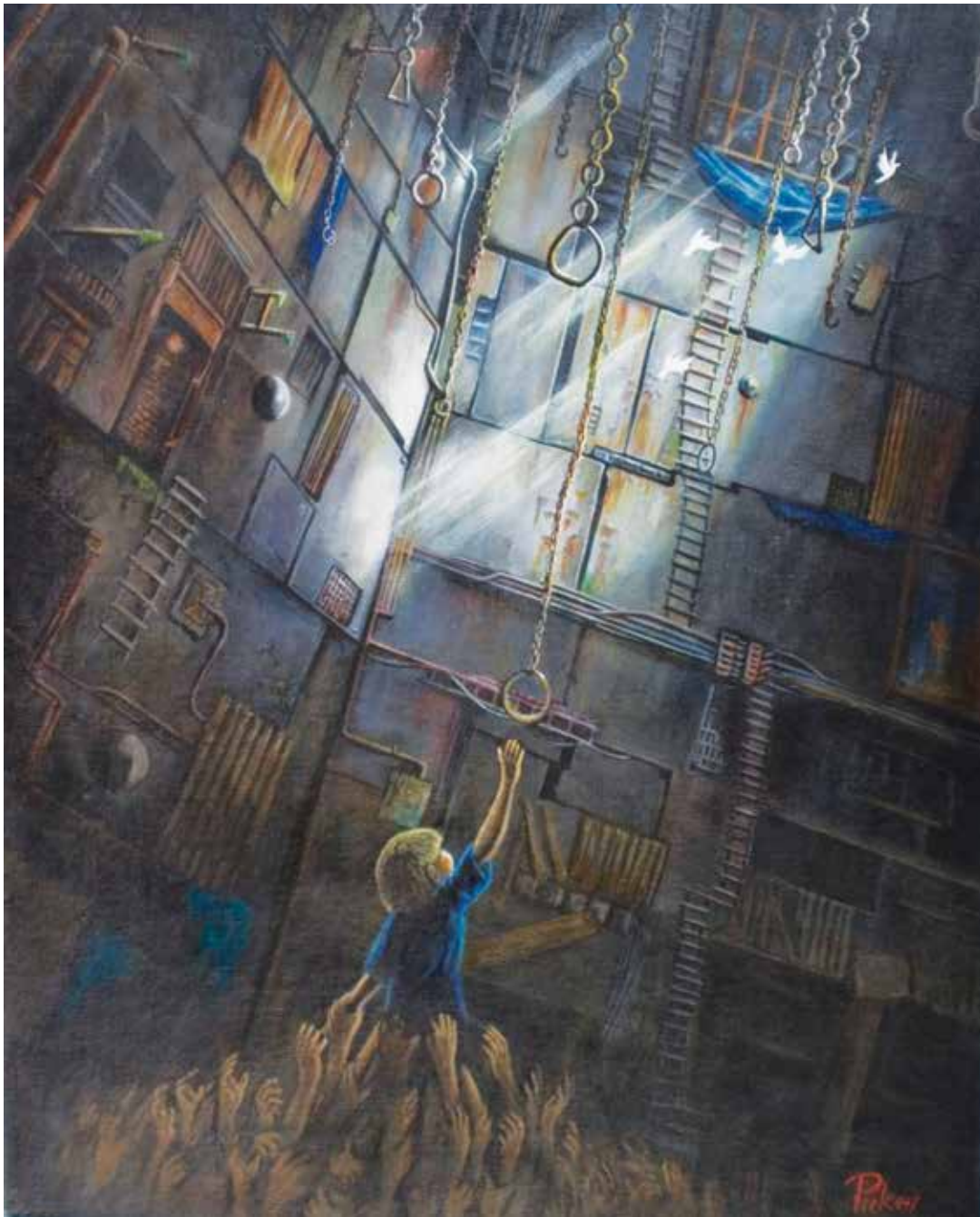


# JUVENILE LIFERS AND JUVENILES IN MICHIGAN PRISONS

## A POPULATION OF SPECIAL CONCERN

By Kimberly Thomas



*Deep Sense of Need* by Bryan Picken

Prisoners serving life without parole for offenses they committed when they were juveniles have received much attention after the United States Supreme Court found in *Miller v Alabama*<sup>1</sup> that mandatory life without parole for juveniles violated the Eighth Amendment and found that its *Miller* decision applied retroactively.<sup>2</sup> Courts have begun the process of sentencing and resentencing these individuals, some of whom are still teens and some of whom have served 40 years or more in the Michigan Department of Corrections (MDOC). All told, not including new cases that come before the court, approximately 370 prisoners<sup>3</sup> will receive individualized sentences under the state laws enacted to implement *Miller* and *Montgomery v Louisiana*.<sup>4</sup> This article examines a few ways in which federal and state corrections law and corrections policy affect this population.

