JUVENILE JUSTICE ACCOUNTABILITY AND IMPROVEMENT ACT OF 2009

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

H.R. 2289

JUNE 9, 2009

Serial No. 111–47

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JUVENILE JUSTICE ACCOUNTABILITY AND IMPROVEMENT ACT OF 2009

TUESDAY, JUNE 9, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:07 p.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Lofgren, Quigley, Gohmert, Poe, Goodlatte, and Lungren.

Staff Present: (Majority) Bobby Vassar, Subcommittee Chief Counsel; Jesselyn McCurdy, Counsel; Karen Wilkinson, Federal Public Defender Office Detailee; Veronica Eligan, Professional Staff Member; (Minority) Kimani Little, Counsel; and Kelsey Whitlock, Staff Assistant.

Mr. SCOTT. The Subcommittee will now come to order.

I am pleased to welcome you today to the hearing before the Subcommittee on Crime, Terrorism, and Homeland Security on H.R. 2289, the "Juvenile Justice Accountability and Improvement Act of 2009."

The United States is the only country on Earth that sentences children to die in prison. While other countries have abolished this practice, we continue to impose this sentence at alarming rates, and in 14 States children as young as 8 years old can be sentenced to life without parole.

Currently, the United States has over 2,500 people in prison serving life sentences without parole for crimes they committed as children. For the majority of these juveniles, it was their first offense.

What is alarming is that over 2,000 of the 2,500-plus juvenile life-without-parole sentences resulted from mandatory minimum sentencing guidelines that required the court to impose the life sentence. In 29 States, once a youth is convicted of certain crimes, the court must impose life and cannot give consideration at sentencing to either the child's age or life history.

Whether or not these mandatory minimum sentences were intentionally designed to penalize such a large number of juvenile offenders is not clear. A recent case, In re Nunez, seems to indicate that the sentencing of some juveniles to life without parole is an

unintended consequence of harsh mandatory sentencing schemes originally designed for adult offenders.

In Nunez, the court compared California State sentences for first-degree murder and for kidnapping for ransom that does not result in injury. Under current laws, a 14-year-old convicted of kidnapping for ransom that involved a substantial risk of death, but no death or even injury occurred, they would receive a mandatory life-without-parole sentence. Had the offender murdered the victim and been convicted, the harshest sentence he could have received would be life with parole.

The inconsistency between these two sentencing schemes implies that at least some juvenile life-without-parole sentences have resulted because of legislative oversight as opposed to any deliberate legislative intent.

Also of concern is that over a quarter of youth offenders serving life-without-parole sentences were convicted of felony murder. Under felony murder laws, a teen who commits a non-homicide felony, such as robbery, is held responsible for a codefendant's act of murder that occurs during the course of the felony. State laws do not require the child offender to have intended or even known that murder would take place, or that he even participated, or even that the other participant was armed—he might not have even known that.

These felony murder convictions are problematic when we consider that many of the juveniles serving these sentences committed their crimes with adult codefendants. In California, for example, 70 percent of the juvenile life-without-parole cases in which a teen was acting with codefendants, at least one of the codefendants was an adult. In over 50 percent of these cases, the adult received a more lenient sentence than the teen, even though the children generally were neither the ringleaders, sometimes not even directly involved.

For example, if a 13-year-old juvenile joins a 25-year-old brother in stealing a car and going on a joy ride, while the 13-year-old juvenile waits in the stolen vehicle his older brother stops at a drug house and murders someone, because the 13-year-old juvenile helped steal the vehicle that was used to drive to the drug house, under the felony murder rule, he will be held accountable for the murder that his brother committed even if the juvenile did not know of the plan.

Now, scientists have revealed that children's brains are underdeveloped in areas dealing with impulse control, regulation of emotions, risk assessment, and moral reasoning. During adolescence, neurological structures most critical to making good judgments, as well as moral and ethical decisions, are still being developed. Additionally, because of their low social status in relation to adults and their dependency on adults, juveniles are uniquely susceptible to coercion and intimidation by adults.

For these reasons, the United States Supreme Court has found that sentencing children to death violates the eighth amendment's prohibition against cruel and unusual punishment. The California Senate recognized this fact and recently passed legislation allowing courts to review juvenile parole cases after 10 years and, if appropriate, resentence the offender to a new sentence of 25 years to life.

While juvenile life without parole is often imposed on children offenders who have been convicted of crimes of homicide, life without parole is also imposed on a variety of other crimes, including assault, carjacking, robbery, molestation, burglary, drugs, and grand larceny. In many of these instances, the crime resulted in no death.

In the case of *Sullivan v. Florida* before the Supreme Court this coming term, a 13-year-old was sentenced to life without parole in Florida after being convicted of sexual battery. In a second case to be heard by the Supreme Court this term, *Graham v. Florida*, a 17-year-old on parole was sentenced to life without parole for taking part in an armed home invasion which also did not result in a murder. The issue before the Supreme Court is whether, in either of these cases, whether or not there is a violation of the eighth amendment's prohibition of cruel and unusual sentences.

There also appears to be a discriminatory impact in life-without-parole sentences. African American youth, on average, receive juvenile life-without-parole sentences 10 times more often than White youth. In Connecticut, Pennsylvania, and California, this disparity is even greater, with Black youth being sentenced 18 to 28 times more often than White youth.

In the bill before us, we are not seeking to prohibit the incarceration of juveniles from life sentences or mandating their release. The bill simply provides that, for a juvenile sentence to life or the equivalent, a meaningful opportunity for a review and possible parole must take place. Only after serving 15 years of incarceration and then only at intervals of 3 years thereafter will juveniles be allowed a chance to show that they are worthy of parole.

Now, we recognize the pain and suffering of victims of child offenders and the need for closure in these cases. For this reason, the bill provides for victim notification requirements in an effort to protect these victims' rights and understandable sentiments. However, there are several States that do not sentence juveniles to sentences of life without parole which manage this need against the need for society to recognize that there are irrefutable scientific differences between juveniles and adults in their ability to make responsible decisions.

We recognize these differences in many ways: Juveniles can't vote; juveniles can't serve on juries; can't drink, smoke, or serve in the military; can't sign contracts, play the lottery, and so forth, because they are not viewed as having the mental capacity or maturity to responsibly do these things. Yet, we toss aside all science and reason regarding the mental capacity of juveniles when it comes to crime.

We addressed this issue in a reasonable manner over 100 years ago through the establishment of a juvenile court system. However, we have allowed the emotions and politics of crime to roll back the provisions of that system to substitute the harsher adult system in not just serious violent crimes but in a whole host of other areas. We continue to do this in spite of the fact that every credible study now reveals that treating juveniles as adults generally results in them committing more serious crimes, and sooner, than similarly situated children sentenced as juveniles.

So we look forward to hearing from the panel on how we can address the issue of why we are the only country in the world to sen-

tence children to die in prison, sometimes for relatively minor involvement in crime.

[The bill, H.R. 2289, follows:]

I

111TH CONGRESS
1ST SESSION

H. R. 2289

To establish a meaningful opportunity for parole or similar release for child offenders sentenced to life in prison, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2009

Mr. SCOTT of Virginia (for himself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To establish a meaningful opportunity for parole or similar release for child offenders sentenced to life in prison, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Juvenile Justice Accountability and Improvement Act of 2009".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Historically, courts in the United States have recognized the undeniable differences between adult and youth offenders.

(2) While writing for the majority in Roper v. Simmons (125 S. Ct. 1183), a recent Supreme Court decision abolishing use of the death penalty for juveniles, Justice Kennedy declared such differences to be "marked and well understood".

(3) Notwithstanding such edicts, many youth are being sentenced in a manner that has typically been reserved for adults. These sentences include a term of imprisonment of life without the possibility of parole.

(4) The decision to sentence youthful offenders to life without parole is an issue of growing national concern.

(5) While there are no youth serving such sentences in the rest of the world, research indicates that there are over 2,500 youth offenders serving life without parole in the United States.

(6) The estimated rate at which the sentence of life without parole is imposed on children nationwide remains at least 3 times higher today than it was 15 years ago.

(7) The majority of youth sentenced to life without parole are first-time offenders.

(8) Sixteen percent of these individuals were age 15 or younger when they committed their crimes.

SEC. 3. ESTABLISHING A MEANINGFUL OPPORTUNITY FOR PAROLE FOR CHILD OFFENDERS.

(a) IN GENERAL.—

(1) REQUIREMENTS.—For each fiscal year after the expiration of the period specified in subsection (d)(1), each State shall have in effect laws and policies under which each child offender who is serving a life sentence receives, not less than once during the first 15 years of incarceration, and not less than once every 3 years of incarceration thereafter, a meaningful opportunity for parole or other form of supervised release. This provision shall in no way be construed to limit the access of child offenders to other programs and appeals which they were rightly due prior to the enactment of this Act.

(2) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue guidelines and regulations to interpret and implement this section.

(b) DEFINITION.—In this section and section 4, the term "child offender who is serving a life sentence" means an individual who—

(1) is convicted of one or more offenses committed before the individual attained the age of 18; and

(2) is sentenced, for such an offense or offenses, to a term of imprisonment of life, or of any number of years exceeding 15 years, cumulatively.

(c) APPLICABILITY.—This section shall apply to individuals sentenced before, on, or after the date of the enactment of this Act.

(d) COMPLIANCE AND CONSEQUENCES.—

(1) COMPLIANCE DATE.—Each State shall have not more than 3 years from the date of enactment of this Act to be in compliance with this section, except that the Attorney General may grant a 2-year extension to a State that is making a good faith effort to comply with this section.

(2) CONSEQUENCE OF NONCOMPLIANCE.—For any fiscal year after the expiration of the period specified in paragraph (1), a State that fails to be in compliance with this section shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to that State under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), whether characterized as the Edward

Byrne Memorial Justice Assistance Grant Program or otherwise.

(3) REALLOCATION.—Amounts not allocated under a program referred to in paragraph (2) to a State for failure to be in compliance with this section shall be reallocated under that program to States that are in compliance with this section.

SEC. 4. NOTICE TO VICTIMS.

Each State that has in effect laws and policies in accordance with the requirements of section 3 shall, not later than 1 year after the date of compliance with such section—

(1) provide notice to the public of such laws and policies, which shall include—

(A) a description of the opportunities for parole or supervised release available to child offenders who are serving a life sentence, and how those opportunities differ from the laws and policies in effect before compliance with section 3; and

(B) the name and contact information of the office, agency, or other entity that may be contacted for additional information about such laws and policies, including the application of such laws and policies to a child offender who

is serving a life sentence, by a victim who was directly and proximately harmed as a result of an offense described in section 3(b) that was committed by such a child offender; and

(2) provide procedures whereby a victim who was directly and proximately harmed as a result of an offense described in section 3(b) that was committed by a child offender who is serving a life sentence may, upon request, receive information about the specific opportunities for parole or supervised release to be provided to such child offender in accordance with such laws and policies, including dates of parole or supervised release hearings and notice of decisions granting or denying parole or supervised release.

SEC. 5. ESTABLISHING A PARALLEL SYSTEM FOR CHILD OFFENDERS SERVING LIFE SENTENCES AT THE FEDERAL LEVEL.

Section 3624 of title 18, United States Code, is amended—

(1) in subsection (a) by striking "A prisoner" and inserting "Except as otherwise provided by law, a prisoner"; and

(2) by adding at the end the following:

"(g) OPPORTUNITY FOR RELEASE FOR CHILD OFFENDERS SERVING A LIFE SENTENCE.—Not later than 1 year after the date of the enactment of this subsection, the Attorney General shall establish and implement a system of opportunity for release that will apply to child offenders who are serving a life sentence (as defined in section 3 of the Juvenile Justice Accountability and Improvement Act of 2009) for Federal offenses. The system shall conform as nearly as practicable to the laws and policies required of a State under section 3(a) of such Act and shall include provision for the same or similar notice to victims as States are required to provide under section 4 of such Act. The system shall be in addition to any other method of release that might apply to such an offender.".

SEC. 6. GRANTS TO IMPROVE LEGAL REPRESENTATION OF CHILDREN FACING OR SERVING LIFE IN PRISON.

(a) GRANTS AUTHORIZED.—The Attorney General shall, subject to the availability of appropriations, award grants to States to improve the quality of legal representation of certain child defendants and child offenders by providing for competent legal representation for individuals who—

(1) are charged with committing an offense, before the individual attained the age of 18, that is

1 subject to a sentence that may include a term of im-
2 prisonment of life, or the functional equivalent in
3 years or more; or
4 (2) are convicted of an offense committed be-
5 fore the individual attained the age of 18, and are
6 sentenced to a term of imprisonment of life, or the
7 functional equivalent in years or more, for that of-
8 fense, and who seek appellate or collateral relief, in-
9 cluding review in the Supreme Court of the United
10 States.
11 (b) LEGAL REPRESENTATION.—In this section, the
12 term "legal representation" means legal counsel and inves-
13 tigative, expert, and other services necessary for com-
14 petent representation.
15 (c) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to carry out this section
17 such sums as may be necessary.

○

Mr. SCOTT. It is my pleasure to recognize the esteemed Ranking Member of the Subcommittee, the gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott.

Today the Crime Subcommittee will review H.R. 2289, the "Juvenile Justice Accountability and Improvement Act." This bill requires States to give parole reviews to juvenile offenders who are sentenced to life without parole.

This bill seeks to regulate prerogative sentencing of convicted criminals. That is exclusively a State issue. As most law professors and lawyers know but some forget, States have exclusive control over the prosecution and sentencing of defendants within their jurisdiction unless their laws violate a constitutional right.

In the 1990's, the overwhelming majority of State legislatures adopted sweeping changes to their juvenile criminal codes to properly address what the juvenile justice system had overlooked: that protection of public safety is of paramount concern whether the offender is juvenile or adult.

These State legislatures revised their codes to allow juveniles charged with serious violent crimes to be tried as adults to ensure that a juvenile offender was not sentenced less seriously for their criminal behavior solely because of their age and perceived immaturity. They also reasoned that juveniles who pause to consider the consequences of their conduct before committing crimes will be deterred if they face harsh sentences such as life in prison without parole.

Presently, 39 States allow for juveniles to be tried as adults and sentenced to imprisonment for life without parole if they are convicted of violent crimes such as murder. In some States, a sentence of life without parole is mandatory if a juvenile is convicted of certain crimes. In other States, the sentencing judge has discretion as to the sentence.

In its next term, the Supreme Court will consider the constitutionality of sentencing certain juveniles to sentences of life without parole. In making its decision, the Court will consider two cases involving offenders who committed crimes that did not result in the death of a victim. That is a slightly peculiar choice of cases, considering that Amnesty International tells us that almost 93 percent of juveniles serving life without parole were convicted of homicide.

When making its decision in these cases, I hope the Court is mindful that prosecutors consider a number of factors when they determine whether to charge a juvenile defendant as an adult. Included in those factors are the nature and circumstances of the offense, the impact of the offense on the victim, and the juvenile offender's criminal history.

As a result of this deliberative process, very few juveniles are charged as adults. According to the National District Attorneys Association, most jurisdictions in America prosecute only 1 to 2 percent of juvenile criminal offenders as adults, and in some jurisdictions this percentage is even lower.

These States give prosecutors that discretion because the State legislatures and the constituents that they represent have determined that tough sentencing is required to punish offenders that

have committed murder and other violent crimes to deter others from committing similar crimes in the future.

H.R. 2289 violates the principles of federalism that are the foundation of our legal system. It is inappropriate at best and unconstitutional at worst for Congress to seek to regulate the manner in which States determine appropriate sentences for State crimes committed and prosecuted within their jurisdiction.

I am also concerned that H.R. 2289 is an unfunded mandate that would impose costly financial obligations on a number of States. Eleven States and the District of Columbia have determined its sentencing systems that do not allow parole. In order to implement the requirement of H.R. 2289, these States would presumably have to create, fund, and maintain a parole board to conduct hearings solely for this particular class of juvenile offenders.

The bill unreasonably threatens to withhold Byrne/JAG grants from the States unless they comply with its mandates. This threat forces the States to make the 10th-amendment-negating decision to substitute Congress's judgment for its own regarding criminal sentencing or risk losing important funds that help State and local law enforcement officials accomplish their mission.

Further, a Federal mandate that a State provide parole reviews for one class of offenders that is not available to other offenders could create other issues of constitutional proportions. Under this bill, two codefendants in a murder prosecution here in Washington, DC, one who is 16 years old and one who is 19 years old, could be tried as adults and convicted of that crime and both sentenced to life in prison without parole. However, this legislation would require the jurisdiction to give periodic parole reviews to the 16-year-old while the 19-year-old would face life in prison. Two individuals who committed the same crime would receive two different punishments.

From a personal standpoint, I never sentenced anybody to life without parole. We didn't have that when I was a judge in Texas. And I would find it a difficult matter to do, especially for someone very young because you can consider age in determining sentencing with regard to mitigation.

But I also believe in the constitutional system we have, that my judgment, as a Member of Congress, should not be substituted and forced onto a State in which I don't live and in which I am not part of their legislature.

And I appreciate the Chairman's comments and the lists about things children can't do. But I would note that juveniles are allowed to legally abort or kill their unborn children. So that is still apparently a constitutional right, as well.

Personally, I don't like the idea of sentencing children to life without parole. It is repugnant. But that is a matter for the States, and I hope my State will not do that.

But with that, I yield back and appreciate the Chairman's indulgence.

Mr. SCOTT. I thank the gentleman.

I think we have switched sides on what the States ought to do because we have been trying—and so I agree we should not normally do this, but I think this is an exceptional situation.

But we have a distinguished panel of witnesses here to help us consider the important issues that are currently before us.

I ask each of the witnesses to complete his or her statement within 5 minutes. And there is a lighting device before you on the table which will turn from green to yellow when there is 1 minute left and red when your time is up.

All of the witnesses' statements will be entered into the record in their entirety.

Our first witness will be Professor Mark Osler of Baylor Law School. He is a former Federal prosecutor and has argued cases in six Federal courts of appeal and the United States Supreme Court most recently. As lead counsel, he won the case of *Spears v. United States* in 2009 in the Supreme Court, where the Court held that sentencing judges can categorically reject the 100:1 ratio between crack and powder cocaine in the Federal sentencing guidelines. He is a graduate of Yale Law School and serves as the head of the Association of Religiously Affiliated Law Schools.

The next panelist will be Dr. Linda White. She is a former adjunct faculty member at Sam Houston State University in Huntsville, Texas, in the Department of Psychology and Philosophy. She holds a B.S. Degree in psychology and an M.A. In clinical psychology from Sam Houston State University and earned her Ph.D. from Texas A&M.

Ms. White's 26-year-old daughter was abducted, raped, and murdered in 1986. She is a volunteer mediator with the Victim Offender Mediation/Dialogue Program in the Texas Department of Criminal Justice and was appointed in 2003 by Governor Rick Perry of Texas to represent victims issues in the Texas State Council for Adult Offender Supervision. She is a former member of the Murder Victims' Families for Reconciliation and a board member of the Texas Coalition to Abolish the Death Penalty.

Our next panelist is Jennifer Bishop-Jenkins. She is the sister of Nancy Bishop Langert, who was brutally killed, along with her husband and unborn child, in a highly politicized killing in Illinois. In 2007, she cofounded the National Organization for Victims of Juvenile Lifers to protect victims' rights. After a 25-year high school teaching career, she has been working as a national program director for victims and survivors of gun violence and serves as a member of the advisory board to the nonpartisan United States Congressional Victims' Rights Caucus.

Our next panelist is Anita Colón. In addition to her day job in human services, she is a human rights and juvenile justice advocate. Her brother, Robert Holbrook, was sentenced to a life sentence when he was 16 years old after a neighborhood drug dealer asked him to serve as a lookout during a drug deal that turned into a robbery and a murder. She serves as the Pennsylvania State coordinator for the National Campaign for Fair Sentencing for Children in Springfield, Pennsylvania. She is also a member of the Pennsylvania Prison Society's subcommittee focused on juvenile life without parole and Chair of the Juvenile Life Without Parole Steering Committee of Reconstruction, Incorporated. She attended Villanova University, where she majored in criminal justice and obtained a master's degree in human services from Lincoln University.

Our next panelist is James Fox, district attorney in San Mateo County, California, and a board member of the National District Attorneys Association. He attended the University of San Francisco School of Law and has a degree in psychology. He is a board member of the Mercy High School and Junipero Serra High School and is also a member of the Criminal Law Advisory Committee of the Judicial Council of California. He will be testifying on behalf of the National District Attorneys Association.

