

Decarceration Nation Episode 22 Juvenile Life Without Parole

Hello and welcome to Episode 22 of the incarceration nation podcast about radically reimagining America's criminal justice system.

I'm Josh Hoe. Among other things, I'm a former I'm formerly incarcerated freelance writer, criminal justice reform advocate and the author of the book *writing your own best story addiction and living hope*.

And now the news, Had a great time this week visiting the monthly meeting of the Detroit chapter of nation outside. I'm a steering team member for the statewide organization nation outside in Michigan, which is an organization which advocates for formerly incarcerated folks throughout my state. I also wrote an article this week on Medium as a response to the platform of criminal justice reforms that the NFL players coalition suggested to President Trump.

As for the show later this week, I'll finally be doing the interview with the folks from the Oscar nominated documentary short feature *Knife Skills*.

Very soon I will be interviewing Donna Hilton who is the author of the book "A Little Piece of Light" which has been getting a lot of buzz lately about her experiences throughout her life and in prison and after prison, which was released recently. Like I said, it's been getting lots of buzz. Finally, I want to send congratulations out to Rebecca Vallis of the Center for American Progress and to Sharon Dietrich who is a legal aid lawyer, Rebecca and Sharon, so the story goes, came up with an idea many years ago that they called Clean Slate while they were sharing wine one evening, as they were discussing this topic of expunged. From that humble beginning, the state of Pennsylvania just became the first state in the United States to make that idea that they came up with into law, congratulations to everyone involved. And for those who don't know, Clean Slate legislation is an automatic process, which, after a certain period of time, uses technology to wipe your record clean after you've been incarcerated. So thanks to Rebecca and to Sharon coming up with the idea and congratulations to everyone involved in Pennsylvania for passing clean slate legislation.

Okay so this week, I want to talk a little about my friend Jamo X. And yes, I did tell him before I did this, that I might be doing this, so he knows so okay. Jamo, got out of prison. About a year ago, he was convicted at the age of 15 to a sentence of juvenile life without parole, and he did 31 years in prison. Think about that for a second. So anyway, how did someone convicted of life without parole get out he got out as a result of a Supreme Court decision called *Montgomery versus Louisiana*, where they allowed people who had been sentenced as juveniles to life without parole to appeal for a new hearing and where they could ask for parole or make the argument for Pro. Luckily, in his case, he was successful. And I've had the honor of knowing him for a while just to get feel for Jamo.

Here are some of his words from a Detroit Free Press article written right after he got out, "I know for a fact I'm not the same person I was when I was at 15 years old. At 25, I wasn't the same person that I was, I have evolved over these 30 years, I think of how I carry myself and how I've lived my life over the past 30 years in prison. That's the best evidence you can show if we can't help children become better people than how can we say we believe in rehabilitation. If you can't take 13, year old people who have committed serious crimes and take them off the streets and get them the help they need and release them safely, then you can't release anybody safely."

Now, I did not know Jamo at the age of 15. But then time I've come to know him. He is always a thoughtful, considerate and very kind person person is always present who's always thinking about others. And during his time in prison, he became a mentor to other juvenile lifers and other prisoners throughout his day, which is probably part of the reason why he got out as a result of his hearing. So I said this about Jamo in a sense, I said that this episode was in a sense about Jamo and it is but it's also about the 247 other people who are sitting in jail in Michigan right now, probably in prison, a ton of other people and a ton of other people across the country. And all of these people are people who were sentenced to juvenile life without parole. I was thinking about it this week, because the midweek the Michigan Supreme Court in afford to decision resolve the conflict that have been holding up hearings for those 247 people that I was talking about a second ago, so that they couldn't get their hearings like Jamo did. So that sounds like a good thing. And like I said, it's true, there are 247 people like Jay mo or still stuck in prison as a result in Michigan have a juvenile life without parole sentence. And just so you know, this isn't just about Michigan, while 20 states banned juvenile life without parole sentences, 30 still allow them. So this isn't just about Michigan. So anyway, when the Supreme Court decision came down, there are a ton of popular press stories, including the New York Times that concluded that Michigan Supreme Court only resolve the question of whether juvenile life without parole could be applied by a judge as a sentence after a verdict of guilty or if these sentences should just be reserved for juries. But what these stories did not report is that the court actually did much, much more than just decide if judges could apply these kind of sentences. They also held that as long as the correct formula was followed, judges would not need to do additional fact finding an order to apply these sentences. And they held that neither strict scrutiny nor deciding a particular defendant was incapable of rehabilitation were necessary to apply a sentence of juvenile life without parole.

