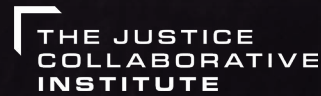
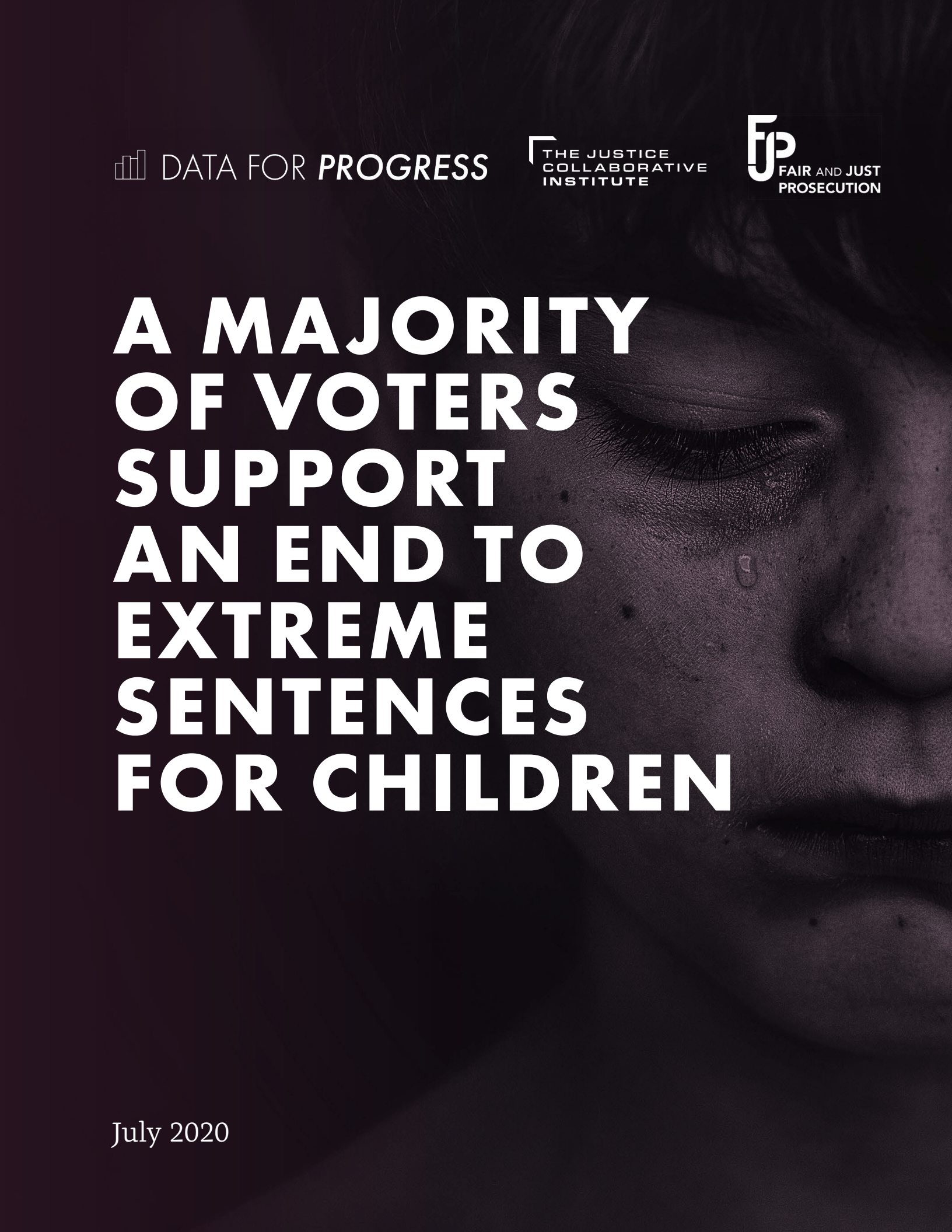


 DATA FOR *PROGRESS* THE JUSTICE
COLLABORATIVE
INSTITUTE **FJP**
FAIR AND JUST
PROSECUTION

A MAJORITY OF VOTERS SUPPORT AN END TO EXTREME SENTENCES FOR CHILDREN

July 2020

EXECUTIVE SUMMARY

Hundreds of thousands of people across the country and around the world have taken to the streets to demand an end to police violence and racism in the criminal legal system, moved by the devastating murders of George Floyd, Breonna Taylor, Tony McDade, Ahmaud Arbery and many others, as well as a broader pattern of racial injustice. Now, prosecutors, defense attorneys, and judges must take immediate and long-overdue steps to address the systemic racism woven through the criminal legal system, including through the imposition of life-without-parole and decades-long sentences for young people.