And last but not least is Marc Mauer, the executive director of The Sentencing Project. He is one of the country's leading experts on sentencing policy, race, and the criminal justice system. He has directed programs in criminal justice policy reform for 30 years and is the author of some of the most widely cited reports and publications in the field, including "Young Black Men and the Criminal Justice System" and the "Americans Behind Bars" series comparing international rates of incarceration. He is a graduate of Stony Brook University and earned a master's in social work from the University of Michigan.

So we will begin with Professor Osler.

TESTIMONY OF MARK WILLIAM OSLER, PROFESSOR OF LAW, BAYLOR LAW SCHOOL, WACO, TX

Mr. OSLER. Mr. Chairman, Members of the Committee, good afternoon. My name is Mark Osler. I am a former Federal prosecutor, and I currently have the honor of serving as a professor of law at Baylor Law School. My teaching and my study concentrate on sentencing and questions of faith related to criminal law. And I welcome this chance to address the issue of life without parole for juveniles.

My testimony is going to focus on placing this bill in context, both the larger context of broad changes in sentencing and the idea that this bill is consistent with a principle that is part of the faith of many Americans.

I believe in punishment, and I believe that the incarceration of the violent and the dangerous in our society is necessary to an ordered society. I am proud of my work as a prosecutor in the city of Detroit and the Eastern District of Michigan.

Things changed in that city in 1978 when a drug gang called "Young Boys Incorporated" took over much of the heroin trade in that city and pioneered the use of children as runners, drug sellers, and killers. The template was copied by others, leading to a disheartening rise in the number of children accused of very serious crimes, the type of crimes which result in the penalty of life without the possibility of parole.

As an academic, I study sentencing, and I recognize where this bill fits into some of the larger trends we see right now. The changes being proposed are not sweeping. Rather, this bill is consistent with the general movement to right-size the relationship between retribution, rehabilitation, and relative culpability. In short, this bill does not seek drastic change but, rather, an incremental adjustment that would affect a relatively small number of cases.

This is consistent in what we see in other parts of sentencing right now. For example, instead of wiping out the sentencing guidelines or mandatory minimums across the board, Members of this

Committee have proposed correcting the Federal sentencing element that is most unfairly retributive, the sentencing ratio between powder and crack cocaine. And we have seen similar movement in the Sentencing Commission itself.

Capital punishment has also seen incremental changes, not abolition. The 2005 case of *Roper v. Simmons*, already mentioned, barred execution for juvenile crimes. And that is significant, but it only affected a relatively few cases.

As State criminal justice systems adjust to new budget realities right now, they consistently are considering incremental changes rather than broad or across-the-board and drastic changes.

In contrast, the year 1984 was a time of drastic change. In 1984, Congress got rid of parole, began the process of formulating strict and mandatory sentencing guidelines, and passed the Bail Reform Act, which, for the first time, created presumptions against release pending trial, even in relatively minor drug cases. Federal sentencing was transformed in a single year.

This is not 1984. Rather, the present project, which includes this bill, seems to me to find a balance between retribution and some kind of human element in the system. This search for balance draws from our deepest principles.

Famously, Micah 6:8 advises, "What does the Lord require of you? To act justly, to love mercy, and to walk humbly with your God." That passage reflects two values. Retributive justice is one of them, and mercy is the other. And those two are in tension with one another. It is difficult to resolve that tension other than to recognize that our system of justice should not be all retribution or all mercy but must have some elements of both.

This bill seeks exactly that balance. A sentence of life without the possibility of parole allows no room for mercy or redemption, an imbalance which is particularly untenable when we are talking about children as offenders.

I can't pretend that this is an easy issue. As a small child, our family was close with our next-door neighbors on Harvard Road in Detroit. We children would play outside as the parents sat on the porches and watched. We remained close as those families moved and the children grew up.

In 1990, the father in that family was shot and killed by a group of 15- and 16-year-old children who were trying to steal his car. Two of the defendants received life-without-parole sentences for killing this man that I often ran to with skinned knees or exciting news. I saw directly the righteous anger and pain of his widow and his children.

And though this issue is difficult for those of us who have known or been victims, we should not look away. I fear that part of what we do when we lock up a child forever is absolve ourselves, the adults. Yet, an examination of the lives of child offenders reveals something different. What we would like to see as pure evil in that child is too often a product of what we have tolerated in our community of adults.

The shocking thing about Young Boys Incorporated was not just that children committed murders and sold drugs on the command of adults, but they were made to do that for the 8 years that that organization thrived in plain sight on street corners. For 8 years,

we tolerated an organization that did such incredible harm and addressed it largely by arresting the children who were involved.

The easy answer is to ignore those questions and push all of the evil on to the child, but to do so is wrong. To lock up a child forever is against our good and present impulse to back away from the most severe retributive sentences. And it is also against a faith imperative, the balance between justice and mercy, which informs Americans when we are at our best.

I have also submitted written testimony today. And I thank you for the opportunity to address these important issues.

[The prepared statement of Mr. Osler follows:]

PREPARED STATEMENT OF MARK WILLIAM OSLER

Eliminating Life Without Parole for Juveniles: An Incremental and Principled Change

Written Testimony Submitted to the House Subcommittee on Crime, Terrorism, and Homeland Security

June 9, 2009

Mark William Osler
Professor of Law
Baylor Law School
1114 S. University Parks Dr.
Waco TX 76798-7288
(254) 710-4917
Mark_W_Osler@Baylor.edu

My name is Mark Osler. I am a former federal prosecutor (E.D. Mich.) and currently serve as Professor of Law at Baylor Law School in Texas. My teaching and study concentrate on sentencing and questions of faith related to criminal law. I welcome the chance to address the issue of life without parole for juveniles. My testimony will focus on placing this bill in context—both the larger context of broad changes in sentencing and the idea that this bill is consistent with a principle that is a part of the faith of most Americans.

I believe in punishment, and I believe that incarceration of the violent and the dangerous is necessary to an ordered society. I am proud of much of my work as a prosecutor, and that includes urging judges to impose many long prison terms. My time as a prosecutor also allowed me insight into a city with a particularly troubled legacy of violent children. In my hometown of Detroit, that legacy was largely created in 1978. That summer, a drug trafficking gang known as Young Boys Incorporated took over much of the heroin trade on the streets of Detroit. Their tactics were particularly heinous—as its name reflected, it relied on juveniles to do much of the hard work, and the killing, related to drug trafficking. The template established by Young Boys Incorporated was copied by drug gangs in that city for at least two decades, resulting in a disheartening number of children accused of very serious crimes. As a prosecutor in Detroit in the late 1990's, I saw the power of this legacy as young boys and girls were still commonly used in the drug trade.

The bill under consideration would not allow children such as those involved with Young Boys Incorporated to escape prosecution, or to avoid a long prison sentence. It would, however, give them hope that someday,

perhaps in middle age, they might see something other than the inside of a prison. Life with the possibility of parole would be both a reasonable and a principled incremental change.

I. The Context of Modern Sentencing

The changes proposed by H.R. 2289 are not sweeping. Rather, they represent an adjustment that would affect relatively few cases, as compared with the total criminal caseload. This is consistent with the current trend in criminal law generally. We are not in a period of sweeping legal changes but one of small steps taken to "right-size" the relationship between retribution, rehabilitation, and relative culpability. I will first discuss this broader context, and then contrast it with a period of genuine sweeping change, 1984-1986.

In the federal and state criminal justice systems, we see similar movement in many jurisdictions. The members of this committee are very familiar with the changes at the federal level, as they are very often considered here. Notably, these changes have been small and thoroughly deliberated.

Most recently, for example, we have seen a reconsideration of the federal sentences we impose for possessing and trafficking in crack cocaine. Thus far, those changes have been driven by the Supreme Court and the United States Sentencing Commission. The Supreme Court has ruled, in *Kimbrough v. United States*[1] and *Spears v. United States*,[2] that sentencing judges may reject the 100:1 ratio between powder and crack cocaine contained in the federal sentencing guidelines. In turn, the Sentencing

[1] 128 S. Ct. 558 (2007).
[2] 129 S. Ct. 840 (2009).

Commission has lessened (but not eliminated) that disparity. Meanwhile, members of this committee have authored bills which would entirely eliminate the disparity between crack and powder. Though these changes are significant, they only affect a fraction of drug cases, which in turn are only a fraction of the total criminal caseload. Moreover, the changes to the crack guidelines have been incremental and well-considered; for example, these changes have found support in the massive 2007 study of crack sentencing conducted by the Sentencing Commission itself.

In the realm of the death penalty, we are also in an era of incremental change. In relation to this bill, for example, the Supreme Court's 2005 decision in *Roper v. Simmons*[3] did not radically change our use of the death penalty, but rather eliminated a small group of defendants (children) from eligibility for the sanction of death.

In the states, the movement is also towards incremental rather than sweeping changes. In many states, such as Ohio, these changes are driven by financial constraints as tax revenues dwindle. One of the more severe financial crises affecting criminal law is in California, but even there we are seeing a genuine reluctance to engage in wholesale change, an a deliberative dialogue about incremental change has taken place.[4] The mood overall is not an atmosphere of dramatic or reckless transformation, but instead reflects ideas (like this bill) which constitute a thoughtful re-evaluation of narrow and specific aspects of sentencing and incarceration.

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[3] 543 U.S. 551 (2005).

[4] For more information on the California budget cuts and the changes that result, see the excellent California Correctional Crisis blog (http:Californiacorrectionscrisis.blogspot.com), which is maintained by students and faculty and students at U.C.-Hastings Law School.

Not every era is this way. In contrast, from 1984-1986, federal criminal law was drastically changed, often with little deliberation or debate. The Sentencing Reform Act of 1984 abruptly abolished parole and created the United States Sentencing Commission to establish strict and mandatory guidelines to restrict judicial discretion in sentencing. The same year, the Bail Reform Act of 1984 created broad presumptions in favor of detention before trial, which was a radical change from prior practice. Subsequently, the Anti-Drug Abuse Act of 1986 mandated harsh mandatory minimum sentences for drug crimes, despite the fact that no hearings whatsoever were held on this change which may have been the most significant of all.[5]

Getting rid of parole entirely, largely rejecting presumptive bail, and sharply limiting judicial discretion in nearly all criminal cases—that is drastic change, and in stark contrast to the relatively minor, incremental, and well-substantiated modifications contained in this bill.

The fact that these are small changes on a large body of existing law is also important context in relation to the federalism concerns that some members of this committee have expressed. The bill would withdraw some funding from states which continue to impose sentences of life without parole on those who committed their crimes as juveniles, and there can be no doubt that this implicates questions of federalism. This bill would, certainly, use federal money to direct state decisions. However, the funds would be withheld under the provisions of the Edward Byrne Memorial Justice Assistance Grant Program, which already directs state decisions in a startling

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[5] Those mandatory minimums are codified at 21 U.S.C. § 841(a) . For a compelling discussion of this process see Eric E. Sterling's *Drug Laws and Snitching: A Primer,* available at http://www.pbs.org/wgbh/pages/frontline/shows/snitch/primer/.

number of ways. That program presently contains well over 60 specific directives to the states on what they must (or must not) do to receive federal funding.[6] While this bill would add one additional condition to the use of this money, a challenge to federalism cannot be properly viewed in isolation. If the harm perceived in this bill is that the federal government is granting money in order to achieve federal (not state) policy goals, that pattern is already established by the grant program itself, and will not change whether or not this bill becomes law.

II. The Principle of Balance

The present trend towards incremental changes in which we back away from the most retributive parts of our criminal justice scheme is not only consistent across jurisdictions, but echoes the traditional religious value of seeking a balance between the virtues of justice and mercy.

In what has become one of the best-known scriptural passages in this nation, Micah 6:8 advises the people of Israel thus: "And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God." To those in criminal law, the passage presents a challenge. If justice means to treat people equally and with a sense of punishment, and mercy means to offer an unearned chance for redemption, the two are in tension.

This tension reveals at least two truths: That we are to be humble in considering the question, and that our justice systems must incorporate some elements of both justice and mercy.

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[6] 42 U.S.C. §§ 3743- 3797.

This requirement of balance between justice and mercy speaks directly to the bill at issue, which does stake out territory somewhere between purely retributive justice (life without parole) and mercy (release or a short sentence), and neatly incorporates aspects of both. The bill allows for retributive sentences, even of life in prison, but also offers the hope of redemption in the form of parole. Notably, this hope is different than the promise of a shorter sentence, and is tied to the behavior of the prisoner himself, as parole will more likely be granted to those who have turned away from violence and drugs.

The child sentenced to life *with* the possibility of parole is still likely to perceive the weight of a nearly overwhelming punishment. The position of such a convict is perhaps best described in Lamentations 3:27-29: "It is good for a man to bear the yoke while he is young. Let him sit alone in silence, for the Lord has laid it on him. Let him bury his face in the dust—there may yet be hope."

Life with the possibility of parole for a child will encompass precisely this balance between values Americans treasure.

III. Conclusion

I cannot pretend that this is an easy issue. As a child, our family was close with our next-door neighbors on Harvard Road in Detroit. The children played in the yards as the parents sat on porches and laughed. We remained close as the families moved and the children grew. In 1990 the father in that family, Benjamin Gravel, was shot and killed by a group of fifteen-year-old and sixteen-year-old children who were trying to steal his car. Two of the defendants received life without parole sentences for killing

the man I had run to with skinned knees or important news. I saw directly the righteous pain and anger of his wife and children.

Though the issue is difficult for those of us who have known or been victims, we should not look away. There is something very deep running through a discussion of imprisoning children for their natural life, because the crimes of our children reveal so much about the nature of our society as a whole: the children who killed Mr. Gravel were a part of my community. I fear that part of what we do when we lock up a child forever is absolve ourselves, the adults. So long as the crime is the result of a child's evil alone (and thus merits giving up on that child for his natural life), we bear no responsibility as a society, as adult political actors. Yet, an examination of the lives of child offenders reveals something different— what we would like to see as pure evil is too often a product of what we have tolerated in our community of adults. The shocking thing about Young Boys Incorporated is not that children committed murders and sold drugs on the command of adults, but that they were made to do that for the eight years that the organization thrived in plain sight. For *eight years* we tolerated an organization that did such harm, and addressed it largely by sweeping up those very children at the center of the evil.

Addressing the societal forces that mold felon-children raises complex societal questions that run into thorny issues of economics, culture, the role of government, and free speech. The easy answer is to ignore those questions and push all of the evil onto the child, but to do so is wrong. To lock up a child forever is against our good and present impulse to back away from the most severe retributive sentences. It also is against a faith imperative, the balance between justice and mercy, which informs Americans when we are at our best.

Mr. SCOTT. Dr. White?

TESTIMONY OF LINDA L. WHITE, FORMER BOARD MEMBER, MURDER VICTIMS' FAMILIES FOR RECONCILIATION, MAGNOLIA, TX

Ms. WHITE. Mr. Chairman and Members, thank you very much for the opportunity to discuss the issue of life without parole and specifically this bill, H.R. 2289.

Until November 1986, I was not very knowledgeable or very interested, to be quite frank, in criminal justice matters in general and certainly not juvenile justice matters. That changed quite suddenly and dramatically late that November when our 26-year-old daughter, Cathy, went missing late that November and was then found dead following sexual assault by two 15-year-old boys. I spent the better part of a year in limbo awaiting their trials, as they had both certified to stand trial as adults.

During that time, the only information I had on either of them was that they had long juvenile records. There was never any doubt about their guilt, as they had confessed to the rape and murder and led the police to her body after they had been detained by the police in another city in Texas.

The court-appointed attorneys for both pled them out, and they were sentenced to long prison terms with no chance at parole for at least 18 years. They came up for parole in 2004, were both given 5-year set-offs, so they remain in prison at this time. I assume they will come up again later on this year.

You have heard in my bio that I taught at Sam Houston State University. During the time that I taught at the university level, I taught upper-level college courses for 8½ years in prison, the most rewarding work I have ever done and the most healing for me as the mother of a murder victim.

In addition to the formal schooling that I have had, I have also educated myself in the area of criminal justice. I heard a lot of information when I attended victims' groups, and I wanted to know for myself if it was accurate. I have found out, for the most part, it was not.

One notable example is that Texas prisons are about as far as you can get from country clubs. Many of our citizens, and certainly victims of crime, want men and women who are convicted of criminal activity to suffer as much as possible in prison, believing that this is the way they will turn from a life of crime. I no longer believe this to be true and have become a devout believer in restorative justice.

It doesn't mean that I think incarceration is always wrong, but neither do I believe that it should be our first inclination for juveniles or for adults. As a psychology student and teacher, I have learned that while it may be necessary to remove offenders from our midst for a time, punishment is often the least effective means to change behavior and often has negative side effects.

I have to admit to you that my journey to healing after my daughter's murder was different than what I often see in victims and survivors, for I concentrated on healing for my family and me and because I focused on education over the years. At first it was education about grief and loss, and later on it was about psy-

chology and death and dying. Eventually, it became concentrated in criminal justice because of so much that I saw in our system was violent, perhaps necessarily so at times, but still, nevertheless, it seemed to me that we returned violence for violence.

As I said previously, for many years I only knew that the boys who killed my daughter were juveniles with long criminal records. In 2000, I found out that one of them, Gary Brown, was willing to meet with me in a mediated dialogue as part of a program that we have in our Texas Department of Criminal Justice Victim Services Division. He was apparently very remorseful by that time and had prayed for a chance to tell us just that.

With our mediator, we did a lot of reflective work getting ready for our meeting. And during that time, most importantly, I found out from Gary's records that his long juvenile record began at the age of 8 with his running away from abusive situations, both at home and in foster care eventually. If I were being abused emotionally, physically, and sexually, I think I would run away too. It seems quite rational to me.

I also found out that his first suicide attempt was at the age of 8, the first of 10 attempts. I have a grandson just about that age right now, and it breaks my heart to think of a child like that trying to take his own life because it is so miserable.

Seeing how little time I have left, I just want to say that I have been deeply blessed by the work that I have done in prison and out of it in the field of restorative justice. And all the years of education that I have had have pointed me in the direction that young people are just qualitatively different from the adults that we hope they will eventually become. And I think that my experience with Gary has shown me that we have a responsibility to protect our youth from the kind of childhood that he had and from treatment that recklessly disregards their inherent vulnerability as children.

Sentencing youth to life without parole strips our young people of hope and the opportunity for rehabilitation. And it ignores what science tells us, that youth are fundamentally different from adults, both physically and emotionally. Even given what my family suffered, our incredible loss, and believing that young people need to be held accountable, I believe that they need to be held accountable in a way that reflects their age and their ability to grow and change.

Thank you.

[The prepared statement of Ms. White follows:]

PREPARED STATEMENT OF LINDA L. WHITE

Mr. Chairman and members: Thank you for inviting me to discuss the issue of juvenile life without possibility of parole, and specifically H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009. My name is Linda White and, as stated above, I am a member of Murder Victims' Families for Reconciliation. I live near Houston, Texas, where I have resided for 35 years. I am here to support the bill before you because it allows for periodic reviews of life without parole sentences given to juveniles.

Until November of 1986, I was not very knowledgeable or very interested, to be quite frank, in criminal justice matters in general, and certainly not juvenile justice matters. That changed quite suddenly and dramatically late that November when our 26-year-old daughter Cathy went missing for five days and was then found dead following a sexual assault by two 15-year-old boys. I spent the better part of a year in limbo awaiting their trials, as they had both been certified to stand trial as adults.

During that time, the only information I had on either of them was that they both had long juvenile records. There was never any doubt about their guilt, as they had confessed to the rape and murder and lead the police to her body after they had been detained by the police in another city in Texas. The court-appointed attorneys for both pled them out and they were sentenced to long prison terms with no chance at parole for at least eighteen years. They came up for parole in 2004 and were both given five year set-offs, so they remain in prison at this time. I assume they will come up again later on this year.

The year after my daughter was murdered, I returned to college to become a death educator and grief counselor. Since that time, I have received a bachelor's degree in psychology, a master's degree in clinical psychology, and a doctorate in educational human resource development with a focus in adult education. I fell in love with teaching along the way and never got my professional counseling credentials, but I have counseled informally through church and my teaching. During the time I taught at the university level, I taught upper level college courses for eight and a half years in prison, the most rewarding work I have ever done, and the most healing for me as the mother of a murder victim.