In one report, approximately 4,000 individuals in Michigan were imprisoned for crimes committed before age 18.<sup>5</sup> Over the past year or two, the number of individuals 17 or younger within MDOC has ranged from approximately 75 to almost 90.<sup>6</sup>

Male youth are often placed at the Thumb Correctional Facility, which has one youthful offender unit with approximately 120 beds. Youthful female offenders are housed in the Huron Valley Women's Facility, which is not youth specific and is the only women's facility in Michigan.

### Federal and state laws affecting juvenile and young adult prisoners

Federal and state laws affect whether individuals who are still juveniles involved in the criminal justice system can be housed with a general adult population. The Juvenile Justice and Delinquency Prevention Act states that as a condition of receiving some federal funding, juveniles may not be housed with adults on the basis of delinquency adjudications,<sup>7</sup> and that juveniles convicted in federal court may not be placed or retained in an adult jail or correctional institution in which they have regular contact with incarcerated adults.<sup>8</sup>

Additional restrictions on the housing of juvenile prisoners are found in the Prison Rape Elimination Act, which has a "sight and sound" restriction requiring the separation of youthful inmates from adult inmates.<sup>9</sup> Restrictions that permit placement of juveniles in adult county jails but require sight and sound separation are also codified in state law.<sup>10</sup>

MDOC does not have a separate policy directive specifically addressing youthful offenders in prison.

A particular concern for youthful inmates is the use of solitary confinement or segregation, either as a disciplinary measure or as an unintended consequence of a lack of appropriate facilities.

Solitary confinement is associated with severe harm to physical and mental health among both youth and adults, including increased risk of self-mutilation and suicidal ideation[;]

## Fast Facts

1. A particular concern for youthful inmates is the use of solitary confinement or segregation, either as a disciplinary measure or as an unintended consequence of a lack of appropriate facilities.
2. The effect of MDOC policy is that lifers, including juveniles serving unconstitutional mandatory life without parole sentences, are less likely to have access to programming, especially during their formative early years in prison.

greater anxiety, depression, sleep disturbances, paranoia, and aggression[;] exacerbation of the onset of pre-existing mental illness and trauma symptoms[;] [and] increased risk of cardiovascular problems.<sup>11</sup>

By some estimates, about a third of juveniles in custody report being in solitary confinement for some length of time.<sup>12</sup> A 2016 U.S. Department of Justice report called for eliminating the use of restrictive housing for juveniles.<sup>13</sup> The DOJ also recommended the minimal use of restrictive housing for young adults and the provision of "developmentally responsive policies and practices" which recognize that brain and psychosocial development continues in the early to mid-20s.<sup>14</sup>

Another concern is that youth are disproportionately subject to abuse and sexual assault in prison.<sup>15</sup> In 2013, a class-action lawsuit, *John Doe v Michigan Department of Corrections*, was filed in Michigan on behalf of more than 500 youthful prisoners ages 14 to 17, alleging that these inmates "have been or will be subjected to sexual and physical assaults and abuse, sexual harassment, and degrading treatment from adult prisoners as a result of incarceration in adult prisons."<sup>16</sup> Partial summary judgment was granted, but the lawsuit was still pending as of July 2017.<sup>17</sup>

### Juvenile lifers and access to programming in prison

An area of attention is the education and programming available to juveniles and juvenile lifers in MDOC even after they have become adults.

Generally, MDOC requires any inmate serving two years or more to complete his or her GED before being paroled.<sup>18</sup> Additional federal laws cover the educational services provided to juveniles and young adults with disabilities. For these inmates, the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990 (as amended) obligate

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MDOC to provide educational services to eligible youth in confinement.<sup>19</sup> Some of these requirements are also ensured by MDOC regulation.<sup>20</sup>

MDOC policy and the availability of programming at any particular facility also affect the work and rehabilitation opportunities available to youthful inmates and inmates sentenced to life without parole for offenses committed when they were juveniles. MDOC prioritizes access to facility programming—such as its Violence Prevention Program, Thinking for a Change, and Substance Abuse Education—by earliest release date,<sup>21</sup> which is the first possible parole date. This prioritization means that lifers, including juveniles serving unconstitutional mandatory life without parole sentences who have not yet been resentenced, are less likely to have access to these programs, especially during their formative early years in prison. Based in part on research showing the continuing development of young adults, the legislature recently amended the corrections code to require development of rehabilitation plans for prisoners aged 18–22 that take age into account and provide for youth rehabilitation programming, to the extent the department is able to do so.<sup>22</sup> ■