Extreme sentences have contributed to the United States being the number one incarcerator in the world—disparately impacting and devastating communities of color—and juvenile life-without-parole sentences are among the most draconian ongoing practices in our country. These sentences essentially abandon young people to die in prison, despite the fact that children have great potential for rehabilitation and are deserving of second chances.

Where have we been—and public support for a new vision for the future

While a series of Supreme Court decisions in the past decade has altered the landscape of juvenile life-without-parole sentences, there are still too many men and women looking at spending the rest of their lives in prison for acts they committed as youth. Juvenile life-without-parole sentences also contribute to the racial disparities in the criminal legal system overall: 80 percent

of people serving life sentences for crimes they committed as youth are non-white. More than 50 percent are Black.

But public discourse is shifting. Reform that ends juvenile life-without-parole sentences is both popular with the public and simple common sense. Community members across the ideological spectrum understand that young people have the capacity to change, and want the justice system to rehabilitate young people, rather than imprison them for life. Two recent national polls conducted by Data For Progress found that a majority of voters believe no one who committed a crime as a child should be sentenced to life in prison without the hope or the opportunity for a second chance. Fewer than a third of voters disagree.

As the public conversation considers the future of policing and the meaning of public safety, criminal justice leaders must use this as an opportunity to think more broadly about the *entire* criminal justice system and make critical changes, especially changes that are sensible, supported by science, and in furtherance of racial equity. There is no better place to begin than to give young people a chance at redemption and end juvenile life-without-parole.

BACKGROUND

The United States has the highest incarceration rate in the world. Our nation's reliance on extreme sentences, including life-without-parole, renders America an international outlier. While the U.S. accounts for less than five percent of the world's population, it comprises 30 percent of people sentenced to life or effective life in prison

worldwide. Philadelphia alone has sentenced more people to life in prison without parole than any other country in the world.

How did we get here

The much-discussed uptick in crime during the 1980s and 1990s, on top of the escalation of the War on Drugs, prompted an increase in harsh punishments across the board with the support of all political parties. Children, especially children of color, were the victims of over-policing and over-punishment. In particular, the 1990s saw the emergence of the now-debunked “superpredator” theory, which argued erroneously that young people, particularly Black youth, were simply beyond redemption. This imagined teenage crime wave never happened, and those who promoted the theory have now fully retracted their statements, which were never based on science or data.

Unfortunately, the superpredator myth left a long legacy of excessively-punitive sentencing practices in its wake, and the frequency of life-without-parole sentences for young people spiked. According to the Campaign for the Fair Sentencing of Youth, 75 percent of all children sentenced to life-without-parole were sentenced during and after the 1990s.

New thinking and reform of juvenile life-without-parole sentencing

This tide has since turned, and, in some respects, change happened rapidly. In 2012, only five states had banned life-without-parole sentences for young people. Today, a majority of states either ban the practice or have no one currently serving such a sentence. Since 2016, the number of people serving life-without-parole sentences given to

them as youth has been reduced by nearly 75 percent. Of those who have had resentencing hearings, fewer than 5 percent had life-without-parole sentences imposed again.

In many ways, however, progress has been stymied. The justice system is still handing down life-without-parole sentences—or their practical equivalent—to children; prosecutors have sought, and judges have reimposed, such sentences, or their functional equivalent, at resentencing; and releases have been slow to happen. In states like Michigan and Louisiana, which have some of the highest numbers of people sentenced to life-without-parole as children, the government has sought to reimpose life-without-parole or very long terms of years without articulating a justification. In states like Missouri, pro-forma resentencing hearings occur even as prosecutors argue that more robust hearings are necessary. Effectively, a juvenile lifers’ chance of release depends on where they are incarcerated rather than the specifics of their case or their capacity for change.