As I mentioned before, the whole reason that the Michigan case happened is that there have been several Supreme Court cases holding that mandatory juvenile mandatory sentences of life without parole for juveniles are unconstitutional, that people sentence before a certain date are entitled to new hearings. And also that concluded that these types of sentences should be extremely rare. This issue of when kids can be sentenced to life without parole was at the core of these recent US Supreme Court cases. And this Michigan decision seems to have gutted the one requirement that US Supreme Court insisted on the notion that these sentences should only be applied when a defendant was so corrupt, and they were that they were permanently

incorruptible and incapable of rehabilitation. In other words, they made the Michigan court in the state of Michigan has made it much easier for the rest of the courts in Michigan to apply and sustained juvenile life without parole sentences. Let me read this from the dissent in Miller, which is one of the other US Supreme Court cases, the United States Supreme Court held that mandatory life without parole set of sentences for juveniles violated the requirement of individualized sentencing for defendants facing the most serious penalties. The Michigan Supreme Court majority's interpretation, allowing a trial court to impose a sentence of life without parole without making any additional findings flouts the individualized sentencing and rigorous inquiry requirements of Miller and Montgomery, which were the two Supreme Court cases US Supreme Court cases that was talking about before it does not follow the court can find nothing beyond the jury's verdict before it can impose a life without parole sentence. life without parole is an excessive sentence for children whose crimes reflect transients, immaturity. the majority's observation that Miller did not impose a specific formal fact finding requirement is beside the point. What matters is that the eighth require the Eighth Amendment requires some additional findings supporting the legal conclusion that a juveniles offenses unusual enough to warrant a life without parole sentence before a court man pose such a sentence reading the state the statute as the majority does renders meaningless the individualized sentence required by Miller by alone life without parole effectively to serve as a default sentence. As long as the prosecutor files the motion required. If a trial court can simply hold the required hearing, consider the Miller factors and declare I find no mitigating aggravating circumstances. So I sent it to the defendants life without parole. Nothing would preclude trial courts from doing so in every case. So, you know, basically what the at least for the state of Michigan what this decision did is rubber stamp the ability to continue to apply life without parole sentences, really with the least possible barrier, which was the opposite in my opinion of what the Supreme Court was trying to say this decision was very troubling to me. Because not just because I know several people who've gotten paroled or who are on juvenile life incidences currently. But also because the specific at this specific moment in time where we are all apoplectic about immigrant kids being held in cages. The Spin Doctors on the right keep mentioning that well, that's okay. Because we can find kids all the time as a normal part of our criminal justice system. That's not okay. It is not okay that we treat juveniles that way is not okay that we have people like Jay Mo, who were put in prison for life at the age of 15. They say this as if it was a point of pride. But it's really a dark truth, something we should be deeply ashamed of. As a country, we should be ashamed that parents are separated from children as part of our criminal justice process. Because there's almost always a better solution than incarceration, there was almost always a diversion program that would result in better outcomes for both parent and child. The exception is obviously whenever a parent is a danger to the child. But in every other instance, research has consistently shown that diversion is better than incarceration, as that we've talked about multiple times on this podcast. The long term research shows that incarceration does not make society safer and longer sentences do not make society safer, we should be ashamed because study after study shows that prisons and jails resulted in the worst possible outcomes for those incarcerated and also for their kids and families. We should also be ashamed that we incarcerate so many kids, incarcerate them as adults until they're adults. And we are the only country in the world sentences kids to life without parole sentences. Yep, that's true. Not North