In addition to the formal schooling I've had, I have also educated myself in the area of criminal justice. I heard a lot of information when I attended victims' groups and I wanted to know if it was accurate. I have found out that, for the most part, it was not. One notable example: Texas prisons are about as far as you can get from country clubs. Many of our citizens, and certainly victims of crime, want the men and women who are convicted of criminal activity to suffer as much as possible in prison, believing that this is the way they will turn from a life of crime. I no longer believe this to be true, and I have become a devout believer in restorative justice as opposed to retributive justice. It does not mean that I think incarceration is always wrong, but neither do I believe that it should be our first inclination, for juveniles or for adults. And neither am I a great believer in long sentences, for most offenders. As a psychology student and teacher, I have learned that punishment is the least effective means to change behavior, and that it often has negative side-effects as well.

My journey to healing after my daughter's murder was different than what I often see in victim/survivors, for I had concentrated on healing for my family and me, and because I focused on education over the years. At first it was education about grief and how to help my young granddaughter with hers, and then, when I returned to college, it became about psychology and issues related to death and dying. Eventually, it became concentrated in criminal justice. Early on I saw much that was violent in our system—perhaps necessarily so at times—but still, it seemed to me that we returned violence for violence in so many ways. I kept my mind and heart open to another means of doing justice, one that would be based on non-violent ideals and means. Restorative justice is that paradigm and I have become one of its greatest proponents. That is what actually led me to seek a mediated conversation with either of the young men who killed my Cathy.

As I said previously, for many years, I only knew that the boys who killed my daughter were juveniles with long criminal records. In 2000, I found out that one of them, Gary Brown, was willing to meet with me in a mediated dialogue as part of a program that we have in our Texas Department of Criminal Justice's Victims' Services Division. He was apparently very remorseful by that time and had prayed for a chance to tell us that. During the next year, Gary, with the help of our mediator Ellen Halbert, and my daughter Ami (Cathy's daughter whom we had raised and adopted) and I did a great deal of reflective work to prepare for our meeting. During that time I found out from Gary's records that his long juvenile record began at the age of eight with his running away from abusive situations, both at home and in foster care eventually. If I were being abused emotionally, physically, and sexually, I think I'd run away, too; it seems quite rational to me. I also found out that his first suicide attempt was at the age of eight, the first of ten attempts. I have a grandson just about that age right now, and it breaks my heart to think of a child like that trying to take his own life because it is so miserable.

Until the time that I met with Gary, I had never laid eyes on him and had, over the years, gradually come to ignore his existence. Both the offenders became non-persons to me, in effect. Once I knew that Gary wanted to meet me, that non-personhood totally changed for me; he became as human to me as the men I had taught in prison. That in and of itself was a relief, I think, since part of me revolted at the idea of forgetting him in any way at all. As the time approached for us to meet, I know that my daughter and Gary both became more and more apprehensive, but not me. I couldn't wait to see him and tell him how much I believed in his remorse and was grateful for it. I know that this unusual response to the killer of one's beloved child was only possible through my discovery of restorative justice

and, of course, by the grace of God. I strongly believe that most of my journey over the last 22 years had been through grace. Otherwise, I have no explanation for it.

My meeting with him was everything I expected and more. Since it was made into a documentary, I have been privileged to have it shown around the world for training and educational purposes, and I have heard from many who have seen it and felt blessed by the experience. I am sometimes invited to go with the film to answer questions and reflect on my experience. I also go into prison, especially with a victim/offender encounter program we have in Texas called Bridges to Life, a faith-based restorative justice curriculum, where my film is used to educate offenders related to victim empathy. I have been deeply blessed by this work and I feel Cathy's presence in it every time I stand before a group either in or out of prison and reflect on my journey.

My education and years of teaching developmental psychology have taught me that young people are just different qualitatively from the adults we hope they become. And my experience with Gary has taught me that we have a responsibility to protect our youth from the kind of childhood that he had, and from treatment that recklessly disregards their inherent vulnerability as children. Sentencing youth to life without parole strips our young people of hope and the opportunity for rehabilitation. It ignores what science tells us: that youth are fundamentally different from adults both physically and emotionally. Even given the trauma, and incredible loss my family experienced, I still believe that young people need to be held accountable in a way that reflects their ability to grow and change. Gary is proof that young people, even those who have done horrible things, can be reformed.

Mr. SCOTT. Ms. Bishop?

TESTIMONY OF JENNIFER BISHOP-JENKINS, CO-FOUNDER, NATIONAL ORGANIZATION OF VICTIMS OF JUVENILE LIFERS, NORTHFIELD, IL

Ms. BISHOP-JENKINS. Thank you, Mr. Chairman and Members of the Committee. My name is Jennifer Bishop-Jenkins, and I am one of the founders of the National Organization of Victims of Juvenile Lifers.

In 1990, my sister Nancy, her husband Richard, and their unborn child were brutally murdered in Winnetka, Illinois, by a young man 4 weeks shy of his legal adulthood. He planned the murders alone and reportedly did it for the thrill of it. He shot Richard in the back of his head and then turned the gun on my beautiful young sister, who begged him not to kill her baby. He fired directly at her abdomen, exploding the baby, leaving Nancy bleeding to death. And Nancy's last act of life was to draw a heart and a "U" in her own blood.

I have devoted the relative peace and legal finality that his three natural life sentences brought us to the prevention of violence and advancing human rights. And I have come here to tell you that the bill before us actually deeply flawed. It is the antithesis of due process and it is a violation of fundamental victims' rights to even consider retroactively changing life-without-parole sentences, certainly not without informing and involving the victims.

Our family's experience illustrates the rank unfairness. We were promised life without parole by a judge who chose to exercise a discretionary life sentence for such a heinous crime because of his privileged upbringing and complete lack of remorse. And relying on that promise, we believed this part of our ordeal was over.

So we don't have transcripts of the sentencing. The court reporter, with his stenographic tapes, cannot be found. We can't contact the jurors. My father, the best witness to the carnage of the crime scene, has died. We can't get statements from prosecutors,

evidence technicians, and police, who had direct contact with the case. Witnesses cannot now be found, such as Nancy's next-door neighbor who heard her terrified pleas for help, and the friend of the killer to whom he confided details of the awful crime.

All that we could have gathered to arm ourselves for a parole hearing someday is lost, lost because we were promised that parole or early release for this killer was not possible. And this is a sickening bait and switch.

I have used my own limited resources to notify a few other victims of this well-funded national effort to free these killers. All were told the same thing: "Don't worry, this guy can't ever get out."

This new uncertainty renders our situation entirely different from victims like Linda White, because, though she and I have worked together a long time as murder victims' family members devoted to restorative justice and human rights, as she herself told you, I am sad to say she literally has no standing in this specific discussion because the offenders in her case did not receive this sentence.

The temerity of anyone to propose anything that so profoundly affects us without notifying us is appalling. If you haven't gone through it, you cannot understand the impact of this proposal before us. Parole hearings are incredibly re-traumatizing. They deprive victims of legal finality. To reopen this pain every 3 years for the rest of our lives and perhaps those of my children is quite literally torture. Proponents of this legislation will be hard-pressed to produce one victim's family like ours where the offender had no relation to the victim who actually wants to endure this lifetime of parole hearings.

They will no doubt give you some rare legitimate stories of injustice that, like all problems in the criminal justice system, can and should be addressed. But we can easily outmatch them with horror stories, such as 12-year-old Victoria Larson, whose killer dug her grave 3 days before raping and killing her. He had already been given his second chance; he was already out on juvenile parole, a parole that he used to rape and murder her. And the 16-year-old who took the 5-year-old girl into the abandoned housing project in Chicago and raped her and then threw her out a 14-story window. As she clung with fingertips to the windowsill, screaming for her mother, he went to the window and lifted off her hands, sending her to her death—5 years old.

This is not impulse. This is callous disregard for human life with cool, advanced planning by people old enough to know that killing is wrong.

I note that this room is not filled with victims' families of these crimes. I promise you it is not because they do not care. It is because no one has bothered to tell them that you are doing this, despite our pleas to this Committee for victim notification in advance of legislation and our pleas to the advocates of these offenders, who have spent millions supporting them, that they devote a small, nominal proportion to outreach to victims' families of these crimes.

My written testimony will detail other important issues pertaining to this legislation, such as how the brain development research is actually being misapplied; how a one-size-fits-all parole mandate cannot work in a Nation where each State has a different

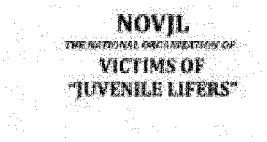
sentencing scheme, including half of them with determinant sentencing and many of them, like my State, with no parole structures at all; and ways that juvenile life sentence can actually be reformed, as I believe it can, without any negative impact on victims, using different ideas.

We all need a real conversation about reforming this process before the filing of any more such legislation and with all stakeholders at the table. And in the meantime, as this bill stands now, it only transfers the life sentences from the guilty offenders to the innocent victims' families left behind.

Thank you.

[The prepared statement of Ms. Bishop-Jenkins follows:]

PREPARED STATEMENT OF JENNIFER BISHOP-JENKINS



National Organization of Victims of "Juvenile Lifers" (NOVJL)
Testimony to the United States Congress
Re: HR 2289
"The Juvenile Justice and Accountability Act of 2009"
June 9, 2009

NOVJL's website : www.jlwopvictims.org
Jennifer Bishop-Jenkins, NOVJL Founder/National Secretary
315 Lockwood Avenue
Northfield, Illinois 60093
847-331-2704
jenniferbjenkins@aol.com

I. ORAL TESTIMONY

My name is Jennifer Bishop-Jenkins and I am one of the founders of the National Organization of Victims of "Juvenile Lifers."

In 1990 my sister Nancy, her husband Richard, and their unborn child were brutally murdered in Winnetka, Illinois by a young man four weeks before his legal adulthood. He planned the murders alone -and reportedly did it for the "thrill" of it. He shot Richard in the back of his head, and then turned the gun on my beautiful young sister, who begged him not to kill her baby. He fired directly at her abdomen – exploding the baby - leaving Nancy bleeding to death. Nancy's last act in life was to draw a heart and a "u" in her own blood.

I have devoted the relative peace and legal finality that his three natural life sentences brought us to the prevention of violence and odvancing humon rights.

And I have come here to tell you that the bill before us is deeply flawed.

It is the antithesis of due process and a violation of fundamental victims' rights to even consider retroactively changing life without parole sentences without informing and involving the victims.

Our family's experience illustrates the rank unfairness.

We were promised life without parole by a judge who chose to exercise a discretionary Life sentence for such a heinous crime because of his privileged upbringing and complete lack of remorse.

Relying on that promise, we believed this part of our ordeal was over.

We don't have transcripts of the sentencing. The court reporter with his stenographic tapes cannot be found.

We can't contact the jurors.

My father –the best witness to the carnage of the crime scene – has died.

We can't get statements from prosecutors, evidence technicians, and police who had direct contact with the case.

Witnesses cannot now be found, such as Nancy's next door neighbor who heard her terrified pleas for help, and the friend of the killer to whom he confided details of the awful crime.

All that we could have gathered to arm ourselves for a parole hearing someday is lost.

Lost because we were promised that parole or early release for this killer was not possible.

This is a sickening bait-and-switch.

I have used my own limited resources to notify a few other victims of this well-funded national effort to free these killers. All were told the same thing.

"Don't worry; this guy can never get out."

This new uncertainty renders our situation entirely different from other victims like Linda White's (whose story you will hear in a few minutes).

Though she and I worked together for a long time as fellow murder victims devoted to human rights, I am sad to say she literally has no standing in this specific discussion because her offenders did not receive this sentence.

The temerity of anyone to propose something that so profoundly affects us without notifying us is appalling.

If you have not gone through it, you cannot understand the impact of the proposal before us.

Parole hearings are incredibly re-traumatizing and deprive victims of legal finality. To re-open this pain- every three years, for the rest of our lives, and perhaps those of our children - is quite literally TORTURE.

Proponents of this legislation will be hard pressed to produce ONE victims' family like ours where the offender had no relation to the victim, who wants to endure a lifetime of parole hearings.

They will no doubt give you some rare legitimate stories of injustice that - like all problems in the criminal justice system – can be addressed. But we can easily well outmatch them with horror stories.

Such as:

- 12-year-old Victoria Larson's killer dug her grave three days before raping her and killing her. He had already been given his "second chance", and was out on a juvenile parole that he used to rape and murder her.
- And the 16-year-old, who took a 5-year-old girl into an abandoned housing project, raped her, then threw her out a 14- story window. As she clung with fingertips to the windowsill screaming for her mother, he went to the window and lifted off her hands, sending her to her death.

This is NOT impulse.

It is callous disregard for human life - with cool advance planning - by people old enough to know that killing is wrong.

I note this room isn't filled with the victims' families of these crimes.

It is not because they do not care.

It is because no one has bothered to tell them you are doing this - despite our pleas to this committee for victim notification and our pleas to the advocates, who have spent millions supporting the offenders, that they devote a nominal portion to reaching out to the victims' families of these crimes.

My written testimony will detail other important issues pertaining to this legislation.

- How brain development research is being misapplied.
- How a one-size-fits-all parole mandate cannot work when each state has a different sentencing scheme, including half with determinate sentencing, and many with no parole structures at all.

- Ways that the "juvenile life" sentence could be "reformed" without any negative impact on victims.

We need a real conversation about reforming the process - before the filing of any more such legislation -and with ALL the stakeholders at the table.

In the meantime, this bill as it stands, only transfers the life sentences from the guilty offenders to the innocent victims' families left behind.

WRITTEN SUBMISSION TESTIMONY

II. Short Bio on Mrs. Bishop-Jenkins

Jennifer Bishop-Jenkins is the sister of Nancy Bishop Langert who, along with her husband Richard Langert and their unborn child, was brutally shot to death in a highly publicized and calculated torture and "thrill kill" murder in Winnetka, Illinois in 1990. The offender is now serving three life without parole sentences in the Illinois Department of Corrections. Inspired by Nancy's final message of love - scrawling a heart and "U" in her own blood as she lay dying - Jennifer has been a tireless advocate for violent crime victims, troubled youth, Restorative Justice and Human Rights, and violence prevention.

In 2007 Jennifer, and several other murder victims' families in 8 states, that found each other through their own efforts, co-founded NOVJL, the National Organization of Victims of "Juvenile Lifers", to protect victims' rights in the discussion about teenaged murderers tried as adults and sentenced to life without parole for killing their loved ones.

NOVJL seeks to respect all victims' rights of the families of these crimes to be fully present, if they so choose, at the policy discussion table fully in any legislation that would retroactively change the natural life sentences being served in their loved ones' murder cases. NOVJL also seeks to call attention to the significant resources being expended on the convicted murderers, most of whom are guilty and often unrepentant of some of the most horrific and aggravated murders in the nation, by various non-profit organizations who support only the offenders, while no resources have been devoted to find, inform, support, educate, and listen to the victims' families of these crimes.

Jennifer has received several awards from humanitarian organizations, such as CONCERN Worldwide and the Rainbow PUSH Coalition, for her work against violence

and for restorative justice and victim-related issues. She travels the nation speaking in workshops alongside her husband Bill Jenkins, also the father of a murder victim, who is a university professor and the author of the acclaimed book ***WHAT TO DO WHEN THE POLICE LEAVE***: *A Guide to the First Days of Traumatic Loss* (WBJ Press).

After retiring from a 25 year high school teaching and administration career, Jennifer worked as a National Program Director for Victims and Survivors of gun violence, and has served as an advisor and on several national and international boards of directors of victim organizations, including Murder Victims Families for Human Rights, and the National Coalition of Victims in Action. She serves on the National Leadership Council for Crime Victim Justice, and founded IllinoisVictims.Org. Jennifer is a member of the Advisory Board to the bi-partisan United States Congressional Victims Rights Caucus.

III. WHY NOVJL OPPOSES HR 2289

We do not oppose all reforms, either to JLWOP (the juvenile life without parole sentence) or to the Criminal Justice system.

We stand for Victims Rights. We stand to be fully notified of and included in any retroactive proposal that would change the life sentence of the offenders in our cases.

First, Victims are genuinely IN DANGER from this porticular proposal.

Many offenders, if released, would go right back to where their victims were, and either seek vengeance or cause a highly volatile situation to become worse. Victims have a right to be protected from such threats.

One example: the national automated victim notification system, now in place in over 43 states, run with government contracts by Appriss Technologies of Louisville, KY, was founded by a family whose daughter, a domestic violence victim, was killed within ONE hour of her offender's release from prison. She was supposed to have been notified if they were to release him. They did not, and she was dead almost within minutes of his release. This case lead to the creation of the SAVIN system of automated victim notification. And there are, sadly, thousands of other examples.

And second, we oppose ANY periodic review model that would require victims' families to regularly re-engage legally with the offenders in parole hearings. This re-traumatization is torture, literally, to victims' families.

There are many ways to reform and address any concerns with this sentence without balancing the bulk of the reform primarily on the backs of the victims.

Regular parole review is the WORST possible "solution" to this perceived "JLWOP problem".

Advocates and officials who have any concern that the laws are currently inadequate to protect the special considerations appropriate for younger offenders.

IV. VICTIMS ARE KEY STAKEHOLDERS

In the national debate generated by advocates for these younger killers, we are here primarily for one reason only **- to assert our right to be included in the discussion** - something, surprisingly, that generally is not happening.

In the several states where there are proposals to abolish JLWOP, victims' families of those crimes have not been found and informed and supported to be part of the

discussions. In fact, they have often been even deliberately ignored, excluded, or in some cases outright demonized.

Victims of these crimes are a relatively VERY small population of people who could be easily found, for the most part, by a few weeks of work by clerical level employees of prosecutors' offices.

Resources to do this MUST accompany any proposal for retroactive change to a sentence such as LIFE WITHOUT PAROLE that victims walk away from believing and told is permanent.

Victims for the most part in LWOP cases do not even register for victim notification in their states because they are told or believe it is not necessary in their cases.

This single fact alone requires an extraordinary response by anyone who wishes to retroactively change LWOP.

Some legal experts tell us in fact that retroactive changes in LWOP may be legally so problematic in most cases as to make them nearly impossible.

In any such significant public policy discussions, such as what to do with the "worst of the worst" among us, no key stakeholders should be kept away from the table. The Victims of these crimes are, without a doubt, key stakeholders.

We were made as such through no choice or fault of our own by the very offenders that the advocates to end JLWOP are now working so hard to defend.

V. MYTHS AND FACTS ABOUT JLWOP

Many advocates for the offenders now serving JLWOP sentences have made some fundamental errors, we feel, in the early years of their movement to reform the JLWOP sentence across the nation. Painful as it has been for us victims of these crimes to reading the many well-funded and published materials from the offender advocates, there is an inaccurate picture of the whole situation being put out we feel an obligation to correct:

1. MYTH: That the real "problem" with the whole JLWOP situation is the age of the offender.

FACT: The real problem is that someone, or several someone's are dead - murdered - and that an offender or offenders chose to commit acts of unspeakable evil against other innocent living human beings.

And there is nothing but devastation in the wake of a murder.

What is at issue in all these cases are horrible, horrible murders and in all these cases

trogedy surrounds the entire scenario. The problems go SO much deeper than just the age of the offender. Advocates against JLWOP need to do a much better job of embracing the full complexity of all these cases and talking about the CRIMES, not just the age of the offender. Reading their materials one could almost miss that these offenders are all convicted murderers, no matter what other circumstances surround the cases.

2. MYTH: We solve this "problem" with o discussion focused on the offenders in prison.

FACT: We solve this "problem" by focusing on the crimes, the larger social and criminal justice picture, the staggering and life-changing harms done (to victims) in these tragic situations, and the need to prevent violence in our society.

The focus of those who support HR 2289 has been, up to this point, almost entirely ***offender-centered***.

And their messaging has been too much about "the poor kids in prison". This will not help them build the broad public support needed to make fundamental changes in law. They need to change their approach to one built on not only strong partnerships with law enforcement and violence prevention professionals, but to one that is all about inclusive restorative justice principles.

Restorative Justice is an approoch that addresses the harms caused the victims. The victims and accountability for the crime is the focus. Some offender advocates have attempted to hijack the restorative justice process and turn it into something that is simply this: the victim forgives and the killer gets out.

That is not restorative justice.

Restorative Justice is incredibly hard work – a long, slow process that is RARELY even possible because both offender and victim have to be BOTH willing and able, and there has to be an infrastructure to support it.

And Restorative Justice is not possible in these kinds of crimes in PLACE of the criminal justice system – when it happens it is only in addition to the legal system.

And victims, the key stakeholders, are completely at the table, where they choose to be, in any public policy discussions about the sentence being served by the offender.

3. MYTH: The offenders in these cases are CHILDREN.

FACT: 53% of oll the offenders serving what these offenders called "juvenile life without parole" were 17 at the time of their offenses - hardly "children". And 17 in many states is the legal age of adulthood anyway.