The COVID-19 overlay, and harm to those most vulnerable

Allowing people who are clearly eligible for resentencing and release to return to the community is not simply a legal issue—it is now also a public health crisis. As Eli Hager reported for the Marshall Project in June 2020, for those who are still awaiting resentencing, the COVID-19 pandemic has raised new fears of potential death in prison. Many people serving life-without-parole sentences given to them as children have spent decades in prison and are extremely vulnerable to COVID-19 because of their age or other health conditions exacerbated by prison and poor health care. And experts have repeatedly underscored that these are individuals who can safely return to their families and communities.

Young people have been particularly vulnerable to life-without-parole sentences precisely because of their immaturity and lack of understanding of the legal process. Research from Michigan suggests that the vast majority of adults arrested for crimes eligible for life-without-parole sentences plead to lesser charges. Children, who are less able to fully comprehend their situation, have often taken their cases to trial and, because of “superpredator” stereotypes, received the harshest punishment. So, as people continue to await resentencing for crimes that they committed as children, adults who were sentenced for similar or the same crimes have been free for decades.

A new vision for the justice system

As efforts are afoot to reduce the footprint of a justice system that has grown too large, any meaningful decarceration strategy must account for people serving juvenile life-without-parole sentences. According to the Sentencing Project, at the current rate of decarceration, it would take another 75 years to cut the U.S. prison population in half. Experts, advocates, and academics agree that reducing the incarcerated population in the U.S. is both an essential step towards racial justice and necessary to bring the U.S. in line with the rest of the world.

Moreover, although many states have reduced juvenile life-without-parole sentences through legislation or judicial review, the median new sentence nationwide is 25 years before parole or judicial review. This extreme average stands in stark contrast to other countries: Sentence lengths in most European countries rarely exceed 20 years, even for adults.

Such a lengthy sentence does not serve a public safety purpose: Well-established research shows that individuals “age out” of crime. The vast

majority of youth, even those who commit serious offenses, are unlikely to offend as they get older. As such, the only possible justification for these excessive sentences is a retributive one, a particularly inappropriate justification for sentences imposed on children, whose level of culpability is lower than that of adults. It is no wonder, in light of this backdrop, that the public’s support for change is widespread and cuts across the political spectrum.

JUVENILE LIFE-WITHOUT-PAROLE SENTENCES ARE RACIALLY DISPARATE—AND THESE CONCERNS ARE PARTICULARLY ACUTE IN THE CURRENT MOMENT

Across the board, harsh sentences such as life, life-without-parole, and juvenile life-without-parole are disproportionately imposed on people of color. Fifty percent of people serving life sentences for crimes committed as children are Black, a racial disparity even more pronounced in juvenile sentences than adult sentences. In all, 73 percent of those given life-without-parole sentences for crimes committed as children have been people of color, primarily Black and Latino children. Alarming, racial disparities in overly-harsh sentences are growing, not shrinking. Since 2012, approximately 70 percent of children sentenced to life-without-parole have been Black, compared to approximately 61 percent before 2016. Any commitment to racial justice requires that these

discriminatory sentences be addressed and that people serving juvenile life-without-parole sentences be permitted the opportunity to show they are ready and eligible for release.

The COVID-19 pandemic has heightened the need for immediate action to address these longstanding racial disparities. For instance, Darnell Johnson is serving a life-without-parole sentencing for a botched robbery in 1998, when he was 17, in which three people were shot and one died. He is waiting for Michigan to schedule his resentencing hearing in accordance with the Supreme Court's mandate. But, in the meantime, Johnson is now 40 and has many of the risk factors for severe COVID-19 illness, including asthma and hypertension. His prison is also considered a coronavirus "hot spot," with a high rate of infection. The COVID-19 pandemic has made these unnecessary, harsh, and racially disparate sentences potential *de facto* death sentences, a result clearly not contemplated by any judge or jury.

YOUTH ARE CAPABLE OF CHANGE

"Longer sentences do not protect public safety. ... [Young people] are capable of growth and change, and can safely be brought home. People who have been incarcerated for decades following offenses committed while they were young are especially deserving of a second look in the middle of a public health pandemic that is crippling communities and economies across Pennsylvania and throughout the country."