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### ENDNOTES

1. *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012).
2. *Montgomery v Louisiana*, \_\_\_ US \_\_\_, 136 S Ct 718; 193 L Ed 2d 599 (2016).
3. See, e.g., Devereaux, *Look up Michigan's juvenile lifers who have a chance at a new prison sentence* (March 29, 2016) (reporting 367 juvenile lifers based on an MDOC list) <[http://www.mlive.com/news/index.ssf/2016/03/database\\_of\\_juvenile\\_lifers\\_vii.html](http://www.mlive.com/news/index.ssf/2016/03/database_of_juvenile_lifers_vii.html)>. All websites cited in this article were accessed August 12, 2017.
4. MCL 769.25 and MCL 769.25a control the sentencing and resentencing procedures and terms for these cases.
5. See Weemhoff & Staley, *Youth Behind Bars* (2014), p 9 <[https://media.wix.com/ugd/03cb01\\_a9d053d7f65141fbbe982057dbd920d1.pdf](https://media.wix.com/ugd/03cb01_a9d053d7f65141fbbe982057dbd920d1.pdf)> (stating that as of November 2013, there were 3,927 people in Michigan's prisons for crimes committed before age 18).
6. At the end of 2014, MDOC reported holding 26 youth aged 16 and under and 55 17-year-olds. Another source stated that in April 2015, MDOC reported that there were 74 prisoners in custody under the age of 17 who were sentenced by the courts as adults. WDET, *Juveniles in Michigan's Prisons* (April 21, 2015) <<http://wdet.org/posts/2015/04/21/80260-juveniles-in-michigans-prisons/>>. Data reported by the U.S. Department of Justice at the end of 2015 showed close to 90 juveniles in our state prisons. Carson & Anderson, *Prisoners in 2015* (December 2016), p 14 <<https://www.bjs.gov/content/pub/pdf/p15.pdf>>.
7. 42 USC 5633(a)(12); see also Kysel, *Banishing Solitary: Litigating an End to the Solitary Confinement of Children in Jails and Prisons*, 40 NYU Rev L & Soc Change 675, 719 (2016).
8. 18 USC 5039. This provision, however, had not been interpreted by the U.S. Department of Justice to prohibit the detention of children charged with or convicted of state felonies in adult jails and prisons. See *Banishing Solitary*, 40 NYU Rev L & Soc Change at 682 n 27.
9. 28 CFR 115.14(a) ("A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.")
10. MCL 764.27a (allowing confinement in the county jail, but requiring that the youth "shall be held physically separate from adult prisoners"); see also MCL 712A.18h (juvenile code provision); MCL 750.139 (stating that children under 16 while under arrest or convicted shall not be in a cell with or in a transport vehicle with adults charged or convicted of a crime).
11. American Psychological Association, *Solitary Confinement of Juvenile Offenders* <<https://www.apa.org/about/gr/issues/cyf/solitary.pdf>> (citations omitted).
12. Press Release, U.S. Senator Dick Durbin, *Durbin: Time To End Use Of Solitary Confinement For Juveniles, Pregnant Women, And Those With Serious Mental Illness* (February 25, 2014) <<http://www.durbin.senate.gov/newsroom/press-releases/durbin-time-to-end-use-of-solitary-confinement-for-juveniles-pregnant-women-and-those-with-serious-mental-illness>> (stating, in calling for all federal and state facilities to end the use of solitary confinement for juveniles, that "[i]rty-five percent of juveniles in custody report being held in solitary for some amount of time"). The U.S. Department of Justice established the Youthful Inmate Standard within the 2012 PREA regulations, requiring all youth under age 18 to be separated by sight and sound from adults in jails and prisons and restricting the use of isolation to achieve that separation.
13. U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing: Final Report* (January 2016), pp 61–62, 101.
14. *Id.* at pp 59–60, 102.
15. National Prison Rape Elimination Act Commission Report (June 2009), pp 155–156 ("In terms of risk for sexual abuse while in confinement, youth incarcerated in adult prisons and jails are probably at the highest risk of all"; also noting "the extreme risk of sexual victimization for youth in adult facilities").
16. *Youth Behind Bars*, p 20.
17. *Does 1-12 v MDOC*, \_\_\_ F Supp \_\_\_ (ED Mich, 2017) (Docket No. 13-14356).
18. MCL 791.233.
19. 20 USC 1400 *et seq.*, 42 USC 12131–12134; see also U.S. Department of Education Office of Special Education and Rehabilitative Services, Dear Colleague letter (December 5, 2014) <<https://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf>> (describing an exception to the provision of a FAPE-free appropriate public education—to youth in adult prison who were not identified as students with disabilities and did not have individualized education plans before incarceration).
20. See MDOC, *Policy Directive 05.02.114: Special Education Services for Prisoners* (providing that "appropriate special education services are provided to all eligible prisoners").
21. See, e.g., MDOC, *Programming—Prisoner Referral and Placement Process* <[http://www.michigan.gov/corrections/0,4551,7-119-9741\\_12798-201919-,00.html](http://www.michigan.gov/corrections/0,4551,7-119-9741_12798-201919-,00.html)>.
22. MCL 791.262d (effective June 29, 2017).