The vast majority of the remaining (about 35%) were 16. Only the smallest numbers of cases - and the ones they of course love to publicize the most - were younger at the time of their offenses - single digit numbers.

Legally every one of these offenders was found in a court or by state law to be legally an adult. Many states define adulthood at 17 or even 16. States vary on ages assigned for adult criminal culpability.

And while the American Criminal Justice system can and does make errors, and needs reform in many areas, the debate about their being "children" or not is not one in American Law - it is in international standards set up against the expertise of those closest to these crimes – and the experiences of those who actually participated in the crimes themselves.

Neither "side" is wrong but they both come from a very different perspective and valid perspective on what is factually so. Many of us judge "children" versus adult in the context of their own individual abilities, maturity, choices, and behavior.

It is clear that horrific murder cases call for extraordinary case by case examination of the individual facts of the case and the culpability of the offender. "Bright lines" drawn normally by the law must be set aside to look instead at the facts of the powerfully important individual circumstance of each such brutal crime.

Most of the JLWOP cases are from the 1990's and are gang members, most with previous records of violence, often having been previously imprisoned as juveniles for violent crimes, even murder. States define adulthood by age differently - for many states it is, indeed, 18. But for other states it is 19, 17 and even 16. JLWOP conviction have dropped dramatically in the last decade now that much of the gang leadership infrastructure has been locked up, and much better prevention mechanisms have been put in place.

Also, advocates who continually call them "children" need to consider the impact of this argument on the victims of these crimes, not just use it for its propaganda impact on the public, and publishing pictures of the offenders (as they have many times) when they were MUCH younger than when they actually committed the crimes. Calling these murderers "children" constantly in their advocacy work is incredibly emotionally troubling to many victims' families - some have described it to us as a dagger into them each time the offender is called that. It is worst when the actual murder victim was a REAL child. Many of these cases were 17 year olds killing, for example, 5 year olds. To hear the offenders called "children" all the time to the mother of a murdered young girl is beyond painful.

"Children" is not a term teens themselves would accept. Those who use this term to describe these offenders are only using it for one purpose – to paint an inaccurate picture of the crimes to propagandize for support for the offenders.

The most accurate is the legal term juvenile, or the social terms teen, youth, or adolescent. Their basis for using the term is derived from the International Treaty of the Child which applies to those under 18. But the political and legal messaging in the United States needs to be applied in ways that are meaningful to our system.

4. MYTH: The ages of the offenders is not considered in their legal process.

FACT: In most states there are layers of review afforded these offenders that are extra and aimed to look at the factors associated with their ages. Also, there are often extra avenues of appeals open in their cases. Many teens that are guilty of murder do not end up in the adult system in the United States. There are also processes in place in courts and in prosecutors' offices that review and evaluate appropriate charges and avenues of prosecution to the individual situation and often there is some discretion afforded prosecutors and judges in these cases. However, we do agree that one possible area of examination for reform might be in the areas of the law where mandatory transfers to adult court are less flexible and allow for less discretion by expert judges and prosecutors who are familiar with the individual facts of the case.

5. MYTH: Many of the JLWOP cases are innocent of their crimes.

FACT: Most of the offenders serving JLWOP sentences are guilty of their crimes, and were the actual "trigger men", though some are convicted as direct accomplices with equal legal responsibility.

A smaller percentage of the JLWOP cases were accomplices, serving life for felony murder counts.

But it is important to consider, if the proposal becomes to reform the felony murder counts for JLWOP, that there are actually some cases where accomplices could be seen as even more culpable than the "trigger men" if they directed or ordered the shooting, as is often the case in some gang killings.

In fact, any proposal that would lessen juvenile penalty for murder like this ACTUALLY ENDANGERS any potential juvenile offenders more because it will most certainly increase the number of older gang members who order the younger members to commit the crimes.

Ask any law enforcement official who works up close with these situations.

Keeping the penalties the same based on the ACT and culpability of the offender, and not just the age of the offender, actually serves to protect many juvenile gang members from serving out their lives in prison by removing the incentive to send them to do the dirty work for the older gang members.

6. MYTH: One of the favorite arguments of those who want to abolish JLWOP is that the brains of these offenders are not fully developed, and therefore they are not fully culpable.

FACT: The argument of the brain's frontal lobe development is generolly not applicable in these matters.

Yes, recent studies show the frontal lobe of the brain continues to develop into the 20s. But if this argument were all that was relevant, no one should be allowed to do anything - drink, join the military, own a gun, drive, marry, sign contracts, vote, until they were close to 30. And legal culpability for all crimes as adults would have to be raised to 25 at least.

In fact, people learn right from wrong at a very young age and have the ability, generally, at a very young age to conform their behavior to what they know is right and wrong.

Moral and emotional and cognitive development is by far advanced enough in early adolescence, if not before, to adequately keep anyone from killing another human being. The fully aware CHOICE to kill, knowing full well that killing is illegal and immoral with permanent life consequences, is often completely demonstrable in most of these cases.

The real issue in SO many of these cases, tragically, by the way, is the easy access the young offenders have to guns. In this way, all American lawmakers who support easy access to guns are responsible for the high rate of murder committed by our teenagers compared to other nations. No one under age in the United States should be able to access a gun except under direct adult supervision for legal purposes such as hunting. And adults who allow them to access guns for illegal purposes are themselves culpable for what happens. Guns render the offender deadly from a distance, easily able to ambush the victim, and make them superior to any victim in physical force. Addressing the easy access to guns in this nation will do more to end the "problem" with JLWOP than any other step advocates could take.

7. MYTH: Victims families will oppose any and all reforms and therefore should not be consulted in or informed of this discussion about the sentences of their offenders.

And there are some who argue that victims should not be informed of and included in this public policy discussion because they are too "emotional" and too adversarial, and unreasonably so.

FACT: First, Victims have a fundamental right in all 50 states and in Federal Law, either by Constitutional Amendment (33 states) or by extensive statute (all states) to be NOTIFIED of and HEARD in matters pertaining to the disposition of their cases. (www.victimlaw.org). Retroactive proposals that become law without victim notice and participation are, we believe, illegal based on those established rights.

Second, many of us who are victims strongly support some real reforms to the criminal justice system.

And NOVJL does not oppose, for example, the recent decision by the US Supreme Court to decide the JLWOP issue for non-murder cases.

The principle of case by case decision-making about which offenders should be held to which level of accountability, depending on the facts of the case, is one we generally support. We invite o nationol discussion about mandatory transfer of juvenile offenders to adult courts. We believe in extra layers of legal protection being afforded younger offenders, and encourage extra layers of review.

And even if we do not support abolishing JLWOP altogether because we know it to be sodly necessary in some cases, we have experience and evidence that has to be examined in the process nonetheless.

To proceed in a conversation about these crimes and their consequences without fully including those closest to the crime, the victims, is to enter the effort severely disabled, without access to all the information one would need.

We can actually provide evidence to the contrary about who in the process is overly emotional. We have found ourselves in recent hearings in several states that they emotion, hostility, and "unreasonableness" is all coming from the offender advocacy side, sadly enough. Contact us if you want specific and several examples, but we have yet to see a hearing on bills in state legislatures where the few victims "lucky enough" to know about the hearings and be able to attend, were anything other than honest in telling the facts of their cases and respectful of all present. And we have stunning and several examples of out and out hatefulness and rudeness openly leveled at victims' families by advocates for the offenders -- including some legislators.

8. MYTH: That everyone convicted of murder deserves the sentence they get (this supports definitely the need for some reforms, and throughout the criminal justice system, not just for "juvenile lifers").

FACT: We know, and often victims know this better than anyone, that the criminal justice system is not perfect. Many people in prison are fully innocent. Many are over-sentenced or less guilty than what their sentence describes. Many guilty people go free, or are not sentenced as they should be. The "system" is far from perfect and needs reform.

And so while we all talk together as a society about what reforms we genuinely need to make, we must bring all stakeholders to the table - and victims are key to that discussion. Offender advocates and family members cannot make the case for reform on their own. Everyone involved can bring much that will enlighten and inform to the discussion.

But the way to RIGHT these WRONGS is NOT by balancing the repairs on the backs primarily of the victims' families and make across the board changes in how often they have to go back - over and over - to hearings on the sentence of the offenders in their cases. Victims deserve as much legal finality in their cases as they can possibly have.

The way to right the wrongs in ALL cases of error and injustice in the criminal justice system is to address each case, protect avenues of appeal, raise the standards for rules of evidence and review prior to going to trial, maximize quality defense resources, make sure penalties are appropriate to the crimes and situations, and make strong systemic reforms in all aspects of the criminal justice system, not just for this one group of offenders.

There are innocent and over-sentenced men and women serving in America's prisons of every age. That there is such massive attention being paid to 2400 cases of mostly guilty murderers, mostly 17 years old, because of their "youth" is a serious injustice for the entire vital movement for criminal justice reform in the United States. It raises questions about whether or not the younger killers' cases are being exploited for mainly PR purposes, or because this cause is particularly capable of increasing the funding for organizations who champion it.

9. MYTH: That the JLWOP sentence is commonly and overly given.

FACT: The JLWOP sentence is almost never given. It is extremely rare and constitutes a very small number of cases nationally. Many juvenile-aged murderers are never tried as adults, and most of those who are do not receive anywhere near an LWOP sentence. Considering the number of violent offenders in the United States, this is a very small issue. The few genuine cases of miscarriage of justice, an issue not limited to JLWOP but pervasive in the criminal justice system, can easily be addressed through opening new avenues of legal appeals and improving the executive clemency process. While it could be true that some states need to reform their mandatory transfer mechanisms by which juveniles can be tried as adults for serious crimes, explaining why some states have a disproportionately larger JLWOP population, these reforms can easily be accomplished without requiring devastated victims' families across the United States to be re-traumatized in constant legal re-engagement with the offenders in unending parole hearings.

And to say that the United States compares so unfavorably with the rest of the world on this issue begs many questions, such as why aren't we comparing our easy access to guns with other nations as an explanation? Why isn't an effective life sentence that is a long term of years, and has the same net effect as a life sentence, being considered as a comparison? Why isn't the overall percentage of violent juvenile offenders compared with the makeup of the rest of the larger prison population being compared across the board with the rest of the world? There are many aspects of the American prison population that when compared with the rest of the world shows some dramatic differences. These need to be seen in a holistic way as interconnected.

10. MYTH: Offenders can be accurately judged as to their rehabilitation while in prison.

FACT: Such evaluations at best are an art, not a science, and often demonstrated, time after time, and all over the nation, can be sadly, and often tragically WRONG. The numbers nationally of repeat offenders, even violent repeat offenders, is staggering.

We have an obligation to keep our communities safe. And to assume that how an offender acts while in the confines of a prison is a good indicator of how they would act once free again is just irresponsible and silly.

11. MYTH: Offenders in prison cannot have a "life".

FACT: In fact offenders can still see family, learn, grow, experience spiritual awakening and comfort, be a friend and supporter to those both in the prison and outside, have relationships, laugh and experience pleasure, read, create and a whole host of other activities.

And we support fully prison reforms in all states that would better allow inmates who demonstrate rehabilitation to transfer to medium and minimum security facilities to serve their sentences, where warranted. This would allow them to work, earn money for their upkeep, their victims, and their families. It would allow them to educate themselves, build relations with the community in some programs, and to mentor other troubled youth. This nation has a large prison population that needs to do MUCH more of this kind of thing. And often these transfers and programs actually pay for themselves many times over.

VI. VICTIM RE-TRAUMATIZATION

The neurological information available to experts about the special way that traumatic memories are laid down in the brain for victims of violent crime is now well known.

Trauma actually opens up the brain, a survival mechanism that is deeply biologically ingrained in our species, to receive massive amounts of data quickly and in ways that are NOT stored like memories – there is not time and too much to store. So the brain simply rapidly absorbs it, and it is stored anywhere the brain can literally stick it into, in a primitive, powerful and disorganized fashion. And ANY prompt (a familiar smell, someone who looks like their loved one, or the killer, or any other reminder) can much easier re-awaken that trauma because of the way it is stored in the brain.

When such memories are re-awakened they do not FEEL like memories – because they were not stored like memories. They feel to the victim like they are happening NOW. The heart races, they sweat, they get nauseous, they get scared, they can't concentrate, and they lose sleep. They are re-traumatized.

Any "reform" that attempts to balance its "corrections" to "flaws" in the criminal justice system by requiring the victims' families to regularly re-engage with someone who murdered their loved ones , perhops for the rest of their lives on a regular basis, is LITERALLY TORTURING the victims.

Regular porole hearings can NOT be the primary solution for flaws in the criminal justice system. This only transfers the life sentence from the victims to the offenders.

VII. THE VARIETY OF SENTENCING SCHEMES IN ALL 50 STATES

One serious flaw with HR 2289 is that it relies on parole hearings after 15 years, and every three years, to "evaluate" offenders now serving life without parole for horrific murders, to correct perceived problems in the system.

To restate the obvious: all 50 states have different sentencing systems. It is a fundamental part of our Constitutional and Federal structure as a nation.

And this bill certainly raises questions of states 'rights in sentencing that will be legally problematic in a whole separate constitutional law discussion that we will not attempt here in these pages.

But the most glaring problem is:

Approximotely half the States in the USA do not have parole built into their current systems – or they have some version of determinate sentencing, actually better for the offender because it sets formulos for release based NOT on the judgments of some politically appointed parole board, but on the offenders' own good behavior.

The number of JLWOP cases in most states is extremely low – a few dozen at most. Only a few states, large ones, have over 100. To require a state, as HR 2289 does, to set up an entire parole bureaucracy (boards, officers, infrastructure, etc) to address a handful of cases is RIDICULOUSLY not cost effective.

Why would any state spend millions to establish a parole bureaucracy to address a handful of cases in order to protect 10% of their federal matching crime funds?

Why would the US Congress ask such a thing of states?

The answer is clear: Parole requirements for JLWOP to states are not feasible or desirable. Those who wish to address the need to reform JLWOP must look to other protections for younger offenders in states where the laws are deemed too harsh, if such a determination can be made.

VIII. SOME OTHER LEGAL ISSUES

Recently the US Supreme Court announced its intention to rule on two Florida JLWOP cases for NON-murder. It is important for all in this discussion about JLWOP to remember that the Supreme Court's ruling, when it comes down next year, has already been announced by the SCOTUS blogs and other sources to address the use of the JLWOP sentence in non-murder.

Advocates for the JLWOP offenders who have been claiming that the recent Supreme Court decision to hear these Florida cases as a rationale for claiming that JLWOP will be undone nationally for all cases, the vast majority of which are horrific murder cases, are simply wrong.

Also, in another case of note, this last year the Connecticut Supreme Court ruled in detail on the JLWOP case before them and said, in absence of a constitutional amendment prohibiting it, state legislatures have the right to determine life sentences for offenders and where to draw those lines.

Finally, my oral testimony above addressed the very serious legal issue of Due Process being denied for these cases where no records were saved because of the life without parole nature. For victims to be able to make a case before a parole board that is legitimate (it's bad enough they should even be asked to do this at all after a conviction – victims deserve legal finality) they need to have documentation about the original crime and case that will often NOT be available to them because it was not retained in an LWOP case where it was assumed it would never be needed.

This is a serious legal issue regarding the retroactivity of any such proposal in LWOP cases, no matter the age of the offender. Nationally the legal community will have to make systemic changes in how proceedings are accomplished and protected if retroactive changes like this are to be made while attempting to protect Due Process Rights.

IX. REFORMS WE COULD SUPPORT

Since we know that there are problems in the juvenile justice system, surely as in the entire criminal justice system, we know there must be dialog about solutions. We know that there are many problems, and actually many solutions as well. One of our main concerns with the approaches advocated by those who support ending the JLWOP sentence is their often too-narrow focus. There is not one solution - there is not one problem - and there is not even clear right and wrong answers.

We also know that there are times when human rights may be in actual conflict with each other.

So, hang on - this is a somewhat complicated example of the argument:

If a prisoner is argued to have a "right" (and this is by no means established, in fact, we are sure there is NO such "right") to a periodic review for early release or parole from a long term sentence, as some prisoner advocates argue; but there is a thorough and rigorous legal case made, given full due process of law and then some, and that offender is found to be fully guilty of a horrific mass or multiplied aggravated murder, and whose life circumstances are such that he or she will highly likely never qualify for early release under any parole system; and since we know it is true that periodic re-engagement with the offender continues to re-traumatize already horribly damaged and innocent victims families, and that such damage is clearly a violation of their rights . . . well then, what does one do? It cannot be advocated that the rights of victims should be constantly re-violated in order to advance the "right" of a prisoner found to merit a life sentence to possible periodic review for release.

One cannot trade one human rights violation for another. Especially when the offender's violations of the victims lives and rights is what created this problem in the first place.

And no one who understands the nature of trauma and victimology would ever argue that victims can simply choose not to care about or participate in such periodic reviews for early release of the killers of their loved ones. While there may be that rare case of a victim survivor able to completely "move on" in their lives, and not give the fate of the killer a second thought, largely that is not even neurologically possible for most people, much less desirable, for a whole host of reasons. Many of us come to see our grief and our memories as a positive and vital link to those we love take violently from us.

We believe that ultimately the key argument in this national debate over the JLWOP sentence may come down to a recognition that, while the fact that some teenagers are actually capable of such horrors in our beloved nation, and we do not like what that means about us as a nation and a people that such a thing is possible (and how we address that we believe IS the KEY discussion we should be having!) we are in fact a nation that has younger people capable of such horrors. They are here and they are, sadly, among us. And tragic as it is (and no one knows the depth of the tragedy better than we do) that they are capable of committing such crimes, the worst tragedy might be to continue to hurt those same victims' families over and over and over again, to no end other than allowing access of that offender to frequent reviews for release that will never predictably be granted.

And all this does not even begin to discuss the cost, and the risk to public safety entailed in such legal processes.

Many states that have chosen a system of determinate sentencing have already made this decision not to engage in this highly problematic process. They have set sentences for certain crimes at certain lengths, and even built in mechanisms for automatic sentence reduction based on good behavior. In so doing they have eliminated an incredibly racist, discriminatory, uneven, costly and ineffective parole system.

One only has to look at the states like California that still use parole to see how wildly problematic the system is.

We also grant that it is obvious that the younger a person is, the less they are capable of consistently good decision-making, and that laws must be written rationally to build in such understandings. But the problem runs along a spectrum and cannot be judged along distinct lines. And knowing that it is wrong to kill, and being able to keep oneself from doing just that, comes pretty early in life for most young people.

Ultimately we believe that *reforms must focus on the transfer mechanisms in states - HOW DOES A JUVENILE OFFENDER BECOME CERTIFIED AS AN ADULT?*

We know that mandatory transfers can be problematic as it eliminates the ability of courts and experts on the individual facts of the cases to make decisions most responsive to the situation.

We know, better than anyone else in this entire conversation, that this is all a very complex problem, and does require a significant public policy discussion.

But this public policy discussion cannot be had without all the key stakeholders at the table and the victims of these crimes and their families are not just stakeholders, they are *the issue*.

There would not be the crime, the sentence, or the debate unless there were first innocent victims, targeted for death by killers. There cannot now be a discussion as to the fate of those killers, sentenced through Due Process to Life Without Parole without the most important people at the table - the Victims' Families.