**– Larry Krasner,
Philadelphia District
Attorney**

Starting in 2005, the United States Supreme Court, in a series of landmark decisions, deemed it cruel and unusual punishment to sentence children to, first, the death penalty and then, in all but the rarest of rare cases, to life in prison without the possibility of parole. The Court grounded its rulings in research and common sense, relying on scientific evidence demonstrating that young people are both more greatly influenced by their environment and, at the same time, more likely to be rehabilitated, than adults. In other words, **young people change.**

Adolescents, research shows, are uniquely vulnerable to their circumstances, highly susceptible to the influence of peers, primed to seek risk, and unable to fully consider consequences. But they are also in a stage of life that is, by definition, transient and marked by rapid, ongoing brain development. Impulsive behavior begins to diminish when people are in their 20s. To consign a child to permanent punishment is to misunderstand children's challenges, and more importantly, their promise.

The current research also strongly suggests that most people "age out" of crime and those sentenced to life and life-without-parole sentences are the least likely to reoffend. Just as a child's mind is more prone to impulsivity and rash decisions, young people are also capable of changing for the better. The neuroplasticity of the brain means that adults rarely resemble the young people they once were. For example, with the support of the Philadelphia District Attorney's office, 174 individuals who had originally been sentenced to life-without-parole for crimes they committed as children were resentenced and released between 2017 and 2019. A study by Montclair State University researchers in April 2020 found almost no recidivism among these individuals; only 2 were re-convicted, both for minor offenses.

The Supreme Court has echoed this understanding. In *Miller v. Alabama*, the Court found that the “distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” In both *Miller* and *Montgomery v. Louisiana*, decided in 2012 and 2016 respectively, the Court declared mandatory life-without-parole sentences for children unconstitutional, given that for most youth their crimes reflect “transient immaturity.” The standard was set at “irreparable corruption,” which, while still somewhat vague, has been interpreted to mean that life-without-parole should be very rare for those who commit crimes as youth.

The Court has also recognized, in *Miller* and other cases, that children who commit crimes have a lower level of culpability compared to adults. This diminished culpability is further supported by the extremely high rates of trauma among people serving life-without-parole sentences for crimes they committed as children. Many were victims of severe childhood abuse and neglect, which science now shows has a substantial impact on behavior, development, and impulse control. Over 90 percent of youth entering the criminal legal system generally have experienced abuse or neglect. *Johnson*, for example, the young man sentenced to life-without-parole in Michigan for a robbery gone wrong when he was a teenager, watched his father physically abuse his mother and saw his brother get shot in his front yard at the age of 11.

JUVENILE LIFE-WITHOUT-PAROLE SENTENCES HAVE SIGNIFICANT COSTS

As discussed above, the vast majority of young people who commit crime, including the most serious types of crime, age out of this behavior. Continuing to incarcerate them once they pose little risk of reoffending does not promote public safety; it only wastes resources. Indeed, the recent study by Montclair State University researchers found that the 174 people released by the Philadelphia District Attorney’s Office will save taxpayers at least \$9.5 million in correctional costs in a single decade. These savings—especially if magnified nationwide—could be better used on community safety initiatives that prevent crime and help build healthier and safer communities.

RECENT POLLING CONFIRMS THAT THE PUBLIC UNDERSTANDS AND SUPPORTS THE NEED TO REFORM JUVENILE SENTENCING

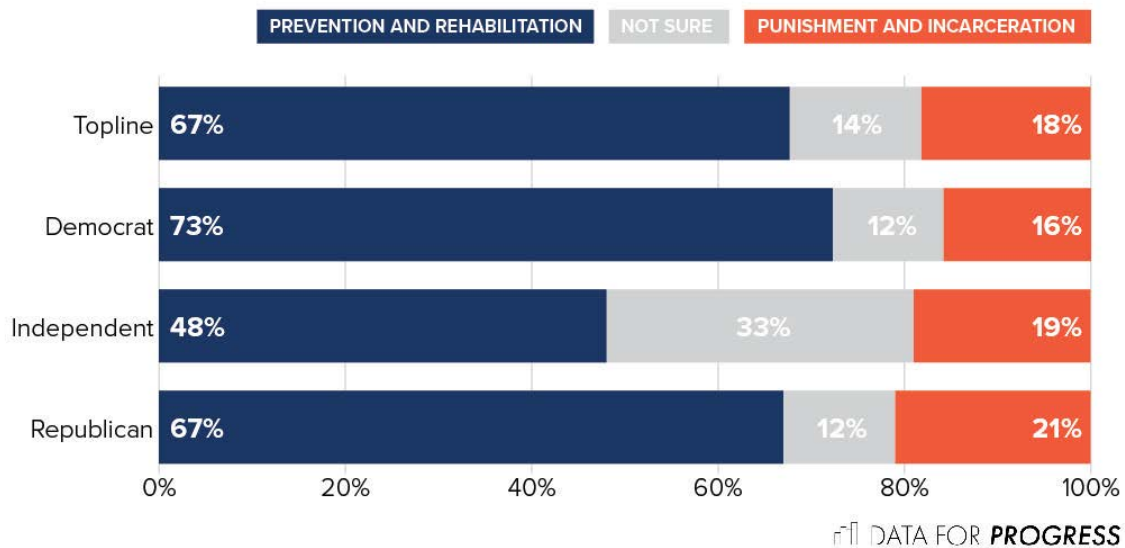
Recent polling of a nationally representative sample of voters found that a majority of respondents recognize that children are uniquely equipped to grow and change, and believe criminal justice policies should allow for that possibility.

