

Juvenile Homicide Sentencing in Tennessee

In Tennessee, a court has two sentencing options when a juvenile is convicted of first-degree murder: (1) life without the possibility of parole; or (2) life with the possibility of parole once the defendant has served 51 years of her sentence. This sentencing structure for juvenile homicide offenders is the harshest in the nation.

25 states and the District of Columbia have actually or constructively banned life without parole sentences for all juveniles.

Of the remaining 25 states, 8 states have a sentencing structure whereby juvenile homicide offenders have a possibility of release after serving 20 years or less of their sentences. An additional 6 states have the possibility of release after 25 years, and another 5 states have the possibility of release after 30 years.

Excluding New Hampshire and Illinois, whose laws on juvenile sentencing are unclear, that leaves only 4 states in which juvenile homicide offenders are not eligible for release until serving more than 30 years: (1) Indiana: 33 years, 274 days; (2) Pennsylvania: 35 years; (3) Oklahoma: 38.25 years; and (4) Tennessee: 51 years.

Therefore, of the states that allow for juvenile life without parole sentences, Tennessee's alternative to juvenile life without parole is harshest in the country.

States and Jurisdictions That Have Banned Juvenile Life Without Parole

Alaskaⁱ
Arkansasⁱⁱ
Californiaⁱⁱⁱ
Colorado^{iv}
Connecticut^v
Delaware^{vi}
District of Columbia^{vii}
Hawaii^{viii}
Iowa^{ix}
Kansas^x
Kentucky^{xi}
Massachusetts^{xii}
Montana^{xiii}
Nevada^{xiv}
New Jersey^{xv}
North Dakota^{xvi}
South Carolina^{xvii}
South Dakota^{xviii}
Texas^{xix}
Utah^{xx}
Vermont^{xxi}

West Virginia^{xxii}
Wyoming^{xxiii}

States That Have Constructively Banned Juvenile Life Without Parole

Maine^{xxiv}
New York^{xxv}
Rhode Island^{xxvi}

States Which Potentially Allow for Release After an Indeterminate Number of Years

Illinois^{xxvii}
New Hampshire^{xxviii}

States Which Potentially Allow for Release After Three Years

Virginia^{xxix}

States Which Potentially Allow for Release After Ten Years

Idaho^{xxx}
Mississippi^{xxxi}

States Which Potentially Allow for Release After Twenty Years

Maryland^{xxxii}
Nebraska^{xxxiii}
Ohio^{xxxiv}
Washington^{xxxv}
Wisconsin^{xxxvi}

States Which Potentially Allow for Release After Twenty-Five Years

Arizona^{xxxvii}
Florida^{xxxviii}
Louisiana^{xxxix}
Michigan^{xl}
Missouri^{xli}
North Carolina^{xlii}

States Which Potentially Allow for Release After Thirty Years

Alabama^{xliii}
Georgia^{xliv}
Minnesota^{xlv}
New Mexico^{xlvi} (New Mexico has no inmates serving juvenile life without parole sentences^{xlvi})

Oregon^{xlviii}

States Which Potentially Allow for Release After Thirty-Three Years, 274 Days

Indiana^{xlix}

States Which Potentially Allow for Release After Thirty-Five Years

Pennsylvania^l (juvenile life without parole sentences are presumptively unconstitutional^{li})

States Which Potentially Allow for Release After 38.25 Years

Oklahoma^{lii} (mandatory jury instruction on burden of proof for life without parole sentence^{liii})

States Which Potentially Allow for Release After Fifty-One Years

Tennessee^{liv}

ⁱ Alaska Statutes Section 12.55.015(g).

ⁱⁱ Arkansas Code Section 16-93-621.

ⁱⁱⁱ California Senate Bill 394 (2017).

^{iv} Colorado Revised Statutes Section 18-1.3-401(4)(b)(I).

^v Connecticut General Statutes § 54-125a(f)(1).

^{vi} Delaware Code Section 4209A.

^{vii} D.C. Official Code Section 24-403.01(c)(1)(B).

^{viii} Haw. Rev. Stat. §§ 706-656(1)

^{ix} State v. Sweet, 879 N.W.2d 811 (Iowa 2016).

^x Kansas Statutes Annotated Section 21-6618.

^{xi} Kentucky Revised Statutes Section 640.040(1).

^{xii} Diatchenko v. District Attorney for Suffolk Dist., 466 Mass. 655 (Mass. 2013).

^{xiii} Montana Code Section 46-18-222.

^{xiv} Nevada Revised Statutes Section 176.025.

^{xv} New Jersey Senate Bill 3079.

^{xvi} North Dakota Century Code chapter 12.1-32

^{xvii} Aiken v. Byars, 765 S.E.2d 572 (S.C. 2014).

^{xviii} South Dakota Codified Laws Section 22-6-1.

^{xix} Texas Code Annotated Section 12.31.

^{xx} Utah Code Section 76-3-209.

^{xxi} Vermont Statutes Annotated Title 13, Section 7045.

^{xxii} West Virginia Code Sections 61-11-23, 62-12-13b.

^{xxiii} Wyoming Statutes Annotated Section 6-2-101(b).