X. THE MISAPPLICATION OF BRAIN RESEARCH

We recommend that anyone concerned with the rationale that the lack of complete frontal lobe brain development until the mid-20s excuses criminal liability read this article published in the *New York Times Magazine* about neuroscience and the law, called "The Brain on the Stand" by Jeffrey Rosen:

http://dericbownds.net/uploaded_images/NeuroscienceLaw.PDF

Here is a select quotation from that article that gives some sense of our concern and I pick up the article from a point where it is discussing the debate about neurological "excuses" for criminal behavior that began with a historic understanding a different issue – mental illness – and then moves to our point about juvenile brains:

"Since the celebrated M'Naughten case in 1843, involving a paranoid British assassin,English and American courts have recognized an insanity defense only for those who are unable to appreciate the difference between right and wrong. (This is

consistent with the idea that only rational people can be held criminally responsible for their actions.) According to some neuroscientists, that rule makes no sense in light of recent brain-imaging studies. 'You can have a horrendously damaged brain where someone knows the difference between right and wrong but nonetheless can't control their behavior,' says Robert Sapolsky, a neurobiologist at Stanford. 'At that point, you're dealing with a broken machine, and concepts like punishment and evil and sin become utterly irrelevant. Does that mean the person should be dumped back on the street? Absolutely not. You have a car with the brakes not working, and it shouldn't be allowed to be near anyone it can hurt.' Even as these debates continue, some skeptics contend that both the hopes and fears attached to neurolaw are overblown. 'There's nothing new about the neuroscience ideas of responsibility; it's just another material, causal explanation of human behavior,' says Stephen J. Morse, professor of law and psychiatry at the University of Pennsylvania. 'How is this different than the Chicago school of sociology,' which tried to explain human behavior in terms of environment and social structures? 'How is it different from genetic explanations or psychological explanations? The only thing different about neuroscience is that we have prettier pictures and it appears more scientific.' Morse insists that 'brains do not commit crimes; people commit crimes' — a conclusion he suggests has been ignored by advocates who, 'infected and inflamed by stunning advances in our understanding of the brain . . . all too often make moral and legal claims that the new neuroscience . . . cannot sustain.' He calls this 'brain overclaim syndrome' and cites as an example the neuroscience briefs filed in the Supreme Court case *Roper v. Simmons* to question the juvenile death penalty. 'What did the neuroscience add?' he asks. If adolescent brains caused all adolescent behavior, 'we would expect the rates of homicide to be the same for 16- and 17-year-olds everywhere in the world — their brains are alike — but in fact, the homicide rates of Danish and Finnish youths are very different than American youths. Morse agrees that our brains bring about our behavior — 'I'm a thoroughgoing materialist, who believes that all mental and behavioral activity is the causal product of physical events in the brain' — but he disagrees that the law should excuse certain kinds of criminal conduct as a result. 'It's a total non sequitur,' he says. 'So what if there's biological causation? Causation can't be an excuse for someone who believes that responsibility is possible. Since all behavior is caused, this would mean all behavior has to be excused.' Morse cites the case of Charles Whitman, a man who, in 1966, killed his wife and his mother, then climbed up a tower at the University of Texas and shot and killed 13 more people before being shot by police officers. Whitman was discovered after an autopsy to have a tumor that was putting pressure on his amygdala. 'Even if his amygdala made him more angry and volatile, since when are anger and volatility excusing conditions?' Morse asks. 'Some people are angry because they had bad mommies and daddies and others because their amygdalas are mucked up. The question is: When should anger be an excusing condition?'"

This article highlights our concern about the reasoning for changing JLWOP is that these offenders' brains are not yet fully developed. In sum:

1. If this were the determination of legal culpability – a FINISHED frontal lobe – then virtually no one under 30 could be held criminally liable for anything.
2. People are well aware of right and wrong and are able to comport themselves to those standards well before adolescence even – most at a very early age. Moral development is also key in understanding this process in the brain.
3. We still hold accountable and punish children who make mistakes, in fact we must – to help them grow.
4. We hold accountable as full adults many older age offenders who have other diminished capacity issues that make them far less culpable than a healthy adolescent who commits a violent crime.
5. All behavior has biological causation, but we have decided, correctly, as a society that does not mean that all behavior is excusable.
6. Dr. Morse's point in the article above makes reference to adolescents in other countries who clearly do not commit murder at anywhere near the rates in the United States, which should be the case if the brain is the cause for the juveniles committing murder. In fact, it is primarily easy access to guns and a violent gang culture that is a direct cause of most of the JLWOP cases in the United States.
7. Laws regarding punishment of offenders internationally cannot compare to the United States until our laws about easy access to guns are judged comparably to other nations as well.

In conclusion, the frontal lobe of the brain may not be finished developing in the average adolescent, but culpability for a violent crime in an offender who is mentally healthy is still fully present.

XI. VICTIMS RIGHTS IN RETROACTIVE LEGISLATIVE PROPOSALS

A. Victims' Rights to notification

Victims' Rights to be heard, to be consulted, to be protected, etc (see www.victimlaw.org) are well-established in two of the three branches of government in all 50 states and in Federal Law.

First, in the Judicial Branch, in hearings, trials, sentencing – victims' rights are generally observed, if not always enforced, in virtually every aspect of their cases through the courts.

Second, in the Executive Branch of Government – in the executing of the law – in incarceration, parole release, clemency matters, etc., - Victims can and often do REGISTER in states to be kept notified either through automated systems (43 states) or some other method, of the movements and releases of offenders.

But victims' rights to be notified of LEGISLATIVE Branch activities that could have the same net effect as a new sentencing hearing or a clemency release have NOT been established in the United States yet because up to now it simply has NOT been an issue.

Victims' Rights to be notified of any retroactive legislation that would affect their cases MUST be the same as any judicial or executive function with the same protections.

Significant work to protect victims' rights must accompany any such legislative proposal.

The following summary was recently submitted to the Webb Commission for his work in the US Senate to undertake a comprehensive study of the nation's prison system:

Overview

After decades of "tough on crime" sentencing, a burgeoning and aging prison population, and a nation now facing a severe economic crisis, states are considering various kinds of early release and retroactive sentence reduction measures for many of the nation's incarcerated offenders. While this trend can be seen as a natural historical cycle and genuine reform, retroactively reducing some prison sentences can, in some cases, pose a serious concern. It also gives rise to a new issue regarding Victims Rights.

Questions

Are Victims Rights (i.e. the right to be notified, heard and to consult, etc.) protected in the Legislative Branch of Government, as they are in the Judicial (trial/sentencing, etc) and Executive Branches (prison/parole/clemency) of Government? Or are victims rights limited to the functioning of only two branches?

If a piece of legislation would essentially have the same effect as a new trial -- a clemency or parole release, or a new sentencing hearing -- does the victim have a right to know that the Legislature could release the offender? Should victim notification be mandated when proposed legislation would retroactively undo the sentence in their cases? If there is no such right for victims, what should the national victim advocate profession and prosecutors offices be telling victims of crime about this aspect of their cases? Should SAVIN efforts include legislative matters such as these?

Complications

1. Early release of violent offender can pose a direct safety threat and a re-traumatization risk to the victims/families. These offenders upon release could return to the victims' community, and could seek vengeance.

2. Half the states have Determinate sentencing with little to no parole bureaucracies in place. All 50 states have different "sentencing schemes". And victims are often told the offender can never get out in cases where they receive natural life.

3. Some offender advocates are claiming that "periodic review" for possible release is a "right" that offenders have. Periodic review is re-traumatizing to victims and robs them of legal finality in their cases. Can the victim community allow this claim to go unchallenged, especially with so many determinate sentences notionally?

4. States are not always focusing on non-violent offenders first and foremost, as they consider these steps.

    a. Many states are actually proposing retroactive and early release legislation with the *most violent offenders* as their target population: long term prisoners, aging offenders, for the most aggravated and heinous offenses.

    b. Life without Parole sentences for juvenile offenders tried as adults (JLWOP) is a primary target for retroactive change. These families should be informed of the immediate threat to the sentences in their cases.

Recommendation

We believe that the national victims' rights community should address this trend head on and take a legally supported stance on all retroactive sentence reduction legislation. We should articulate Victims' Rights in legislative matters affecting our cases. And we believe it is now time for the victim advocacy profession to talk proactively with all victims and clients about the very real possibility that a sentence by a court may not be the final word with respect to time served.

B. ***Victims' Rights Are Human Rights***

The Life Without Parole sentence is widely regarded as the appropriate sentence for those who show an exceptional disregard for human life. Many believe they have simply lost the right to walk among us. And while most of us believe that this sentence should be incredibly rare, and only reserved for the proverbial "worst of the worst", sadly, there are such truly bad actors among us human beings on planet Earth.

The most complicated aspect of the JLWOP issue is the human rights question – the interpretation of international treaty, not signed by all nations, that no matter the act, no one under that "magic" age of 18 according to some international treaties should receive a life sentence.

In fact, legal interpretations of those treaties and laws and global legal practice that balance the entire picture of violence, victimization, offender behavior and public safety, and victims' rights can present a different picture.

Victims' rights are human rights also.

And one cannot merely trade one human rights violation for another.

The founder of NOVJL, Jennifer Bishop-Jenkins, was instrumental in conversations with Human Rights Watch (www.HRW.org) a leading advocate to end JLWOP, to address this very question.

And in fact, all international law and treaty and national law affirm that Victims' Rights are Human Rights also.

Here is a link to the HRW report on the subject:
http://www.hrw.org/en/reports/2008/09/23/mixed-results-0

Here is the KEY POINT: if a reasonable determination can be made - with full due process - by many fine expert legal minds functioning in full integrity that the killer would never meet the standards of the state for parole, then the victims' rights to not have to be tortured by re-engaging constantly with the offender in hearings and reviews for release *should take precedence*.

Justice requires that we weigh in balance the rights of the offenders and the rights of the victims and deliver justice. See the diagram at the end of this document that illustrates the point that after conviction the burden to protect the victim should outweigh the constitutionally appropriate rights of the accused that exist before conviction.

But after conviction, when the offender is declared legally guilty, the rights of the victims to be kept safe, to not be re-traumatized unnecessarily must and should outweigh any perception that the offender has any kind of "right" to be periodically reviewed for early release.

NO SUCH RIGHT exists in law.

Advocates for JLWOP reform would be wise to stop talking about periodic review as the solution to their concerns about the sentence. The law has balanced the rights of the offenders against the right of the public to be safe and unnecessarily re-victimized. The Life without parole sentence is appropriate in sadly a few very rare, worst cases.

And if a determination can be reasonably and lawfully made that the offender will never qualify for early release anyway, as if often the case with these thankfully few but horrifically high level violent offenders, then the victims' rights to not have to constantly legally re-engage with them in regular parole hearings is PRIMARY.

And if the offender advocating for change in the law do not find and notify every victims family member of their proposed legislation while they can still have a voice in the process then they are guilty of violating the most innocent and injured of all people - the victims - in order to help the guiltiest - the killers. This set of priorities makes no sense.

Ultimately their decisions to do the right things by the victims in these cases, if they ever do finally make thase choices, may be motivated by political pragmatism. Because with public sentiment towards guilty murderers being what it is, it seems clear that they do not stand a chance of passing any major legislation with significant victim opposition.

We do not question the motives of those who advocate for juvenile aged killers. We all love children. We all want to help raise the best children we can. We should not be criticized in any way for not loving and valuing and caring about young people as much, or more, than they do who advocate for these young offenders. We say "care more" because we understand some advocacy groups take on the JLWOP issue because of access to funding for their organization.

We do believe that they see the world as they would like it to be, however. With regards to the dangers inherent in human nature and what some people are capable of, we sadly have been forced to see the world as it IS.

And we have paid the highest price imaginable to learn that lesson.

C. ***An example of how Retroactive Sentence Reduction Legislation in States Can Violate Victims Constitutional Rights***

The following legal brief (EXHIBIT 1) is just ONE example for ONE state (Illinois) was prepared by the National Crime Victims' Law Institute at Lewis and Clark University for victims of juvenile lifers in the state of Illinois who were concerned about legislative proposals in the state legislature to retroactively bring parole to JLWOP cases. It demonstrates how retroactive sentence changes via legislative fiat can be a serious legal violation of victims' rights. See exhibit 1.

XII. CONCLUSION

Remember, these are not "routine" murders. Many juvenile offenders commit murder – far too many – and never are tried as adults.

And for those who are tried as adults, they are rarely sentenced to life.

"Juvenile" Life Without Parole is RARE.

It is given to highly aggravated crimes and with offenders who demonstrate the highest levels of culpability to the worst kinds of crimes – multiple murders, rape and murder of children, murders of law enforcement, torture murders, etc.

And while there are some poster cases for reform – as there clearly are throughout EVERY area of the criminal justice system – the vast majority of those serving a "JLWOP" sentence are incredibly guilty of incredibly heinous crimes.

The few cases of miscarriage of justice can and should be handled, as everywhere else in the criminal justice system, by the appeals process and the executive clemency process.

And we would not oppose prospective changes in the law (because those would not violate victims' rights to know) that would eliminate, or make much more protected for the young offender, the mandatory transfer of juvenile offenders to the adult system in such serious cases. Judges and prosecutors should have discretion to place the offender in the system that is appropriate for the facts of the individual case, and younger offenders should have the right to appeal and demonstrate their case for where they appropriately should be adjudicated.

The victims' families of these crimes walked away from the horrifying process of the murder of their loved ones, the investigation, arrest, trials and appeals, and sentencing of the offenders with at least the promise that the offender would never get out.

Life without parole should mean life without parole when the crime is highly aggravated, committed by an offender who knows that the act is criminal, and due process has been respected.

And these victims' families MUST be notified of any legislative effort such as HR 2289.

Submitted by NOVJL

The National Organization of Victims of 'Juvenile Lifers'
www.jlwopvictims.org
Jennifer Bishop-Jenkins, Secretary
847-446-7073

EXHIBIT 1

MEMORANDUM

TO: IllinoisVictims.Org

FROM: NCVLI

RE: Victims' Rights & Retroactive Sentencing

DATE: March 14, 2007

The information in this memorandum is educational and intended for informational purposes only. It does not constitute legal advice, nor does it substitute for legal advice. Any information provided is not intended to apply to a specific legal entity, individual or case. NCVLI does not warrant, express or implied, any information it may provide, nor is it creating an attorney-client relationship with the recipient.

Pursuant to your request, the National Crime Victim Law Institute (NCVLI) has prepared an independent analysis of what rights of Illinois crime victims would be affected if the legislature passed a statute retroactively reducing offenders' sentences.

NCVLI is a nonprofit educational organization located at Lewis & Clark Law School, in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal

advocacy, education, and resource sharing. NCVLI accomplishes its mission through education and training; technical assistance to attorneys; promotion of the National Alliance of Victims' Rights Attorneys; research and analysis of developments in crime victim law; and provision of information on crime victim law to crime victims and other members of the public. In addition, NCVLI actively participates as *amicus curiae* in cases involving crime victims' rights nationwide.

DISCUSSION

With the passage of Article I, Section 8.1 of the Illinois Constitution (the "Victims' Rights Amendment"), and other statutory provisions, the citizens of Illinois endowed crime victims with rights in the criminal justice system. Those rights include the rights to be treated with fairness and respect for victims' dignity, to timely disposition, to be reasonably protected, to be present at all court proceedings and to restitution. The Victims' Rights Amendment was enacted as part of a national movement to ensure that crime victims are not treated as second class citizens in the criminal justice system, but instead are treated as participants in that system who are to be respected, protected and heard. As noted by the Ninth Circuit Court of Appeals in discussing the passage of the federal victims' rights act, victims' rights law overturns the longstanding "assumption that crime victims should behave like good Victorian children—

seen but not heard." *Kenna v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 435 F.3d 1011, 1013 (9th Cir. 2006).

This memorandum discusses how the rights in the Victims' Rights Amendment will be implicated if the sentences of violent criminals are retroactively reduced.

A) Victims' Right to be Treated with Fairness

Illinois victims have a state constitutional right "to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process." Ill. Const. art I, § 8.1(a)(1). This right ensures that victims are treated properly within the criminal justice system. As stated by Justice Cardozo, "justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." *Snyder v. Massachusetts*, 291 U.S. 97, 122 (1934).

While fairness, with respect to victims' rights, has not been defined by an Illinois court, other state and federal courts have discussed the meaning of fairness within the context of victims' rights.[1] As noted by a federal district court,

[1] *See, e.g., Romley v. Schneider*, 45 P.3d 685, 688 (Ariz. Ct. App. 2002) (holding that fingerprinting victim violates victims' rights under the Arizona Constitution, statutory law and Rule 39(b)(1), including the rights to fairness, dignity, and respect and to be free from intimidation, harassment and abuse); *State v. Timmendequas*, 737 A.2d 55, 75-82 (N.J. 1999) (holding that constitutional requirements of fairness and dignity for victims dictate that the needs of the victim and defendant should be balanced in determining venue); *State in the Interest of K.P.*, 709 A.2d 315, 321 (N.J. Super. Ct. 1997) (holding that

"[t]o treat a person with fairness is generally understood as treating them 'justly' and 'equitably.'" *United States v. Heaton*, 458 F.Supp.2d 1271, 1272 (D. Utah 2006). Fairness also includes fundamental precepts of due process. *See* 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl) ("Of course, fairness includes the notion of due process.").

While no published opinion has applied a victim's right to fairness to the retroactive reduction of offenders' sentences, a retroactive reduction of violent criminals' sentences risks causing more harm to victims, an effect that would implicate common sense notions of fairness. At a minimum, fairness requires taking the interests of victims into account in any decision to retroactively change the sentence that was given at conviction. Additionally, as a matter of procedural fairness, victims should be given due process – notification and an opportunity to be heard before their offender's sentence is reduced.

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the language of "fairness, compassion and respect" create mandatory and self-executing rights for victims); *State v. O'Neil*, 836 P.2d 393, 394 (Ariz. Ct. App. 1991) (holding that requiring the state to record witness interviews violates the right to fairness, dignity and respect and the right to be free from intimidation, harassment and abuse, as well as other constitutional rights of the victim); *State v. McDonald*, 839 S.W.2d 854, 858-59 (Tex. 1992) (holding that the right to "fairness" in the Texas Constitution gives victims of crime access to the prosecutor but does not grant victims civil discovery of contents of prosecutor's file). *But cf. Schilling v. State Crime Victims Rights Bd.*, 692 N.W.2d 623, 631 (Wis. 2005) (holding that the fairness and dignity language in victims' rights amendment was not mandatory); *Bandoni v. Rhode Island*, 715 A.2d 580, 587 (R.I. 1998) (holding that the fairness provisions were not self-executing but rather statements of general principle).

B) Victims' Right to Timely Disposition

Victims in Illinois have a right to "timely disposition following the arrest of the accused." Ill. Const. art I, § 8.1(a)(6). In part, this right ensures that victims have closure of the criminal case so that they can begin the recovery process. *See* Paul Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 1994 Utah L. Rev. 1373, 1405 (1994) ("Victims cannot heal from the trauma of the crime until the trial is over and the matter has been concluded."). In the habeas context, the Supreme Court has affirmed the importance of finality in the criminal process:

> Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out . . . to unsettle these expectations is to inflict a profound injury to the "powerful and legitimate interest in punishing the guilty," an interest shared by the State and the victims of crime alike.

Calderon v. Thompson, 523 U.S. 538, 556 (1998) (citation omitted). Retroactively reducing sentences harms the victims' sense of finality, implicating the right to timely disposition.

C) Victims' Right to Protection

The Victims' Rights Amendment provides victims "[t]he right to be reasonably protected throughout the criminal justice process." Ill. Const. art I, §

8.1(a)(7). The release of an offender directly implicates the safety and protection of the victim:

> Victims and witnesses share a common, often justified apprehension that they and members of their family will be threatened or harassed as a result of their testimony against a violent criminal. This fear is quite understandable. Victims and witnesses have seen personally what the defendant is capable of doing. In addition, threats and actual retaliation are not uncommon.

President's Task Force 19. For example, victims make safety planning decisions based on the release date of offenders. As noted by a survivor of sexual assault:

> What are my concerns regarding my core rights as a victim/survivor relevant to this issue of offender reentry? Ensuring my safety and that of my family is, and always should be, first and foremost. Discussing my safety concerns with local law enforcement and the community should occur long before the offender is released.

Anne K. Seymour, *The Victim's Role in Offender Reentry: A Community Response Manual* 19 (U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime 2000). The release of offenders by any means, including a retroactive reduction in sentence, directly affects victims' right to protection, and victims' safety must be taken into account in any decision to release offenders prior to their original sentence release date.

D) Victims' Right to Information Regarding Sentence, Imprisonment & Release

Victims have a constitutional right to information about "conviction, sentence, imprisonment, and release of the accused." Ill. Const. art I, § 8.1(a)(5). At a minimum, this means that victims must be notified if their offender's sentences are to be retroactively reduced. For this notification right to have meaning it must occur prior to the reduction in sentence.

E) Victims' Right to Be Heard at Sentencing

In addition to the right to information regarding an offender's sentence, victims also have the right to be heard at sentencing. Victims have a constitutional right to "make a statement at sentencing," Ill. Const. art I, § 8.1(a)(4), and a statutory right to "address the court regarding the impact that the offender's criminal conduct . . . has had upon . . . the victim." 725 Ill. Comp. Stat. Ann. 120/6(a). This statutory right to present a victim impact statement also includes the right to have the statement considered by the court in determining the sentence: "The court shall consider any impact statement admitted along with all other appropriate factors in determining the sentence of the offender . . . ." *Id.* These rights to participate in the sentencing process reflect the victim's interest in the sentence:

> The imposition of a criminal penalty may be the most difficult kind of decision a judge is called on to make. In addition to affecting the defendant, the sentence is

> a barometer of the seriousness with which the criminal conduct is viewed. It is also a statement of social disapprobation, a warning to those tempted to emulate the offender's actions, and a step that must be taken for the protection of society. Finally, it is a statement of societal concern to the victim for what he has endured.