“Young people deserve second chances, and prioritizing prevention and rehabilitation over harsh punishment is the right thing to do for the individual and ultimately makes communities safer.”

– **Rachael Rollins,**
Suffolk County
District Attorney

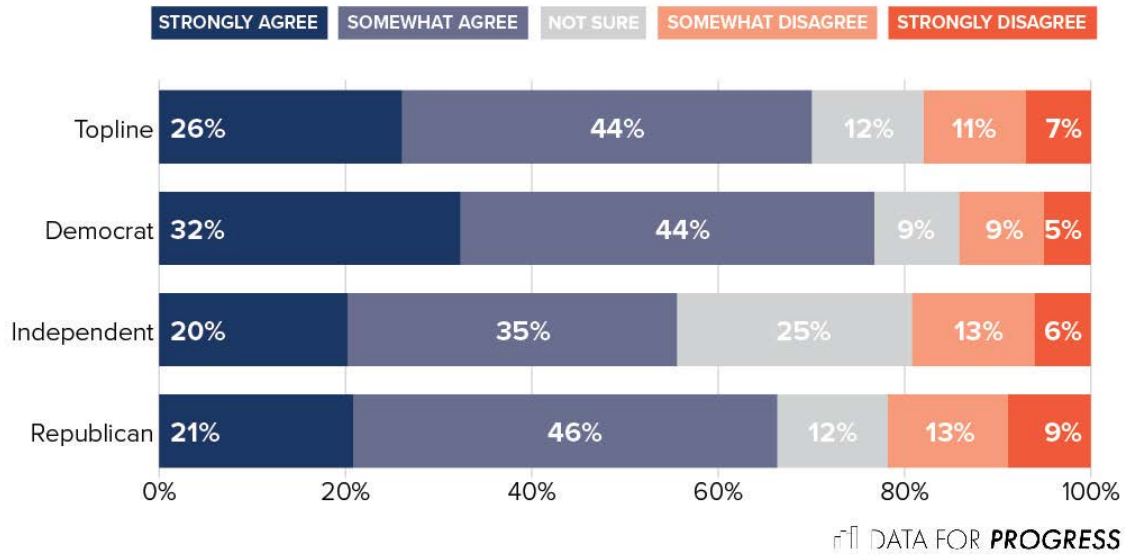
There is also widespread support for a reset of youth justice thinking in our nation. Two-thirds of respondents, including two-thirds of Republicans, believe the juvenile justice system should focus more on prevention and rehabilitation rather than on punishment and incarceration.

If you had to pick the most important purpose of the juvenile justice system, do you think there should be more focus on punishment and incarceration OR more focus on prevention and rehabilitation?