^{xxiv} See “Maine Has Long Avoided Life Sentences for Juveniles,” U.S. News and World Report, July 31, 2017 available at <https://www.usnews.com/news/best-states/maine/articles/2017-07-31/maine-has-long-avoided-life-sentences-for-juveniles>.

^{xxv} New York only allows for a juvenile life without parole sentence in terrorism cases. New York Penal Law Section 490.25. New York has no inmates serving juvenile life without parole sentences.

^{xxvi} According to U.S. News and World Report, Rhode Island “has never sought a life-without-parole sentence for a juvenile.” A State-By-State Look at Juvenile Life Without Parole, U.S. News and World Report, July 31, 2017, available at <https://www.usnews.com/news/best-states/utah/articles/2017-07-31/a-state-by-state-look-at-juvenile-life-without-parole>.

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- ^{xxvii} 730 ILCS 5/5-4.5-105 took effect in 2017. It allows the court to consider a number of factors, including the defendant's age, as factors in mitigation in imposing sentence. Theoretically, this section would allow the court to impose any sentence on a juvenile convicted of first-degree murder. It is unclear exactly how courts will apply this provision. In *People v. Buffer*, 75 N.E.3d 470 (Ill.App. 1st 2017), the Appellate Court of Illinois found that a sentence of fifty years incarceration for a juvenile homicide offender was an unconstitutional *de facto* life sentence.
- ^{xxviii} New Hampshire has five inmates serving juvenile life without parole sentences. One had his sentenced upheld in 2013 after refusing to attend his resentencing hearing. The other four are currently awaiting resentencing. See *Four Of Five New Hampshire Juvenile Lifers Await Resentencing*, NHPR, July 31, 2017, available at <http://nhpr.org/post/four-five-new-hampshire-juvenile-lifers-await-resentencing#stream/0>. Their cases should give an indication of how New Hampshire will treat juvenile homicide offenders going forward.
- ^{xxix} Section 19.2-303 of the Virginia Code allows a court to “suspend the sentence in whole or part.” In *Aldridge v. Commonwealth*, 606 S.E.2d 539 (Va.App. 2004), the court suspended all but three years of the defendant's sentence based on a first-degree murder conviction.
- ^{xxx} Idaho Statutes Section 18-4004.
- ^{xxxi} Mississippi Code Section 47-7-3(1).
- ^{xxxii} Maryland requires a judge to impose a life sentence but allows her to provide that a lesser time be served in confinement and suspend the rest of the sentence. Maryland Code of Criminal Procedure Section 6-222. There have been multiple cases in which judges have imposed life sentences for homicide offenders with all but twenty years suspended. See, e.g., *Bonilla v. State*, 115 A.3d 98 (Md. 2015); *Wilder v. State*, Appellant's Brief and Appendix 2017 WL 5467932 (Md.App. 2017).
- ^{xxxiii} Nebraska Revised Statutes Sections 28.105.02; 83-1, 110(1).
- ^{xxxiv} Ohio Revised Code Annotated Section 2929.03.
- ^{xxxv} RCW 9.94A.730.
- ^{xxxvi} Wisconsin Statutes Section 302.114.
- ^{xxxvii} *State v. Vera*, 235 Ariz. 571 (Ariz.App. 2014).
- ^{xxxviii} Florida Statutes Section 775.082.
- ^{xxxix} Louisiana Revised Statutes Section 15:574.4.
- ^{xl} Michigan Code of Criminal Procedure Section 769.25(9).
- ^{xli} Missouri Revised Statutes Section 558.047.
- ^{xlii} North Carolina General Statutes Part 2A of Article 81B of Chapter 15A
- ^{xliii} Alabama Code Section 13A-6-2(c).
- ^{xliv} Georgia Code Section 17-10-6.1(c)(1).
- ^{xliv} Minnesota Statutes Section 244.05(4)(b).
- ^{xlvi} New Mexico Statutes Annotated Section 31-21-10.
- ^{xlvii} A State-By-State Look at Juvenile Life Without Parole, *U.S. News and World Report*, July 31, 2017, available at <https://www.usnews.com/news/best-states/utah/articles/2017-07-31/a-state-by-state-look-at-juvenile-life-without-parole>.
- ^{xlviii} Oregon Revised Statutes Section 163.105(1)(c).
- ^{xlix} Indiana Code Section 35-50-2-3 provides a sentencing range of 45-65 years imprisonment for murder. Pursuant to Indiana's Credit Time Calculator, an inmate earns one credit day for each three actual days spent incarcerated. See Credit Time Calculator, at <https://public.courts.in.gov/ctcalc/>.
- ^l Pennsylvania Consolidated Statutes Section 1102.1(a)(1).
- ^{li} *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017).
- ^{lii} Oklahoma Statutes Annotated Section 21-701.9A. A natural life term in Oklahoma is 45 years, and an inmate is eligible for parole after serving 85% of her sentence, or 38.25 years.
- ^{liii} In *Luna v. State*, 387 P.3d 956 (Okla. 2016), the Court of Criminal Appeals of Oklahoma concluded that a judge must instruct a jury, *inter alia*, that “[n]o person who committed a crime as a juvenile may be sentenced to life without the possibility of parole unless you find beyond a reasonable doubt that the defendant is irreparably corrupt and permanently incorrigible.”
- ^{liv} Tennessee Code Annotated Sections 40-35-501(h)(1), (i)(1).