President's Task Force 76. The right to have a victim impact statement considered by the judge when deciding on the sentence recognizes the importance of the harm to the individual. As the Supreme Court stated in the context of capital sentencing, victim impact information "is designed to show . . . *each* victim's 'uniqueness as an individual human being,'" *Payne v. Tennessee*, 501 U.S. 808, 823 (1991).

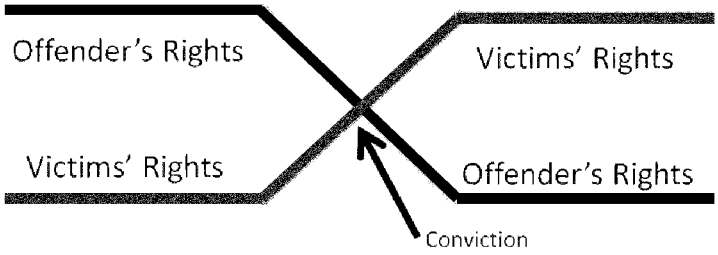
A retroactive reduction in sentence essentially erases the victim's right to participate at the original sentencing. Victims gave statements at the sentencing and the judge used that information to impose a sentence based on existing law. Imposing a new sentence, automatically and retroactively, contravenes the right of victims to give victim impact statements prior to sentencing, violates the trust the victims placed in the system, and fundamentally undermines the purpose of a victim's original victim impact statement.

CONCLUSION

A retroactive reduction in the sentences of violent offenders implicates at least five rights held by victims in Illinois: the rights to fairness, timely disposition, protection, information about sentence, imprisonment and release, and to make statement at sentencing. Any change in existing sentencing law must take into account these rights.

EXHIBIT 2

Victim Rights in Balance



Prior to the trial, it is understandable that the offenders' constitutional rights to be protected with a higher priority than the victims' when necessary.
However, post-conviction, it is essential that the victims' rights then be protected at a higher priority, especially in the areas of protection from intimidation, the right to be heard, and the right to be notified of factors that would affect the offender's legal status.

EXHIBIT 3

IN MEMORIAM

RICHARD LANGERT, NANCY BISHOP LANGERT and their unborn BABY

Pictured here on the happy day in 1990 that they found out they were expecting their first baby. Nancy's glow was only to last a few months.

Richard was 28 and Nancy was 25 and so happy to be having their first baby.

Their killer brutally shot Richard execution style point blank in the back of his head with a .357 magnum, and then turned the gun on Nancy.

She cowered in the corner of her basement floor, begging for the life of her unborn child by holding her arms over her pregnant abdomen.

"Please don't kill me, please don't kill my baby" she begged, but the killer fired directly into her belly. Later autopsy revealed that the bullet hit the young baby and exploded it.

The killer fled and left her there to die. He reported to friends that he just "wanted to see what it would feel like to shoot someone." He had plotted the murders for weeks, picked them because their home was directly across from the police station, and he could brag about what he did just under the noses of the local police.

This offender was not impulsive – he plotted the killings for weeks. He did not act under peer pressure – he told no one of his secret plans, until after the murders when he bragged about them. He did not come from a disadvantaged home – his parents were millionaires. He was not mentally deficient in any way – he had superior grades and test scores and attended one of the finest high schools in the United States. He was a varsity athlete. He did not lack a developed maturity or morality. He was highly functional, organized, and incredibly effective. And he spoke many times of how he knew killing was wrong, illegal, but wrote that it gave him a thrill to break these social mores. This offender was not a victim of racism in his prosecution. He was white, wealthy, well-educated, fully mature and well aware of the law and right and wrong. But he thought

that criminals were smart, and he wanted to see what he could get away with. He wanted to see what it would feel like to shoot someone.

Nancy's last act of life was to draw a heart and a "u" in her own blood - her last act in life was to tell us she loved us.

Their killer was four weeks shy of his 17th birthday, at which point he would be tried as an adult for all crimes in Illinois. He was certified and tried as an adult, and duly sentenced to three life without parole sentences that he is currently serving in the Illinois Department of Corrections.

RUEBEN PULIDO and MARK LOPEZ

Young Ruben Pulido who was shot and killed alongside his good friend, Mark Lopez in 2000. Both boys had been playing basketball in their front yard and were sitting in the front porch in suburban Chicago.

The parents of these two fine young men were very proud of the fact that they were good and stayed out of gangs and yet they were targeted by two killers who were simply looking for someone to shoot.

The 19 year-old killer ordered a 16 year-old to "light them up." They both died with a single bullet each in their hearts. One of the killers is a juvenile lifer.

Rueben and Mark's parents, siblings, and extended family have stood together in both devastation and tears that they want to make sure that these murderers never walk free, and that they do not have to spend the rest of their lives fighting to keep them where the law has sent them - to prison for life - for taking deliberately and casually the lives of these two promising young men who were greatly loved by their families.

ROSS ELVEY

April 28, 1993 - My husband Ross V. Elvey was murdered, leaving me alone in what should have been our happy retirement years. Instead, I still have to work, and have lost my home and all savings, and am barely scraping by. Our children have never fully recovered from this trauma.

Ross was closing his place of business when one juvenile (DM) came in the front door and distracted Ross while another juvenile (KK) came in the back door with a metal pipe. KK proceeded to beat Ross over the head with the metal pipe; they held him down on the floor and continued to beat him. They then stole the guns they had came for and stupidly ran out the front door where one of Ross's customers (LB) was driving by.

LB jumped out of his truck and started to chase them. The 2 juveniles ran through the neighborhood stopping to ask many people to give them a ride home as a gang was chasing them. When LB could not catch them he went back to the shop and called 911. The Sheriff's Department drove through the neighborhood and found a lady who had put them in her son's car and had him drive them home. Knowing the color and type of car these two where in, they were caught within 45 minutes.

Ross was in a coma for 41 days before he passed away on June 7, 2007.

DM was 4 month short of 16 so he could not be tried as an adult. Their gang was called 187 Crips...DM's street name was "NINE" as he could get 9mm hand guns for others. At 14 he supplied handguns to two other 14 year old juveniles who committed 2 murders. Maybe if something had been done to DM when he first started passing out guns, my husband may still be alive.

DM was in the Youth Authority until the day before he turned 25. I don't think he ever learned a thing. I attended 8 yearly progress hearings for DM. KK was 2 months over 16 and was tried as an adult. His street name was 187 insane. The Prosecutor and Judge on the case were great. KK was found guilty in a day and a half trial of First Degree Murder with Special Circumstances and the Judge gave KK a LIFE WITHOUT THE POSSIBILITY OF PAROLE (LWOP) SENTENCE in September 1994.

Since then KK has tried to kill another inmate and received a 25 to life sentence for attempted murder. I hope that with his two sentences, he won't ever be released.

It is hard to describe the pain, sorrow and troubles this brutal murder of our loved one has caused our family. Sit down and write a list of all the things you would lose if your SPOUSE is brutally murdered, what you and your family would go through. I still find new things everyday that I have lost and have to work though all because of two juvenile's bad choice.

One example that we don't think of, when married we file our tax return as married-joint return, when you lose that spouse, you go down to single, which means you now pay more in taxes unless you have small children. It would take many pages to tell you what our family lost and goes through each and every day. We must make sure those homicide victims survivors of juvenile killers have their voices heard across the country when it comes to discussing changes in juvenile sentences past and future. Maggie Elvey and Family.

IN MEMORY OF JIMMY

My brother, Jimmy, was 28 at the time of his brutal death

He was one of 7 children. His father was a successful business person; we grew up on a beautiful lake in Oakland County. Our mother was a stay at home Mom. All seven of us graduated from Waterford schools, many of us went on to College and we are all productive and successful members of society. My mother has since passed away but my Dad now enjoys his time with his, 11 grand children and proudly has one more on the way. My youngest brother is about to adopt his second child. I tell you all this because I often sit and wonder what my Brother Jim's life would have been like. He was an automotive mechanic and enjoyed working on cars. He told me once that he enjoyed spring because people would roll down their windows and be able to hear that their cars needed attention and his shop would get busy. He loved to help people, often working on cars for free. I imagine that Jimmy could have owned his own business. I will never know there are no second chances given here!

Jim left his house to go to K-Mort on Mother's Day, 1990, to buy our mother a card. Barbara Hernandez had been at that same K-Mart the day before to purchase the knife that would kill Jim. It was never determined in court how Barbara was able to convince my brother to let her into his car but he did and she took him to the house, where she knew her boyfriend was waiting, with the knife she had purchased the day before. Jim was just a random victim in a scheme to steal a car. It was brought out in court that Barbara had concocted this "pre-meditated" scheme to lure someone to the house to steal their vehicle so that she and her boyfriend could go to New Mexico, get off of drugs, put their lives back together and live with her father. Yes this would be the same father the ACLU states physically and mentally abused Barbara. She wanted to live with him.

During the trial we heard all the brutal details of the crime. You see my brother was not just stabbed once or twice. He suffered 25 wounds in all. 10 stabs and 15 incised. But the brutality did not stop here. Jim had suffered many lacerations to his neck to the point of almost decapitation. Just writing this makes me cringe and brings back the horrible thoughts of my brother's endless suffering and his horrible death. The pain had to be tremendous; to this day I can imagine him bleeding to death. All for his car!

Of greatest interest to the prosecutor were the defensive wounds present to Jimmy's hands. In Jim's hand they found hair - forensic scientist testified that "it was forcibly removed from Barbara Hernandez head therefore she must have been near him during the time of his struggle." Not likely that he pulled her hair out while she sat innocently in another room?

The medical examiner testified that Jim was a big guy at 175 lbs and compared to James Hyde, Barbara's boyfriend, my brother was almost twice his size. The medical examiner testified that Hyde could not have fought with Jim and proceeded to stab him alone. Barbara either held him down or stabbed him while Hyde held him down. Hyde admitted himself to a hospital in Finlay, Ohio. Hyde had suffered a stab wound to the stomach. When admitted to the hospital the police were called and both he and Barbara where apprehended. I can imagine my brother fighting for his life.

Hyde and Hernandez would not speak to the police. It took three days for them to tell the police were to find Jim's body. If Barbara did not kill and if she was innocent and just afraid for herself, why would she not have told the police were my brother was dying? Why did she make us suffer for three days? We Searched for Jim for days, fearing the worst and hoping for the best as we held vigil at our mother's house. I had not slept for 3 days when they had found Jim… Our worst nightmare had come true, my brother, my friend, gone, he was DEAD. How could this be?

During the trial, my Mother's Health went frail. It was so difficult for her to bury her son. She loved us all so much. After her death, as I was cleaning out her dresser, I found a doctors record that indicated that my Mother, several years early had had a scare with cancer. After speaking with her doctor, I believe the cancer was in remission and the stress of Jim's murder resurfaced it. Jim died on May 12, 1990, Mother's Day and my sister's wedding anniversary. My mother died the next year on April 27th we had the funeral on April 29th the same sister's birthday.

We remember vividly calling my Mom from the pay telephone at court house in Oakland County, she was in the hospital in Detroit, We promised her we would call her and give her the verdict. We told her that they had been charged with first degree murder and that they were going away to prison for the rest of their life. The court was nice enough to schedule the sentencing around my mother's funeral.

The sentencing for James Hyde was first, his was easy because he was considered an adult. Sentencing for Barbara was a little more difficult. It had been decided after several hearings that she would be tried as an adult but there needed to be another hearing to determine if she would be sentenced as an adult. Prior to the hearing, she was seen by Doctor Holden to evaluate her and see if she had "diminished capacity" - the inability to form the intent to commit murder. After 5 hours of interviewing Barbara, Dr. Holden found that Barbara did not have diminished capacity. She did form the intent to commit murder.

Second she was evaluated by Mark Mudd - probation manager with Oakland County Circuit Court Department of Corrections. He evaluated her and found that due to "the gravity and brutality of the offense, the serious nature of such offense, and for the long term protection of society." she should be sentenced as an adult.

Then she was evaluated by Ms. Tansil from the Michigan State Department of Social Services who also found that she should be sentenced as an adult. Then at the hearing the judge, based on the evidence, found that she should be sentenced as an adult.

Unlike the ACLU we think the courts did a great job evaluating the physiologic, and psychological and emotional capabilities of the killer and gave full consideration of the circumstances surrounding the crime – before they sentencing her to LWOP.

After Barbara was sentenced, we worked hard to pick up the pieces of our lives, although nothing in our lives seemed right anymore. My brother was gone, my Mother was gone. I found myself as a grown married woman, needing to sleep with a nightlight so when I woke up scared from the nightmares that raced through me I could be assured that no one was in my room. I cried myself to sleep. We had not had time to mourn my brother's brutal death or my mother. The healing process took years.

Now my family and I have learned to accept the things that we cannot change. We have learned to never take each other for granted. The one good thing that has come from all of this is our family unit is as strong as anyone could hope for. The bad thing for the supporters of this legislation is that you can rest assured that we won't rest until these bills are dead!

Tell the truth ACLU. Barbara Hernadez did not hide in another room while my brother was murdered; her hair was in his hand. He was held down by her. Go to the court house and read the transcripts. No one ever denied that she purchased the knife and then took Jim to the house to be killed!

Remorse is not a ticket to the chance for freedom! Rehabilitation is not a get out of jail free card!

As I sit here tonight, once again completely consumed with this horrible crime that has been done to my family, I realize that once again, I am being victimized. I am being forced to relive this horrendous time in my life, at the expense of all the other productive things I should be doing with this time.

As long as legislatures introduce and support bills that provide criminals sentenced to LWOP the opportunity for parole, my family will be sentenced to LIFE WITH NO CHANCE OF PAROLE we will be a victim for life!

We love you Jim - From his sister Jody

Danni Reese Romig

From mother Dawn Romig: Our daughter was 12 years old when she was beaten, raped and murdered. The young man who did all this was 17 years old. He is now serving a life sentence with no parole in Pennsylvania. Here is a picture of her. This picture was taken 2 weeks before she died. We got them back 1 week after she died.

MADDIE CLIFTON

Jacksonville, Florida -Maddie Clifton's family, law enforcement officials and religious figures involved in the case speak out.

Former Sheriff Nat Glover: "I remember the number of days she was missing, the media coverage and the level of attention, both here and nationally. ..."

Mark Foxworth, who lead the Clifton case: "Tuesday, Nov. 3, 1998, is a day I will never forget."

Maddie's older sister, Jessie Clifton: "As an 11-year-old, you think about toys, games, and most of all, your family and friends."

Monsignor John Lenihan: "Not a day goes by without some memory of Maddie Clifton, her mother, father and sister, Jessica."

VICTORIA LARSON

Vicki smiled all the time. That smile was contagious and could light up a room. On July 12, 1979, Scott Darnell murdered that smile.

Victoria Joelle Larson was born February 8, 1969. She was brought home to a town of 500 and two siblings. As Vicki grew she made lots of friends, good grades and because she was so tiny she could out run any kid in town.

Everyone loved Vicki . . . expect for one person.

Vicki was walking home from her brother's Little League game when Darnell told her he had a pony for her. She had no reason not to trust this 15 year old, as he had been to our home many times while 'visiting' his grandparents. He was handsome, smart and polite telling us he had a crush on Vicki's sister. We had no idea of his chilling past.

He took Vicki to a spot in a corn field, where he had dug her grave 3 days earlier. Vicki must have tried to run away when she saw the stakes and leather straps near the grave sight for she was strangled from behind with his bandana. He raped her, threw her small, lifeless body in the shallow grave. Before his night long flight he buried his wallet, watch and murder weapon so that when found he told the police that a gang of bikers stole his things before taking Vicki. As the county and state officers talked to him, his eyes kept going to a spot of fresh, turned dirt. Hand by hand the police removed the dirt and found my 10 year old child.

Darnell was taken into custody and confessed to every part of the crime, but said he had heard voices, "to kill". It was Friday, July 13, when Sheriff Cady came to our house, they had found Vicki earlier that morning; she was dead.

His trial was held, the verdict came on Vicki's 11th birthday, GUILTY on all counts, his insanity plea was denied. He was to serve 30 years for the rape and natural life for the murder.

Later, his long criminal record was published; torturing small animals at an early age, progressing, to sticking his hand down little girls panties, threatening young girls, stealing guns and leaving frightening letters, again for an under developed girl. He used knives to scare girls and raped small girls. He began to dig graves in the snow or plotted them in dirt. Darnell was incarcerated in every juvenile prison in Illinois. The last time for planning another girl's murder, he'd gone as far as digging her grave, but, that time he changed his mind and didn't follow out the killing. His so called 'visit' was a summer release, the state said he was safe to go to his grandparent's home, even though, he'd promised several times he would KILL!

Even 30 years later, I have nightmares, especially since I heard about the effort to free Darnell. The thought of having to face him again, perhaps many times, in a parole hearing, has been torture to me.

I can never have my child back, but I will do whatever it takes to keep Darnell behind bars, as he is a chronic pedophile and my greatest fear is if he is ever released, there will be more little girls found dead in shallow graves.

And there are thousands more . . .

The precious lives lost to those who choose to commit murder have exacted on toll on us too large to measure. We can only work with our every breath to remember and honor them by working to make sure no one else has to go through what we have gone through.

We want to give no more place to their murderers in our lives. We have been through the trials, the agony, and we deserve legal finality in our cases. We want them to serve out their life sentences, permanently and anonymously.

Many of us are praying that they grow to learn to be better human beings, but also that they serve their sentences - for even in prison they get to live, love, learn, laugh, be with family, and experience pleasure and life.

Our loved ones are gone forever.

There are thousands of innocent people who have been murdered in horrific acts of violence deliberately caused by teenage offenders who were found to be adults in their states for the purposes of criminal culpability and sentenced to life without parole.

Their families do NOT know about HR 2289.

Mr. SCOTT. Thank you.
Ms. Colón?

TESTIMONY OF ANITA D. COLÓN, PENNSYLVANIA STATE COORDINATOR, NATIONAL CAMPAIGN FOR FAIR SENTENCING FOR CHILDREN, SPRINGFIELD, PA

Ms. COLÓN. Good afternoon, Chairman Scott and Committee Members.

First, I would like to thank you, Chairman Scott, for introducing H.R. 2289 and for holding this hearing. I commend you for your concern over the issue of sentencing juveniles to life without parole, as well as your willingness to step forward to address it.

My name is Anita Colón, and I am the sister of Robert Holbrook, a man convicted, currently serving a life sentence in Pennsylvania for a crime he was convicted of at the age of 16, a crime that occurred on his 16th birthday.

That day, lured by the promise of $500 made by a drug dealer, Robert agreed to serve as a lookout for four adult males for what he thought was going to be a simple drug deal. My brother soon found himself in the midst of a robbery of a drug dealer's wife inside her home. Although he desperately wanted to run once he realized what was happening, he was terrified of the drug dealer that had ordered him to stay and oblivious to the consequences that would await him if he remained.

As a result of that terrible night, tragically a young woman lost her life. Because of the terribly misguided decision my brother made, his freedom was taken away forever. Having no prior experience with the court system, my brother accepted his attorney's advice and pled guilty to murder generally. The attorney told us that if he did not do this the DA would seek the death penalty.

Despite the fact that Robert was a juvenile, had no prior criminal record, and did not participate in the actual murder of the victim, the judge imposed a sentence of first-degree murder for aiding and abetting in the crime. Because of mandatory sentencing in Pennsylvania, he was sentenced to life without the possibility of parole. At his sentencing, the judge stated that my brother had certainly been the least culpable of the offenders but that the law did not permit him to use discretion in his sentencing.

That was over 19 years ago, and my brother is now 35 years old. While his friends continued high school, got their driver's licenses, went on to college, got married, my brother spent the majority of his most defining years in prison. Most of his early years were spent in isolation, separated from the adult offenders because of his age. Here he was locked up for up to 23 hours a day in a cell the size of a small bathroom.

My brother's conviction and incarceration was devastating to my family, especially my mother. My mother wrote to her son in prison each and every day right up until the end of her life 4 years ago. At that time, she had been diagnosed with cancer, and within months she passed away. My brother was not allowed to attend her funeral because the Department of Corrections no longer permits the transporting of lifers to attend funerals, even when a parent dies.

Despite being told that there is no hope for him, my brother has refused to give up on his life. While in prison, he obtained his GED, participated in many college and paralegal courses, and became an avid reader and writer. He has had several articles published and works closely with many human rights organizations.