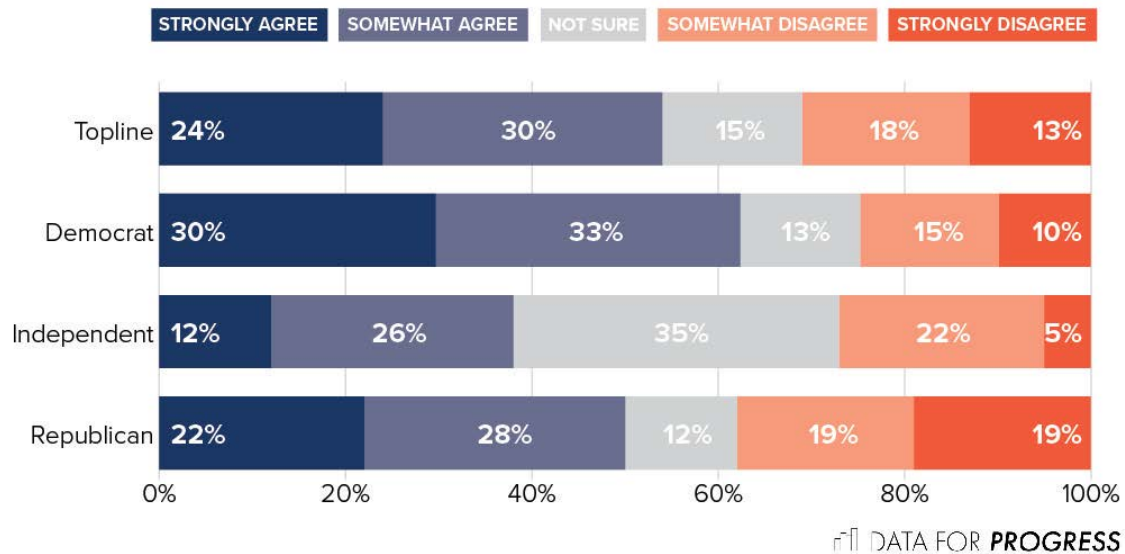
Further, over two-thirds of respondents, including over two-thirds of Republicans, believe that all children, including those convicted of crimes, have the capacity for positive change, and that a person who committed a crime as a child should be paroled from prison if a parole board later concludes that the person does not pose a threat to public safety.

Do you agree or disagree that all children, including those convicted of crimes, have the capacity for positive change, and if a parole board concludes they pose no threat to public safety, they should be paroled?

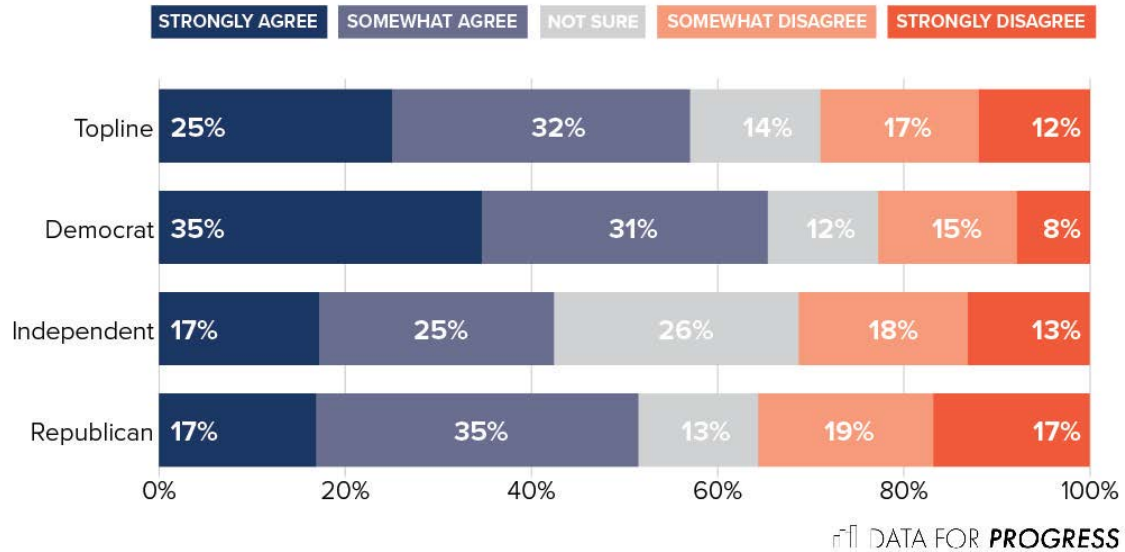


A majority believe that no one should be sentenced to life in prison without the hope or opportunity for a second chance for a crime committed as a child.

Do you agree or disagree that no one should be sentenced to life in prison without the hope or opportunity for a second chance based on a crime they committed as a child?