Korea, not Iran, not Russia, not Syria, just the United States of America. So if it's not already obvious that this should not be okay. Here are some reasons why you should probably one why I absolutely opposed juvenile life without parole. juveniles brains are different than adult brains. And this is from Justice Kagan's mature opinion, and the Miller versus Alabama case, which was kind of the first in the string of cases by the US Supreme Court that dealt with this problem. We insist in these rulings that a sensor have the ability to consider the mitigating qualities of you as we observed youth is more than a chronological fact. It is a time of immaturity, responsibility impetuosity and recklessness it is a moment and condition of life when a person may be the most susceptible to influence in the psychological damage at signature qualities are all transients endings. This is especially good on this point. They're a 16 year old shot a police officer point blank and killed him. We invalidated his death sentence because the judge did not consider evidence of his neglectful and violent family background including his mother's drug abuse and his father's physical abuse and it's emotional disturbance we found that evidence particularly relevant more so than it would have been in the case of an adult offender we held just as chronological age of a minor is itself irrelevant mitigating factor of great weight so must the background and mental and emotional development of a youthful dependent be duly considered in assessing culpability and other words according to even the Supreme Court of the United States, juveniles are the opposite of set in their ways the opposite of beyond rehabilitation and the opposite of forever criminal Lisa, you and provide some confirmation of this in her 2011 Southern California interdisciplinary Law Review article research clearly establishes that decision making capabilities between adults and adolescents are markedly different adolescents compared to adults are more prone to risk taking behavior. However, this type of reckless adolescent behavior ceases as adolescents reach adulthood and their brains develop fully. Undoubtedly, adolescents have the remarkable ability to be rehabilitated most juvenile offenders on death row experience some kind of childhood trauma and contrast the majority of adolescence from the general population experience no childhood trauma. Moreover, the research provides a link between environmental factors and criminal activities. These psychological and neurological studies support the assertion that convicted adolescents can be reformed and rehabilitative. In addition, effective models of juvenile rehabilitation support the notion that juveniles have the ability to change and rehabilitate if you remember last week, when we were talking to Bruce Western. One of the points that we were discussing, and I thought was a very salient point is this notion that violence is a part of most of the people involved in the criminal justice systems life in more than just one way. In other words, you might perpetrate violence, but you are more than likely also the object of violence. And you also probably were a witness to violence and violence is a sociological factor that surrounds so many people who come into contact with criminal justice system. In addition, the practice of juvenile life without parole is explicitly banned in the United Nations Convention on the Rights of the Child. Of course, we're not a signatory because, you know, we don't believe in any of that stuff anymore. But it's still internationally. That's the reason why every other country aside from the United States as opposed to it. Let me also mention here that juvenile life without parole sentences are applied in an incredibly racially disparate manner. This is a in the ACL us report on racial disparities, disparities. And sentencing is plainly noted that although blacks constitute only about 13% of the US population, as of 2009, blacks constitute 28.3% of all lifers, 56.4% of those

...serving life without parole, and 56.1% of those who received life without parole up for offenses, committed as juveniles and remember, we're talking about a population that's like 12 to 14% of the US population. So that is a huge disparity. And that's only part of the problem as the newspaper re entry Times explains the racism that black and brown people encounter doesn't begin with this justice system. It begins with how they exist in society, from the neighborhoods they grow up in the schools they attend, and the violent incursion that surrounds them, which makes juvenile life without parole sentences even more racially skewed and systemically unfair. A 2012 report by the sentencing project titled the lives of juvenile lifers revealed that 32% of these inmates grew up in public housing. 40% had been enrolled in special education classes. If you were then half were attending school at the time of their offense. An 80% of girls reported histories of physical abuse and 77% of girls reported histories of abuse. And while the root of this story is here in Michigan, this is an issue that of national importance. Well before this, this decision, Rashad Robinson explained the larger impact and the New York Times op ed consider Michigan were prosecutors are denying parole or shorter sentences for 60% of juvenile lifers, even in cases where parole board's have recommended them in open Collin County northwest of Detroit, the shares a whopping and 90% nearly half of all juvenile lifers are concentrated in Michigan, Pennsylvania and Louisiana. Prosecutors elsewhere have also effectively thumb their nose at the Supreme Court's ruling. On top of this, many prosecutors are re sentencing juvenile lifers to de facto life without parole sentences. The district attorney in Orleans Parish Louisiana defended reduced sentence for juvenile lifer to a term that would have left him in leave prison at age 101. So even when we are getting relief, the way that we write the laws and the way that prosecutors push for the laws to be written, as we've talked about many times before, are in such a way that it becomes de facto juvenile life without parole, which is equally brutal. Obviously, it's takes us back to many of our earlier episodes. At the core of this issue is that prosecutors have too much power and we are bound up in problematic notions of justice being tied directly to the length of incarceration attached to a crime, to the notion that a person who is committed a criminal act is forever a criminal to the notion that violence is a forever feature people who committed a violent crime and ultimately to the politics of punitive justice. We also have discussed some particular folks with juvenile life without parole sentences during our live state bill debate episode a couple weeks ago. All of these are reasons why we need to end this practice. In another earlier episode, I talked about bars to balance which is this idea I had, and it's actually been incorporated into a campaign called right to vote by a bunch of different prison organizations. And the idea of bars to ballots is that formerly incarcerated people and incarcerated people where possible, should always should all vote and vote only for Canada support support real criminal justice reform. I think this is true as a general rule of thumb, that we should all start seeing this as a primary self interest that to not vote this way is to vote against our own self interest. I think that's true in the larger society as well. And I know a lot of people, maybe people listening to this podcast, have some doubts about the the process of voting or about our democratic process itself. But my whole take is that that is it is impossible to make that change unless we start turning out in the numbers necessary to let people know that they can't continue to do these kinds of things. Like, for instance, one of the people who's most associated with these juvenile life without parole sentences is a prosecutor in Michigan, and Kym worthy, you know, if everyone that was associated with our movement in her district,