My brother deeply regrets his participation in the crime and the horrible loss suffered by the victim's family but does not believe that his entire life and hope for the future should be taken away from him. Whereas I also believe that my brother's actions that day did warrant punishment, I am confident that he does not deserve to spend the rest of his life, what could turn out to be 60, 70, even 80 years, in prison for one horrible choice he made while barely 16.

Although my initial concern over juveniles sentenced to life without possibility of parole came as a result of my brother's conviction, after truly researching this issue I became an advocate for juvenile justice reform. And I am speaking to you today on behalf of the approximately 2,500 juveniles currently sentenced to die in prison throughout the United States.

Our laws do not allow juveniles to assume the same responsibilities as adults such as driving, voting, drinking, joining the military, because we know that they are not mature or mentally developed enough to make these decisions or control these actions. Yet we hold these same children as accountable as adults when it comes to crime. Juvenile offenders should not be held to the same level of accountability as adults, because they are not adults. These youth are not beyond redemption, but currently they are without hope.

In my home State of Pennsylvania, we have the distinction of having the highest number of juvenile lifers of anywhere else in the world, with approximately 450 prisoners serving life sentences for crimes they committed or participated in as juveniles.

The district attorney's office claims that only the worst child offenders are sentenced to life without parole and only in exceptional circumstances, but that is simply not true. While I acknowledge that those fighting crime throughout this country face daunting challenges, the answer is not to throw away the lives of our children forever. The fact that a child commits a crime does not negate the fact that they are still a child.

Please understand that I am in no way suggesting that you open the prison gates and free everyone that was incarcerated as a juvenile. This legislation would provide these offenders the prospect, not guarantee, of parole after a reasonable period of incarceration.

I find it incomprehensible that heinous mass murderers, such as Charles Manson, are given the chance for parole, yet thousands of children, whose crimes were committed while they were still mentally and emotionally developing, are denied this same opportunity. Juvenile offenders should be given a second chance, a chance to prove that an extremely poor decision made during adolescence does not have to define who they can become as an adult within society.

Chairman Scott, Committee Members, I implore you to do just that. Again, thank you for allowing me to testify before you today. I urge you to enact this bill and restore hope to the thousands of

individuals currently serving juvenile life without the possibility of parole in this country.

[The prepared statement of Ms. Colón follows:]

PREPARED STATEMENT OF ANITA D. COLÓN

First, I would like to thank you, Congressman Scott, for introducing HB2289 and for holding this hearing. I commend you for both your concern over the issue of sentencing juveniles to life without the possibility of parole. as well as your willingness to step forward to address it.

My name is Anita Colón. I am the sister of Robert Holbrook, a man currently serving a life sentence in Pennsylvania for a crime he was convicted of participating in at the age of 16, a crime that occurred on his sixteenth birthday. That day, lured by the promise of $500 made by a neighborhood drug dealer, Robert agreed to serve as a lookout for four men for what he thought was going to be a simple drug deal. My brother soon found himself in the midst of a robbery of a young woman inside her home. Although he desperately wanted to run once he realized what was happening, he was terrified of the drug dealer that had ordered him to stay, and oblivious to the consequences that would await him if he remained.

As a result of that terrible night, an innocent young woman lost her life and my brother's freedom was taken away forever. Having no prior experience with the court system, my brother accepted his attorney's advice and pled guilty to murder generally. The attorney told us that if he did not do this, the D.A. would seek the death penalty.

Despite the fact that Robert was a juvenile and did not participate in the actual murder of this woman, the judge sentenced him to first degree murder for aiding and abetting in the crime. Because of mandatory sentencing in Pennsylvania, he was sentenced to life without the possibility of parole. At sentencing, the judge stated that my brother had most certainly been the least culpable of the offenders, but that the law did not permit him to use discretion in his sentencing. That was over 19 years ago and my brother is now 35 years old. While his friends continued high school, got their drivers licenses, went on to college, got married and now have children, he sits confined to a cell. Most of his early years were spent in isolation, separated from the adult offenders.

My brother's conviction and incarceration was devastating to my family, especially my mother. My mother wrote to her son in prison each and every day right up until the end of her life four years ago. At that time she was diagnosed with Cancer and within months she passed away. Robert was not even able to attend her funeral because the Department of Corrections no longer allows the transporting of lifers to attend funerals, even when a parent dies.

In spite of the lack of hope afforded him, my brother has refused to give up on his life. While in prison, he obtained his GED, participated in a paralegal course, and became an avid reader and writer. He has had several articles published and works closely with many human rights organizations fighting against racism and unfair sentencing such as his. My brother deeply regrets his participation in the crime and the horrible loss suffered by the victim's family, but does not believe that his entire life and hope for the future should have been taken away from him. Whereas I do believe that my brother's actions that day did warrant punishment, I am confident that he does not deserve to spend the rest of his life (what could turn out to be 60, 70, even 80 years) in prison for one horrible choice he made while barely 16.

Although my initial concern over juveniles sentenced to Life without the Possibility of Parole came as a result of my brother's conviction, after truly researching this issue I became an advocate for juvenile justice, dedicated to this cause, and I am speaking to you today on behalf of the approximate 2,500 juveniles currently sentenced to die in prison throughout the United States. Please allow me to share some background on this serious human rights issue we are addressing. Much of this may have been said already, but I feel it is important to highlight.

The United States is currently the only country in the world known to have children sentenced to and serving life without the possibility of parole. This alone tells me that there is something wrong with this policy. Sentencing juveniles to life without the possibility of parole violates customary international law and it is expressly prohibited under any circumstances by Article 37 (a) of the United Nations Convention on the Rights of a Child (CRC). The United States and Somalia are currently the only countries that have refused to ratify this treaty.

As you are aware, The U.S. Supreme Court made the distinction between the culpability of juvenile offenders and adult offenders when it abolished the death pen-

alty for juvenile offenders in 2005 (Roper vs Simmons). Citing both clinical and academic research, the Court acknowledged that adolescents are immature, incapable of clear adult decision making, and prone to peer pressure. Using this same logic, it is time that the United States acknowledges and addressing the fact that this same logic applies to sentencing our children to die in prison.

Throughout the country, states are re-examining the affect of automatic transferring of juveniles to adult court in combination with mandatory sentencing laws resulting in life without parole sentences for juveniles, and I believe it is the perfect time for the Federal Judiciary System to address this problem.

Nationally, almost 60 percent of the prisoners serving life without parole for crimes they committed as juveniles were first time offenders, never having been convicted of a previous crime. In addition, one third of those juveniles convicted of life without parole were convicted of felony murder, because they participated in a crime that resulted in a homicide, but they did not themselves kill anyone. In most of the cases, these sentences were a result of mandatory sentencing currently in place for adults convicted of murder, leaving judges with no discretion in sentencing.

Also, there are a significant disproportionate number of minorities serving JLWOP throughout the United States. In California and Pennsylvania, an African American youth is 20 times more likely to receive a sentence of life without the possibility of parole than a white youth even though African Americans make up less than 15% of these states' youth population. These statistics are similar throughout the country.

Finally, JLWOP, like most forms of unusually harsh punishment, does not serve as a deterrent. FBI Statistics show that from 1994–2004 the number of juveniles arrested for murder rose by over 24%. Research studies have shown that juvenile offenders are more susceptible to rehabilitation and treatment than adult offenders. These children are not beyond redemption, but currently they are without hope. We imprison children for the rest of their lives, without any hope of rehabilitation or re-entry into society and call it justice. Well, I call it inhumane.

Our laws do not allow juveniles to assume the same responsibilities as adults (such as driving, voting, drinking, or joining the military) because we know that they are not mature or mentally developed enough to make these decisions about or control these actions. Yet, we hold these same children as accountable as adults when it comes to crime. Juvenile offenders should not be held to the same level of accountability as adults because they are not adults.

In my home state of Pennsylvania, we have the distinction of having the highest number of juvenile lifers of any state in the country, with approximately 450 prisoners serving life sentences for crimes they committed or participated in as juveniles. The Pennsylvania District Attorney's Office claims that only the worst child offenders are sentenced to life without parole, and only in exceptional circumstances, but that is simply not true.

While I acknowledge that those fighting crime throughout this country face daunting challenges, the answer is not to throw away the lives of our children forever. The fact that a child commits a crime does not negate the fact that they are still a child. Please understand that I am in no way suggesting that you open the prison gates and free everyone that was incarcerated as a juvenile. The legislation proposed in HR2289 does not ignore the fact that some juveniles commit horrible crimes and cause tremendous grief to victims' families, and deserve to be punished for their actions. Nor does the bill ignore the fact that there are some juvenile offenders that may never be able to develop into reasoning members of society and should therefore not be released. What this legislation does is provide these offenders the prospect, not guarantee, of parole after a reasonable period of incarceration. I find it incomprehensible that heinous mass murderers such as Charles Manson are given the chance for parole, yet thousands of children whose crimes could never begin to compare to his are not.

Juvenile offenders should be given a second chance, a chance to prove that an extremely poor choice made during adolescence does not have to define who they can become as an adult within society. Congressman Scott, committee members, I implore you to do just that. Again, thank you for allowing me to testify before you today. I urge you to enact this bill and restore hope to the thousands of individuals currently serving juvenile life without the possibility of parole in this country.

Mr. SCOTT. Thank you.

Mr. Fox?

TESTIMONY OF JAMES P. FOX, DISTRICT ATTORNEY, SAN MATEO COUNTY, CA

Mr. FOX. Chairman Scott, Ranking Member Gohmert, and Members of the Committee, my name is Jim Fox. I am the district attorney of San Mateo County in California and the chairman of the board of directors of the National District Attorneys Association.

Some of us are old enough to remember Father Flanagan, the founder of Boys Town. He was famous for having said, "There is no such thing as a bad boy." I started in the criminal justice system in 1966, 43 years ago, when I graduated from law school, working in the juvenile hall. And I am here to tell you today that, as wonderful as Father Flanagan was, he was not correct in saying there is no such thing as a bad boy. There are.

And, you know, what we are talking about today is changing the laws in a number of States, which is going to significantly impact the whole criminal justice system, without any real guidelines. I couldn't agree more with Ranking Member Gohmert, that this is not a Federal issue; this is a State issue.

Unfortunately, by attempting to put the money as a hook, what you are also ultimately going to do is to penalize those States which have utilized Byrne/JAG funding for prevention programs. So I would suggest that this is not the best way to go.

In looking at the issue, I see in the bill a reference to the fact that 16 percent of juveniles doing life sentences are determined to have been 15 or younger. I am not familiar on a national basis, but I can tell what you the number is in California: 1.2 percent of juveniles doing life sentences were 15 and younger.

So I would suggest that either—and I do not know what goes on in Pennsylvania, but I would suggest that the Congress is not the correct mechanism to correct what may very well be an injustice in an individual State and to adversely impact all of the States.

We talk about the seriousness of the crime. In California, juveniles cannot get life without the possibility of parole, tried as adults, unless they are convicted of first-degree murder and special circumstances are found true. At that point, the court has discretion; it is not automatic.

And so, I would suggest there is no need for this legislation, because who better to consider the appropriateness of a sentence than the judge who heard the trial, who heard the evidence?

It has been said that if—and, frankly, I would also like to point out that this bill goes further than just life without the possibility of parole. As I read it, it mandates parole hearings within the first 15 years and then every 3 years thereafter, whether the sentence was life without the possibility of parole or not. In California, the sentence for first-degree murder is 25 years to life. Whether if you are a juvenile prosecuted as an adult or if you are an adult, you are going to do 25 years before your first eligibility for a parole hearing. So you are completely changing the structure of the law.

But what I think really needs to be emphasized is you are creating a re-victimization. Those family members of people who have been murdered, who have been told that the sentence was life without the possibility of parole, that does bring finality. Frankly, it brings a greater finality than if somebody in California were to be sentenced to the death penalty, because they are going to serve at

least 25 years before that is carried out, with the possibility of reversal.

Life without the possibility of parole means just that, absent commutation. So there are mechanisms available to remedy what is perceived to be a miscarriage of justice, and it is through the State's executive branch. The Governor of every State has the ability to commute a sentence which the Governor believes, based upon the evidence and based upon changes of circumstances, would be appropriately modified.

So I do not support this bill. I believe that it does adversely impact the whole concept of federalism and the States' rights. Sentencing and criminal prosecution is a matter for the States. And especially for those States that I believe have done it right, it would be inappropriate to enact this measure.

Thank you very much for the opportunity to testify today.

[The prepared statement of Mr. Fox follows:]

PREPARED STATEMENT OF JAMES P. FOX

Chairman Scott, Ranking Member Gohmert, members of the Subcommittee, thank you for inviting me to testify today on behalf of the National District Attorneys Association (NDAA), the oldest and largest organization representing over 39,000 district attorneys, state's attorneys, attorneys general and county and city prosecutors with responsibility for prosecuting criminal violations in every state and territory of the United States.

NDAA has taken the opportunity to review H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009 and strongly objects to what we consider to be an overly broad and one-sided attempt to require state legislatures to revise juvenile codes across America to make it more difficult to prosecute juvenile offenders as adults for egregious crimes and to punish juvenile offenders less seriously for their criminal behavior solely because of their perceived immaturity.

The overwhelming majority of state legislatures appropriately adopted sweeping changes to their juvenile codes during the 1990's to properly address what the juvenile justice system had far too long overlooked, i.e., that protection of the public safety is of paramount concern whether the offender is a juvenile or an adult.

Not only does this legislation fail to recognize the importance of this paramount concern of protecting the public safety, it also ignores other important concerns which should rightfully be part of the decision-making process in reference to crimes committed by juvenile offenders, such as the nature and circumstance of the offense, the impact upon the victim, and the juvenile offender's criminal history. This bill instead focuses solely upon offender-based criteria as being the factors which should control the decision-making process, be it the decision to directly file or transfer a juvenile offender to adult court for prosecution or the decision as to what sanction should ultimately be imposed if a juvenile offender is convicted.

The NDAA supports a balanced approach to juvenile justice which properly takes into consideration all relevant factors in deciding what criminal charge should be filed against a juvenile offender and whether the case should be disposed of in juvenile or adult court, or handled under a "blended sentencing" model [1] in those states incorporating this middle-ground approach of addressing juvenile crime. These factors should include the threat to public safety, the seriousness of the crime, the offender's criminal history, the certainty of appropriate punishment, and the age and maturity of the offender. This proposed legislation considers only the age and maturity of a juvenile offender, which is clearly inappropriate. In fact, while age and maturity is an appropriate consideration in not only the sentencing but the charging of a juvenile offender (a factor, by the way, which is always taken into consideration by America's prosecutors), all of the aforementioned factors should be considered in the decision-making process as to juvenile offenders, with the greatest weight being given to protection of the public safety.

[1] "Blended sentencing" models currently exist in 15 states in America and represent a combination of both juvenile and adult criminal sanctions for serious, violent or habitual juvenile offenders whose crimes have been determined by either a prosecutor or judge to not warrant immediate prosecution or transfer to adult criminal court.

The unwritten, but clear implication of this proposed legislation is that too many juvenile offenders are prosecuted and sentenced as adults in our country. The reality is, in fact, quite the opposite. Very few juveniles are prosecuted and sentenced as adults in America, contrary to the unwritten implication of this proposed legislation and a public misperception driven in large part by sensationalistic media coverage of certain high profile cases. Few jurisdictions in America prosecute more than 1 to 2% of juvenile criminal offenders as adults, and in some jurisdictions this percentage is even lower. In those cases where adult court prosecution does occur, the simple fact of the matter is that adult court prosecution is clearly warranted in these instances.

In a poll conducted in 1993, 73% of those surveyed across the U.S. said that "violent juveniles should be treated as adults rather than as defendants in lenient juvenile courts."[2] While more information about human brain development is available today than existed in the mid-1990's, there are few juvenile offenders committing murders or crimes of violence who do not realize that their actions are wrong and most fully understand the gravity of the crimes they have committed. As noted above, the age and maturity of these juvenile offenders are factors properly considered both as to where the proper venue of the case should rest and as to the sentence to be handed down upon conviction. These are not, however, the only factors that must be considered in these important decisions.

Another aspect of this bill that needs to be addressed is the aggressive, violent nature of juvenile membership in gangs across America. Gangs actively recruit membership in their early-to-mid teens to carry out violent and heinous crimes as a way to prove themselves to gang leaders and to increase their individual standing within the gang's hierarchy. Because many states mandate lesser penalties for violent juvenile offenders than adults, gang leadership often have juvenile gang members perform violent crimes towards others because there is less of an ability to prosecute them.

While we do believe treatment, rehabilitation, youth gang prevention initiatives and after-school programs are important tools in addressing America's gang problem, the ability to provide swift enforcement of violent juvenile offenders is necessary to keep our nation's communities safe. It is our belief that this bill will not only weaken America's gang enforcement capabilities, but will give many violent offenders who have no desire to be rehabilitated a free pass back onto the streets of our communities to commit more violent crime against the innocent.

We believe the vast majority of citizens in our country would support the prosecution of these heinous offenders as adults, as well as the appropriate prison terms handed down upon conviction for these egregious crimes. To argue that these violent offenders, after being convicted of crimes warranting a life sentence without the possibility of parole should be considered for parole solely because of the criminal's age is something America's prosecutors will never support and is contrary to the interests of justice and protecting the citizens we proudly serve.

H.R. 2289 also fails to recognize in its findings that 13 states in America have set an age of majority for criminal prosecution of less than 18 years of age. The NDAA does not agree with the ABA that the age of majority for adult criminal prosecution of offenders should be 18 years of age in every state in this country. To the contrary, this is a decision rightfully left to local control and the deliberate and thoughtful decisions of state legislatures on this important issue should be respected.

Even more importantly, this legislation fails to acknowledge the most fundamental aspect of juvenile codes across America, namely that a juvenile offender's age and maturity are always taken into consideration in the disposition of a case. In fact, that is the reason why we have a juvenile court system in the first place—a system, by the way, which is supported by America's prosecutors. It is also important to keep in mind that age and maturity are also considered in cases involving juvenile offenders transferred and convicted as adults for their crimes, with the exception of the imposition upon conviction of certain mandatory sentences required by law (and in those instances, it is once again state legislatures that have properly concluded after thoughtful deliberation that certain crimes are so egregious that society should rightfully demand a mandatory minimum sentence for offenders convicted of them).

The NDAA also supports consideration of blended sentencing options in appropriate cases where serious, violent or habitual offenders are not transferred or waived to adult court. These laws, which are sometimes referred to as a "middle-ground approach" or a "one last chance option" for juvenile offenders, are designed

[2] Sam Vincent Meddis, Poll: Treat Juveniles the Same as Adult Offenders, USA Today, Oct. 29, 1993, at 1A.

for those youth who have committed a serious offense which does not initially warrant adult prosecution, but which requires greater sanctions and/or longer supervision by the juvenile court than is provided in the traditional juvenile court system. Blended sentencing laws combine some juvenile and adult sanctions, provide for stayed adult sanctions to be imposed at a later date should the offender not conform to the conditions of the juvenile court disposition, provide incentives for the youth to remain law abiding in the future and lengthen the period of supervision over the youth by the juvenile court. Blended sentencing models are appropriate and necessary in the continuum of sanctions available for more serious, violent or habitual offenders, especially for younger youth committing very serious crimes.

Something that cannot be overlooked is how repeated parole hearings would adversely affect the victims of these heinous crimes. By requiring a parole hearing every three years after 15 years of incarceration, this bill would unintentionally harm the victim and the victim's family by subjecting them to the ordeal of repeated court visits when all they want to do is move on with their lives. Re-victimizing a family with these mandated court proceedings is unfair and unjust.

The manner in which this legislation is to be enforced would penalize all aspects of America's criminal justice system. Consequences outlined in this legislation for states who do not comply would not receive 10 percent of the funds obligated to them through the Byrne Justice Assistance Grant (JAG) program for each fiscal year of noncompliance. The Byrne Justice Assistance Grant program—not to be confused with the Byrne Discretionary program, which is entirely earmarked—is distributed to states and local areas on a formula basis. The formula combines population and crime data, and the funding is used to address the most pressing criminal justice problems in a given area. States and localities have the flexibility to leverage the small amount of funding they get through JAG with their own resources tackle crime challenges in innovative ways, including funding allocations to cold case units, identity theft investigation, school violence prevention, hate crime programs, services for threatened jurors, victims and witnesses, and a variety of other efforts.

Hypothetically speaking, if this bill were signed into law and a state did not comply in a timely manner, this law would not only punish state and local prosecutors, but thousands of public servants in law enforcement, substance abuse prevention and treatment, drug courts, corrections, state and local government, victim assistance and juvenile justice personnel. In tough economic times, this is the wrong way to enforce legislation when state budgets are currently more strapped than ever.

