

There Is No Meaningful Opportunity in Meaningless Data: Why It Is Unconstitutional to Use Life Expectancy Tables in Post-Graham Sentences

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Abstract : The United States Supreme Court recently announced that it is unconstitutional to sentence a child to life without parole for non-homicide offenses, and that each child so situated must be afforded a meaningful opportunity for release from prison in his lifetime. The Court also declared that it is unconstitutional to impose a mandatory sentence of life without parole on a child for homicide offenses. Across the United States, attorneys and advocates continue to litigate issues surrounding the implementation of these legal principles. Some states have held that any sentence to a finite term of years, no matter how long, is not the same as 'life' and therefore does not violate the constitution. Other states have held that a sentence to a term of years that is less than the expected life of that particular child is not unconstitutional. In Colorado, the courts have routinely looked to life expectancy estimates from governmental organizations to determine how long a particular child is expected to live. They then compare that the date that the child is expected to be eligible for parole, and if the child is expected to still be living when he is eligible for parole, the sentence is deemed constitutional. This paper argues that it is inappropriate, reckless, unconstitutional and not scientifically sound to use such estimates in determining whether a child will have a meaningful opportunity for release from prison and life outside of prison before he dies. This paper argues that the opportunity for release must mean more than a probability that a child will be released before his death, and that it must include an opportunity for a meaningful life outside of prison (not just the opportunity to be released and then die on the outside). The paper further argues that life expectancy estimates cannot guide a court or a legislature in determining whether a sentence is or is not constitutional.

Keywords : life without parole, life expectancy, juvenile sentencing, meaningful opportunity for release from prison

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