburg	Life With
James	Terrance	M	Black	17	6/29/97	6/30/99	Cleveland	LWOP
Jefferson	Delmonte	M	Black	17	2/20/01	4/18/02	Johnston	LWOP
Jefferson	Shymel	M	Black	15	11/7/09	6/8/12	Rockingham	Term of Years
Johnson	Tydis	M	Black	15	8/23/96	5/21/97	Cleveland	Life With
Johnston	Donovan	M	Black	16	5/11/95	4/17/96	Mecklenburg	Life With
Jones	Harold	M	Black	16	10/16/98	10/5/00	Cumberland	LWOP
Jones	Joseph	M	Black	13	10/16/98	2/23/00	Cumberland	LWOP
Keaton	Akeem	M	Black	16	1/29/05	2/13/08	Mecklenburg	LWOP
Kelliher	James	M	White	17	8/7/01	3/1/04	Cumberland	Life With x2
Kornegay	Eric	M	Black	17	8/28/99	8/31/00	Lenoir	LWOP
Lee	Kentay	M	Black	14	1/1/99	7/7/00	Mecklenburg	Term of years
Lesane	George	M	Black	17	12/1/94	2/4/98	Robeson	LWOP
Lewis	Danny	M	Indian	17	9/2/02	7/6/04	Robeson	Life With
Lovette	Laurence	M	Black	17	3/5/08	12/20/11	Orange	LWOP
Lowery	Jamie	M	Black	16	7/2/08	2/9/11	Robeson	Life With
May	Jahrheel	M	Black	16	1/2/13	7/16/15	Pitt	Life With + 64-89
Mayhand	Anthony	M	Black	16	11/19/95	11/7/96	Guilford	LWOP

McCord	Travis	M	Black	16	2/10/97	4/7/99	Cleveland	LWOP
McKeithan	Henry	M	Black	17	6/12/97	8/26/98	Harnett	LWOP
McKinney	Antonio	M	Black	16	7/30/99	1/18/01	Wayne	LWOP
McLaughlin	Jamison	M	Black	17	7/18/95	9/25/97	Cumberland	Life With
McLean	Dwight	M	Black	17	11/1/02	10/18/04	Wake	LWOP
McPhatter	Marcus	M	Black	16	12/15/95	11/20/98	Scotland	Life With
McRae	Derrick	M	Black	16	10/14/95	5/14/98	Richmond	Life With
Medina	Jhalmar	M	Latinx	16	3/10/03	9/1/04	Mecklenburg	Life With + 189-236
Meeks	Kenneth	M	Black	16	6/28/04	4/10/06	Wilson	LWOP
Morris	Cameron	M	Black	17	4/28/05	1/24/07	Wake	Life With
Moss	Decarlos	M	Black	17	4/25/02	5/28/04	Person	Life With
Nguyen	Doan	M	Asian	17	6/17/02	10/3/03	Cumberland	Life With
Oglesby	Jaamall	M	Black	16	9/10/02	5/28/04	Forsyth	LWOP
Pallas	Peter	M	White	16	10/20/97	9/2/99	New Hanover	LWOP
Pemberon	Devonte	M	Black	17	5/9/10	10/4/11	Wake	Term Of Years
Perkins	Artis	M	Black	15	9/16/00	4/20/01	Wake	LWOP
Perry	Antonio	M	Black	17	9/10/03	8/25/04	Nash	Life With x2 + 157- 198
Perry	Dominique	M	Black	17	4/18/07	8/27/08	Guilford	LWOP
Purcell	Keonte	M	Black	17	5/6/07	12/17/09	Cumberland	Life With + 16-20
Reid	Utaris	M	Black	14	10/21/95	7/24/97	Lee	New trial ordered and order appealed
Santiago	Donte	M	Black	16	7/31/01	4/17/03	Onslow	Life With + 114-164
Santillan	Jonathan	M	Latinx	15	1/5/13	9/1/15	Wake	LWOP
Seam	Sethy	M	Asian	16	11/19/97	9/30/99	Davidson	Life With
Simmons	Gregory	M	Black	17	5/27/06	4/23/08	Brunswick	LWOP
Sims	Antwaun	M	Black	17	1/4/00	8/24/01	Onslow	LWOP
Stancil	Wayne	M	White	17	7/7/98	8/2/99	Carteret	LWOP