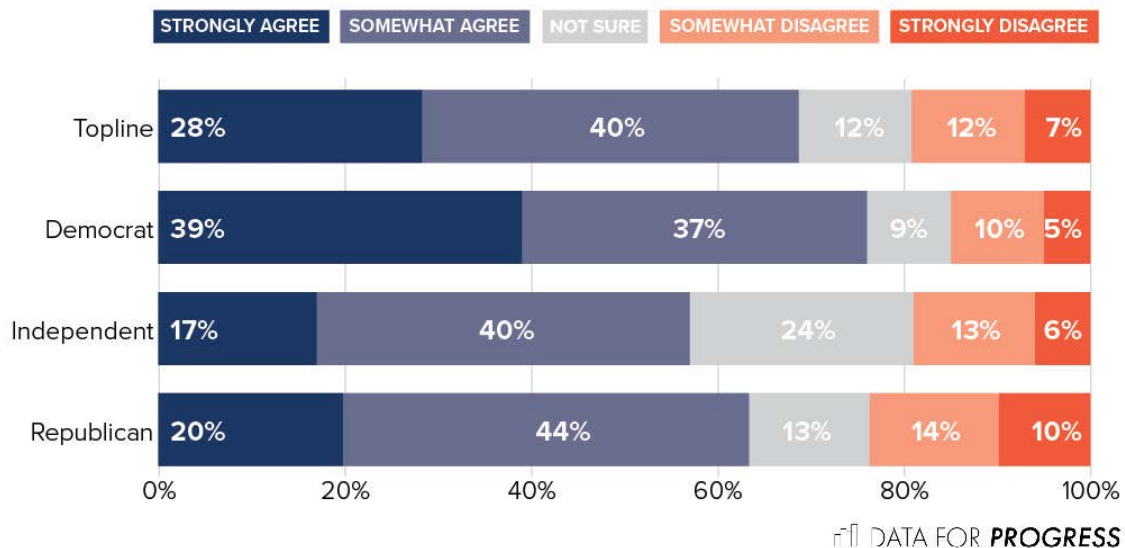


Do you agree or disagree that no one should be sentenced to life in prison without the opportunity for parole for a crime they committed as a child?



Over two-thirds of respondents agree that children who receive lengthy sentences should have their sentences reviewed by a judge or parole board after no more than 15 years, with the opportunity for release if they pose no danger to the community. This majority holds across race, age, gender, and education.

Do you agree or disagree that children who receive long sentences should have their sentences reviewed by a judge or parole board, with the opportunity for release if they pose no danger to the community, after no more than 15 years?



The results of this polling confirm that public opinion is in harmony with recent U.S. Supreme Court cases, scientific research, and common sense: children are still growing and should not receive sentences that do not leave room for second chances.

DISTRICT ATTORNEYS HAVE A RESPONSIBILITY TO REVIEW THESE CASES

A prosecutor’s “obligation does not end after the sentencing court renders its judgment,” argued a recent [amicus brief](#) signed by 59 current and former federal and state prosecutors and former directors of departments of corrections. Indeed, prosecutors have the unique power and responsibility to revisit extreme sentences, as elected officials committed to promoting justice, public safety, and community well-being. Incarcerating people who do not pose a risk to public safety undermines these objectives by diverting money from other initiatives and separating individuals from their families and communities.

But in many states, prosecutors have failed to take adequate action. In [Michigan](#), for example, 200 people who were sentenced to life-without-parole as children are [still awaiting resentencing hearings](#), thanks largely to the original resentencing recommendations made in 2016, when prosecutors requested continued life sentences for [66 percent of the people](#) sentenced to life-without-parole as children. Even amid the

current coronavirus pandemic, many prosecutors in Michigan have refused to reduce sentences.

Prosecutors should instead use their power to review cases and promote sensible resentencing, release, and parole for people who are still serving life-without-parole sentences they received for crimes they committed as youth. This is consistent with their obligation to promote the interests of justice, and aligns with sound policy at a moment when change is needed most.

METHODOLOGY

From 5/24/2020 to 5/25/2020 Data for Progress conducted a survey of 1,594 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, urbanicity, race, and voting history. The survey was conducted in English. The margin of error is ± 2.5 percent.

From 6/7/2020 to 6/8/2020 Data for Progress conducted a survey of 1,301 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, urbanicity, race, and voting history. The survey was conducted in English. The margin of error is ± 2.7 percent.

This report is a joint project of [Data for Progress](#), [The Justice Collaborative Institute](#), and [Fair and Just Prosecution](#).