showed up at her office and let her know that they weren't going to continue to vote for her. If she continues to push for juvenile life without parole, then I suspect that her calculus would change or someone else would have a better shot at winning the prosecutors job in that area. So, you know, it seems to me that it's really important that we start moving toward solutions where we call us as a movement for criminal justice reform as a block of voters in every district, in every state, in every place where we reside, which, you know, if you think about it, there's millions of millions and 10s of millions of people who have been incarcerated, and people who are are recently released and people are still incarcerated. And if we all are fighting for each other, and we're all putting that interest first. So we can't continue to be discriminated against. So people can't get these in just sentences and things like that, then we actually could make quite a difference. And obviously, all of our allies to now I mean, we do this not just because it's in our self interest, but we should also do it because they do otherwise it's morally wrong. We should do this because there's no good reason to continue this practice. There's no good evidence proving that kids can't be rehabilitated, the argument the kids can be deterred, is kind of silly, you know, as if they're, you know, reading the paper, and they understand that a life without parole sentence and stuff like that could, you know, could exist, and that's how they're going to be punished. And even if we assume that that is valid, we know for a fact from research that we've quoted before on this podcast, that while the certainty of punishment has a chance of tutoring length of punishment, does not. Are we going to hang our hat on retribution is that what this is all about is it is for instance, with my friend Jay, Mo is 31 years, not enough. I mean, I have spent years in prison. And I know that one year in prison is incredibly brutal. I could spend hours of this podcast just talking about the terrible things that I saw. And just the notion that any moment in prison could be your last moment. Like, for instance, when I was in prison, most of the time I was in Michigan, what, in what in Michigan, what we call in Michigan, a level one prison, which means that instead of being put in cells, you're put in pole barns, and there are 160 people in each pole barn. And there's really nothing that keeps everybody away from each other. Except for that there are two correctional officers in this gigantic building. And if they get you in time, maybe they'll intervene. But usually they don't have time or they don't have the backup. And so you know, at all times in prison, even if no one's coming after you, you have this kind of constant level of stress, because any moment you know, something bad could happen around you. something could happen to you. Someone could, you know, I mean, it's just, it's hard to explain unless you've been there and just the fact that you can't leave. You know, one of the things that I've been talking about a lot in regards to this internment policy for the kids on the border is that, you know, when you hear these spin, doctors will say something like, Oh, well, they're really nice facilities, and we provide them with toys, and we do all this kind of stuff. You know, Disney World is a really nice place. I used to go there all the time. When I was a kid, and I went there, even as an adult. I loved it every time I went, but if they told me that I had to go, and I could never leave, I would hate Disney World. Part of it is just the fact that you're incarcerated. You know, it doesn't matter how nice the cage is, it's still a cage. You know, that doesn't mean that there can't be positive things that come out of the cage. But if you're in prison for that long, you know, with my friend Jay, Mo, like I said, it's 31 years. That's an awful I mean, like have less than half of the population in the United States has even been alive 31 years. I mean, if we can't say that, that's enough, if we can't come to the point where we accept that Enough is enough.