Stinnett	Carlos	M	Black	15	11/20/95	11/1/96	Johnston	LWOP
Sturdivant	Sandy	M	Black	16	6/13/98	12/2/99	Union	Life With
Sullivan	Michael	M	Black	16	6/5/02	10/25/04	Durham	Life With
Swain	Leo	M	Black	16	6/2/99	10/30/00	Buncombe	Life With
Taylor	Matthew	M	Black	16	2/17/04	7/20/05	Durham	LWOP
Thornton	Matthew	M	Black	15	12/4/06	1/13/09	Harnett	LWOP
Tirado	Francisco	M	Latinx	17	8/17/98	4/11/00	Cumberland	LWOP
Tomlin	Frank	M	Black	16	6/25/03	5/19/05	Guilford	LWOP
Valdez	Eric	M	Latinx	17	3/14/05	10/5/06	McDowell	LWOP
Walker	William	M	White	17	7/26/97	4/9/98	Stokes	LWOP
Walters	Travis	M	Black	17	1/6/98	9/25/09	Robeson	Life With
Watson	Steven	M	Black	17	7/15/97	4/16/99	Guilford	LWOP
Williams	Montrez	M	Black	17	6/30/08	6/15/11	Mecklenburg	Life With x2
Williams	Raytheon	M	Black	17	11/25/06	11/20/09	Guilford	LWOP
Willis	Anthony	M	Black	16	2/16/96	12/10/97	Cumberland	Life With + 25-39
Wooten	Kolanda	F	Black	17	8/24/03	4/19/05	Wayne	LWOP
Xanonh	Ang	M	Asian	14	10/29/94	8/25/95	Wake	LWOP
Yarrell	Rashawn	M	Black	17	9/17/00	12/10/02	Randolph	LWOP
Young	David	M	Black	17	1/8/97	5/4/99	Buncombe	LWOP

* Additional Time in months

APPENDIX B: LOGIT RESULTS FOR COUNTY-PREDICTORS OF JLWOP
SENTENCES

	(1) 1+ JLWOP Sentence	(2) 1+ JLWOP Sentence	(3) 1+ JLWOP Sentence	(4) 1+ JLWOP Sentence
<i>Homicide Rate</i>	-0.031 (0.037)	-0.033 (0.015)		-0.015 (0.037)
<i>Percent Black Pop.</i>	0.035** (0.015)	0.033** (0.015)	0.025* (0.014)	0.034** (0.015)
<i>Population Density</i>	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)	-0.000 (0.000)
<i>Poverty Rate</i>	-0.120*** (0.044)	-0.109** (0.044)	-0.116*** (0.043)	-0.128*** (0.046)
<i>Death Sentences</i>		0.241 (0.212)	0.359 (0.249)	
<i>Homicide Rate (lagged)</i>			0.033 (0.032)	
<i>Death Sentences (lagged)</i>				-0.042 (0.258)
<i>Intercept</i>	-2.407*** (0.659)	-2.513*** (0.650)	-2.356*** (0.622)	-2.297*** (0.671)
<i>Observations</i>	2,400	2,400	2,400	2,400
<i>County Fixed-Effects</i>	YES	YES	YES	YES
<i>Year Fixed-Effects</i>	YES	YES	YES	YES

Note: *p<0.1; **p<0.05; ***p<0.001

APPENDIX C: LOGIT RESULTS ON THE INERTIA EFFECT IN JLWOP
SENTENCING

	(1) Sentence JLWOP	(2) Sentence JLWOP
<i>Homicide Rate</i>	-0.0004 (0.001)	-0.001 (0.001)
<i>Percent Black Pop.</i>	-0.008 (0.005)	-0.004 (0.005)
<i>Population Density</i>	-0.0002*** (0.000)	-0.0001*** (0.000)
<i>Poverty Rate</i>	-0.0005 (0.003)	-0.002 (0.003)
<i># of Previous JWOP Sentence(s)</i>	0.101*** (0.012)	
<i># of DP Sentence(s)</i>	-0.019*** (0.006)	
<i>Any Prior JLWOP Sentence (binary)</i>		0.213*** (0.023)
<i>Any Prior DP Sentence (binary)</i>		0.001 (0.023)
<i>Intercept</i>	-2.407*** (0.659)	0.180 (0.120)
<i>Observations</i>	2,400	2,400
<i>County Fixed-Effects</i>	YES	YES
<i>Year Fixed-Effects</i>	YES	YES

Note: *p<0.1; **p<0.05; ***p<0.001; Death penalty is abbreviated as “DP”.