I mean, we've got some real problems with the way we look at Mercy. And the way we look at justice, what is just about any of this, especially given the research that's a yes, that young brains don't make the choices the way older brains make, I mean, I'm willing to take responsibility for my crimes, because I committed them when I was older. But, you know, at least we should have some mercy. And remember that the problem here is, this isn't a distinction between letting people go without serving a sentence and just getting out nilly. This is about people who have served a life sentence, not having to serve a life without parole sentence. Even if we were to say, no more juvenile life without parole, all of these people would still be serving a life sentence, which in most places, 20 to 25 years minimum and that's assuming you get some some parole help. So just this whole thing is, is to say that there's a justification for this seems beyond the pale. And you know, as I said, also, in Episode One of the entire podcast, the heart of the problem of the criminal of criminal justice, and the reason we should demand change at the heart of my call to radically reimagine America's criminal justice system is one indispensable, indisputable, I said, indispensable, I met indisputable truth and that is racism, as I said, way back then you would have to be willfully blind walk into a prison or jail in United States and not immediately see the structural racism. juvenile life without parole is enforced in racially biased ways, which means for people of color who experience it, it is an unfair sentence. If, for instance, a person like me were a juvenile. And I got just life instead of juvenile life without parole at a lesser rate than people who are of color that means that the justice system is not, you know, that is not being just our goal should be to reduce injustice, especially in justice rooted in racially biased systems and structures. I guess I just hope that Michigan and the other 30 states come to their senses soon, or that we make them come to their senses. I think about my recent trip to Washington, DC. So I took a bus trip to go to the ACLU conference, they have an annual Well, they just started to have an annual membership conference. And J. Mo was able to go with me. And at one point, I remember just thinking what a great time were having and we had a blast the entire time.

It was just a wonderful experience. They were incredibly welcoming. There were so many great speakers was an incredible experience to great thing. If you like the ASL, you don't like the ACLU. That's not the point is it was it was a really, the panels were interesting, the food was good, the people were great, was just a really good experience. But for Jay Mo, he told me that that was the first time aside from moving from prison to prison during his 31 years incarcerated cross the state Michigan that that was the first time in his life he had ever left the city of Detroit. And I just thought about that. And I thought a thought a lot since then. Especially after this court decision that if this if there weren't mercy for people like James and I would have never met GMO I would have never had any of those experiences that I wouldn't have experienced his kindness. I can't tell you the amount of times I've seen him help other people just little things like he sees someone who needs help, he walks he walks out of his way to bend over and help them the advice he gives to other people who are struggling the the time he spends trying to just be a good member of his community, the the quiet generosity that he shows every time I see him, I would never have gotten to experience that if there had not been this is a Supreme Court decision. And it makes me very sad that this Michigan Supreme Court decision has made it so it's likely that so many more kids like new kids who get sentenced that could, you know, maybe they did something terrible, maybe they killed someone, but you know, at the end of the day,

they could spend the rest of their life in prison when it's very likely that they could be rehabilitated, and that 20 years from now, they could be a person just like Jamo. And you know, I can only hope that that's the case. Because, you know, I cannot tell you what a What a great person Jamo is and how much I care about this issue.

I really hope that if you weren't aware of this issue before that you'll think about it a little bit more and check into in your state or in neighboring states or an organization so you work with what they're doing to help. And I just, you know, I hope that in Michigan will be able to come up with a political coalition, which is something we're trying to build, like I said, that allows us to have influence on legislators in much the same way that prosecutors do now and influence on prosecutors in much the same way that tough on crime or victims rights groups have because it's not that I only want our interest heard, but I do want our interest heard. And today it's so politically popular and easy to just kick you know, to just make everything as harsh as humanly possible. I mean, I have a hard time believing if you read this decision that the Supreme the Michigan Supreme Court wasn't actively trying to find ways to make it so that the Supreme Court decisions weren't about trying to find a way for juveniles to get out of the Michigan criminal justice system.

All right, well, that's it for this week. As always, you can find the show notes or leave us a comment at the corporation nation. com if you want to support the podcast directly. You can do so from portray in comm slash on pirate satellite. You can also support us by leaving a five star review from iTunes Like us on Stitcher, Spotify. Thanks so much for listening to the the corporation nation podcast See you next time.