It appears to us that Juvenile Justice Accountability and Improvement Act of 2009 is both ill-advised and unnecessary, and we strongly urge the United States Congress not to support it. By its terms, it is a wholesale attack upon the juvenile codes of states throughout America and upon the prosecutors and judges who thoughtfully and professionally enforce those codes with fairness and impartiality every day. Not only are mitigating factors, such as a juvenile offender's age and maturity and amenability to treatment and probation properly considered in the decision-making process at every stage of the handling of a juvenile crime, so too must aggravating factors be considered, such as the severity of the crime, the threat to public safety, the impact upon the victims and the offender's criminal history. Only when all these factors are properly weighed in the decision-making process will our system of justice be in proper balance and public confidence exist in the outcomes of the critical decisions made in connection with these cases.

I'd like to thank Chairman Scott, Ranking Member Gohmert and the other members of the Subcommittee for giving me the opportunity to speak on behalf of America's prosecutors. I am happy to answer any questions you may have for me at this time.

Mr. SCOTT. Thank you.

Mr. Mauer?

TESTIMONY OF MARC MAUER, EXECUTIVE DIRECTOR, THE SENTENCING PROJECT, WASHINGTON, DC

Mr. MAUER. Mr. Chairman, thank you for the opportunity to be here.

Let me just say that I think, while there are differences among us on the panel most likely, that I would like to think we all share a concern for the problems of juvenile violence and how to respond to that, and the needs of victims of juvenile violence and other

crimes. And I would like to think we could come up with policies that could address these in a comprehensive way, that do justice, that invest well in public safety. I think that should be our goal.

I have submitted testimony. Let me make three main points from that to summarize what I think are the issues we want to look at in regard to this policy.

The first is that, as we have said, children are, in fact, different from adults. And I think here this is not something that has come up recently; these are longstanding traditions, if you will, in our society and, indeed, in most other societies as well. The fact that we have a very broad consensus that children cannot buy alcohol or tobacco, cannot join the military, cannot vote, this is a recognition about their maturity level. And there is no reason why this wouldn't carry over into other areas of behavior. Little debate about these policies.

The second way in which children are different is that I think we have a longstanding understanding and tradition that children are capable of change. This was the premise behind the founding of the juvenile court more than 100 years ago as an arena of rehabilitation, to acknowledge that, to create opportunities, not that it has been without controversy, but that is a longstanding tradition as well.

Indeed, in the work that I have done over many years in criminal justice, I have spent a good deal of time in prison, in many cases meeting with people serving life sentences, not necessarily all juvenile life sentences. And I have seen over my years that the people I see in prison who are 35, 40, and 50 years old are very different from the teenagers who committed some horrendous crimes some years before.

That doesn't suggest that we should release all of them tomorrow, but it seems to me it does suggest that we all grow up in different phases of our lives, and we need to recognize that in the justice system as well as on the outside. There are some very important issues here.

The second issue is in terms of public safety. And here I think we know that there is no additional benefit that we as a society get from juvenile life without parole than from sentences of life with the possibility of parole.

If we think of the goals of sentencing and what we want to accomplish, two elements are key here. The first is that of incapacitation. If measures like this were adopted, we would have a parole board making a determination about whether a person is a reasonable risk to be released into the community or not. The goal of incapacitating a dangerous person would still be paramount, and we would have a professional parole board making that kind of decision. The people in parole I have worked with over many years all take that very seriously. I don't know any parole boards that are looking forward to releasing thousands of people in the streets who could be potentially committing violent crimes. They take these things seriously and use risk assessments.

The second area of public safety has to do with deterrence. Here, too, there is no evidence that tells us that a sentence of life without parole somehow has more of a deterrent effect than life with the possibility of parole. If a juvenile or anyone else is considering en-

gaging in a serious crime and knows that the possibility may be of a life sentence with or without parole, either that is a deterrent or not. But the additional part of life without parole is no additional benefit.

Unfortunately, when it comes to juveniles, we know many of them don't have much of a long-term time horizon. They are not very rational. Many of their crimes are impulsive. And so to think that they will somehow be deterred by harsher penalties I think is fooling ourselves in many ways.

The third part is the international situation that we know, where we do have this very strong contrast between the 2,500 people serving juvenile life-without-parole sentences in the U.S. and none in the rest of the world. And let me just say, this is not because there are not problems of violence in other countries among juveniles. It is not because they don't have gangs in other countries. It is not because they don't have access to weapons. Other countries, every other nation, varied as they are, has determined that they need to make distinctions in this regard, and those are the policies that they have adopted.

In closing, let me just say that, what legislation like this would do, we are merely talking about eligibility for parole. It would not change one person's situation tomorrow. It merely means that a professional parole board would have the opportunity to consider all the relevant elements in the case and make a determination that way, similar to what we do in most States most of the time. And it seems to me that is a very reasonable approach.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Mauer follows:]

PREPARED STATEMENT OF MARC MAUER

Testimony of Marc Mauer
Executive Director
The Sentencing Project

Prepared for the United States House of Representatives, Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security

Hearing on H. R. 2289, Juvenile Justice Accountability and Improvement Act of 2009

June 9, 2009

I am pleased to submit this testimony on behalf of The Sentencing Project to express our strong support for H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009. I am Marc Mauer, Executive Director of The Sentencing Project, a national non-profit organization engaged in research and advocacy on criminal and juvenile justice policy issues. I thank Chairman Scott and the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security for holding today's hearing.

In the United States, there are more than 2,500 people serving life sentences without the possibility of parole for crimes committed when they were less than 18 years old. The federal government and 45 states allow sentences of life without parole for juveniles; it is prohibited in 5 states and the District of Columbia.

The Sentencing Project opposes sentences of juvenile life without parole (JLWOP) because they declare that young people are beyond reform. All other nations have devised strategies to hold youth accountable, promote public safety, and prioritize rehabilitation to limit recidivism without resorting to this extreme punishment.

Our country's juvenile justice system was founded on the majority view that children, even those responsible for grave acts, are fundamentally different from adults. The imposition of life without parole sentences on young people is especially cruel and misguided because it ignores the fact that children are different from adults in critical ways. Behavioral research confirms that children do not have fully matured levels of judgment, impulse control, or the ability to accurately assess risks and consequences. Because of these characteristics among young people, the threat of a JLWOP sentence does not serve as a deterrent.

Current law recognizes the fundamental differences between youth and adults in many ways. Age restrictions exist for voting, driving, alcohol consumption, and entering into a variety of legal contracts based on young people's relative immaturity.

The decision to treat youth as adults with criminal sanctions is at odds with the distinctions we recognize in these other arenas.

There is widespread agreement among child development scientists that young people who engage in delinquency are very capable of reforming their behavior and leading law-abiding lives. The transitory nature of adolescence is such that the youth who stands in the courtroom at sentencing is quite different from the individual who could appear before a parole board in the years ahead. The U.S. Supreme Court agrees—in *Roper v. Simmons* the Court explained, "From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Detailed research on the application of JLWOP sentences around the country documents evidence of systemic racial disparities and gross failures in legal representation. There is also some evidence that adult codefendants receive more lenient sentences than their juvenile counterparts. Despite the popular misconception that these sentences are reserved for the "worst of the worst," a large portion—as many as 60%—of the people serving JLWOP sentences are first-time offenders.[1]

In addition, more than one quarter of people serving JLWOP were convicted of "felony murder," which means they were participants in an underlying crime that resulted in a murder, but did not actually commit it, and may not have even been present at the time.[2] In many cases, a youth is reported to have accompanied an older accomplice without even full awareness of the activities to be undertaken but, because of felony murder rules in some states, these individuals are held equally accountable. For example, data collected last year in California reveal that in 70% of

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[1] Human Rights Watch/Amnesty International (2005). *The Rest of their Lives.* San Francisco: Human Rights Watch.
[2] Ibid.

the cases in which the youth was acting within a group, at least one other member of that group was an adult.[3]

Our young people deserve fair treatment and a chance to reform their lives. To gauge their progress, they deserve the opportunity for a parole hearing at some point during their sentence to determine whether they can safely be released to the community. Enactment of H.R. 2289, The Juvenile Justice and Accountability Act of 2009, would not mean that violent people will simply be released to the streets. Instead, it would allow for careful, periodic reviews of individual cases to determine whether, 15 years later, people sentenced to life without parole as youth continue to pose a threat. We support legislation that acknowledges the critical differences between youth and adults and imposes age-appropriate sentences that protect public safety and gives a second chance to young people.

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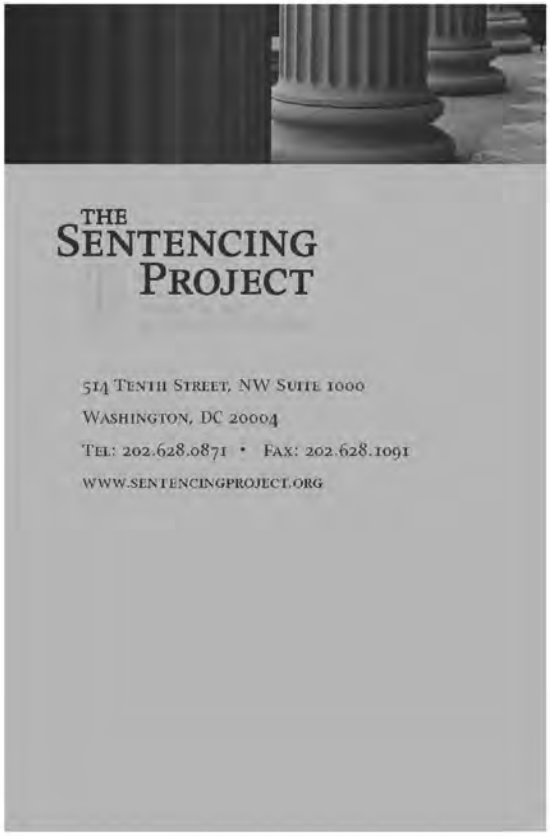
[3] Human Rights Watch (2008). *When I Die They'll Send Me Home: Youth Sentenced to Life without Parole in California.* San Francisco: Human Rights Watch.



Mr. SCOTT. Thank you.

And now the panel, we have been joined by Mr. Lungren from California and my colleague from Virginia, Mr. Goodlatte. I will begin asking questions under the—oh, excuse me, Mr. Quigley from Illinois.

We will begin with 5-minute questioning from the Members of the panel. And I will begin with Mr. Mauer.

Can you speak of the deterrent effect of life without parole rather than life?

Mr. MAUER. Well, I don't think there is any evidence whatsoever that tells us that there is more of a deterrent effect.

First of all, many crimes of violence are committed under the influence of drugs or alcohol. These are not necessarily people who are thinking about any kind of deterrence regardless of what the penalty is.

Secondly, just common sense would tell us, if I was thinking about committing a serious violent crime and I knew the penalty was life with the possibility of parole, you know, if that is not sufficient to deter me, it is hard to imagine why life without parole is going to be any greater of a deterrent. If it means serving 15, 20, 30 years, there are not very many people who are willing to give that up to commit a crime.

So there is no research evidence to support that.

Mr. SCOTT. Does the research show that the deterrence is a calculation of whether you are going to get caught and not the length of the sentence?

Mr. MAUER. The research in deterrence generally shows that the certainty of punishment is much more important than severity of punishment. If we can do something to increase the prospects someone will be apprehended, Some people will think twice, but merely enhancing the sentence that they will receive if they are caught, for people who by and large are not thinking about getting caught, doesn't buy us very much.

Mr. SCOTT. Can you say something about the proportionality compared to other sentences for people who are caught up as lookouts and just involved on a tangent in a crime?

Mr. MAUER. Well, we have, you know, through felony murder rules and similar policies, yes, those people are engaging in criminal activity and, yes, there needs to be some sort of appropriate punishment for them. But the scale of what we are looking at in this case, because these penalties are so severe, you know, compared to other kinds of criminal behaviors, well beyond the proportionality differences we normally see in the court system.

Mr. SCOTT. Mr. Fox, Virginia passed a—just relatively recently passed legislation allowing review of cases, some cases, after I think it's 20 days or just a matter of weeks. Isn't it sometimes the case that persons are determined to be factually innocent of the charge way after the finality of the sentence?

Mr. FOX. I am certainly aware that that has occurred, primarily through the development of DNA, that people who have been convicted have been determined to be factually innocent, yes.

Mr. SCOTT. Are there any cases for which people are serving life without parole where parole would be appropriate? There are, obviously, some where they would not be appropriate, but are there some where it would be appropriate?

Mr. FOX. Well, as I said, I am not in a position to comment upon the laws of other States, such as Pennsylvania or Michigan.

I do not believe, having as much experience as I do in the State of California, that people are doing life without parole inappropriately. As I said, in the juvenile cases, the court exercises discretion. It has the discretion and only in rare cases will the court ultimately impose what is the ultimate penalty for a juvenile, which is life without the possibility of parole.

Mr. SCOTT. In California, it's discretionary, but in a lot of States it's mandatory. Is a mandatory life without parole an appropriate sentence for a lookout?

Mr. FOX. It may be. It depends upon the background of the lookout. If the lookout had a prior murder and is now committing a robbery, yes.

Mr. SCOTT. And I think it may be or it may not be.

Mr. FOX. That is something, though, for the individual States to pass judgment on.

Mr. SCOTT. And what is it about American children, Mr. Fox, that makes life without parole appropriate only in the United States and nowhere else in the world?

Mr. FOX. Well, I don't know, as, again, I am talking primarily about California. But, in the United States, we have a system of justice that is unlike most others, especially in terms of the due process that is afforded; and so our system of justice is not the same as in most other countries. That doesn't necessarily make it bad.

Mr. SCOTT. Thank you.

Mr. Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott.

I do appreciate everybody's testimony here today, but I am intrigued. Some of the arguments—well, actually, most of the arguments I am hearing presented against life without parole are similar and may be at least akin to arguments that have been made against the death penalty. And, in fact, I know in Texas, as the issue of life without parole was debated, the big push to adopt it was so that we could have this option and maybe we don't even need the death penalty. Because if we could just force everybody to only do a maximum of life without parole, then you can be assured that this is the end-all/be-all. It's not going to get reversed once you know that it's been appealed. There won't be any parole.

And so you can be comfortable that this monster that killed, harmed, this antisocial personality who knew right from wrong, who chose to do wrong, unlike people who may be guilty of hate crimes who, through mediation and whatnot, have been found to be rehabilitatable, often, unless they are an antisocial personality.

But here, after hearing States like mine promise, look, let's go to life without parole instead of the death penalty, because that is such a permanent situation. You won't have to ever—and now I am hearing, okay, those who bought into the life without parole, now let's talk about the problems with life without parole and bring that down.

And it seems like it would be more genuine just to do—I know Dr. White is a proponent, as she has said, talking about punishment not being all that much helpful. Just say, look, we don't think punishment is that helpful. Don't even let's have it. Let's all try to be nice to each other.

But I also have been curious—and I don't know if any of all know, through any of your own research—do you happen to know how many people in this country have been sentenced to death and executed summarily by a juvenile conducting his own court? Does anybody know how many people have been sentenced and executed by juveniles in this country?

Because, as Ms. Bishop-Jenkins is pointing out, I am afraid we haven't let some of those victims' families know that this is ongoing and that if we are going to involve ourselves in substituting our judgment for the judgment of each State, those people that have testified repeatedly before State legislatures ought to know that we are about to usurp that power and you need to come let your voices be heard here. It sounds like nobody is aware.

My big concern particularly, though, is the automatic sentencing of a juvenile to life without parole. Even in the death penalty in Texas when I handled those cases, I mean, it was hard to get the death penalty. You had to prove that they either committed the murder or knew that there was a murder going to be committed or a future danger and there was no evidence mitigating against the death penalty.

So, depending on the State, I would certainly want to go testify if somebody wasn't going to—if they were going to try to make it automatic. This is not a good idea. You have got to have some discretion.

But I am also—and I see my time is running out.

You have each given wonderful perspectives, but I would hope that you are all aware, there are gangs—I have heard testimony about this. There are gangs who know in certain States that juveniles are treated better. Therefore, they get the juveniles to do the murdering, because they know there's no way they can be treated as harshly as the guys a couple of years older. And so I think we need to step back and maybe, as Ms. Bishop-Jenkins said, hear from all the people, all the stakeholders, before we jump in and usurp the power of the States.

And I appreciate you letting me get that in. Thank you.

Mr. SCOTT. Mr. Lungren.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

I do note the absence of any representatives of the victims' rights organizations in California. And I, along with Mr. Fox and others, have worked very hard in the State of California on criminal justice reform and always, always, we had the voices of the victims of crime or their families to comment on it. And if this Congress is going to change the law such that it changes the law in my State, I would hope that we would have the opportunity to do that.

And I know this is not a mandatory law but it's, once again, the Federal Government deciding that the States don't matter. You don't mandate it, but what you do is you give them money for a specific purpose, and now you are going to penalize them if they don't follow this. Talk about a shell game.

But I guess we don't need governors anymore now. Governors can't even say they don't want stimulus money, because courts say they have to take it. We don't need CEOs anymore, because the President of the United States is now CEO of the largest automobile company in the United States. Everybody here now happens to be stockholders in American companies, and now we are going to extend that to the area of criminal justice?

Professor, also, you mentioned 1984. I happened to be in 1984, because it was my legislation that made the changes you obviously don't think are very good. We got rid of the Parole Commission on

the Federal level because of the inequities on the system as it impacted on victims.

And while I respect very much, Dr. White, your testimony, I would have to say your testimony is probably minority testimony among victims and victims' family members that I know.

And reference was made here to those who are in prison under LWOP, as we call it in California, life without possibility of parole, said that they all—we all grow up in different phases of our lives and no long-term life horizon.

At least in California you have got to commit first-degree murder with special circumstances to get this kind of a sentence. The victims don't have any long-term life horizon. They are not growing up in different phases of their lives. It's the whole reason that the ones who did the injustice to them are no longer there.

So I have some real problems with the premises of this bill that somehow we, the Federal Government, know so much better than the States as to what they ought to do with their system. We worked very hard in California to create our system. You may not like it, but it's the one that we have come up with, both through the vote of the people and through the legislature. And we have made changes over time, and we have lower crime rates than we had before when we had these other systems.

I will never forget, when I became attorney general, I started working on the indeterminate sentence program that we had in California, victims coming to go me, saying it was a joke on them. They were the only ones who didn't know what really was happening in the system. They heard a sentence. They heard with their ears what the sentence was, but it didn't mean anything.

Now we are going to tell people who have sat in those rooms listening to the crucial and horrific descriptions of the murder of their loved ones and heard a judge authoritatively say, under these circumstances, you don't have to worry. This person will never see the outside again. They are going to be life without possibility of parole. We are not going to talk about death penalty, life without possibility of parole. You can understand that.

Now we are going to tell those families we lied to you? I guess that's what we are going to do.

I mean, I appreciate the fact that families of those incarcerated suffer, but I have also seen the people who suffer on the other side, the anguish they go through with every parole hearing. The fact that witnesses are no longer available. The fact that the father and the mother no longer can come and see that.

I mean, this idea that now you are going to say to them every 3 years they are going to go through this after a period of time? Maybe there are some changes that need to be made in different States, but I would just have to say that this is overwhelmingly over the top.

Ms. Bishop-Jenkins, what was your state of mind? What's the state of mind of your family with respect to the fact that the person who did this, those who did the murder against your family were going to be put away for the rest of their lives?

Ms. BISHOP-JENKINS. Thank you so much, Congressman.

I have to tell you that it was everything. It made all the difference. Because the most difficult part of losing Nancy and Rich-

ard and the baby was having to go through the trial then for 18 months of a trial and one appeal. And to have to go into court and to be in that adversarial process and to face him and to hear the other side argument and to see him, have to be in the same room and be very close to him physically, to have to face the prospect, as we know——

And I now work with victims all across the United States, and I know what it's like in States that do have parole. Illinois does not have parole, and we haven't had it for 30 years. There is no bureaucracy in place whatsoever.

We have determinate sentencing where offenders can earn time off based on their own good behavior. It's a better system. It's a system supported by offenders, because it allows them not to be the subject of a politically appointed parole board but to actually earn their time off with their own good behavior.

And yet, because of determinant sentencing, that one sentence of life, that one most serious sentence, which is only reserved in Illinois to the very, very, few, you have to have either killed multiple people, as in our case, or you have to have killed a police officer or you have to have killed a child during a sex offense. That's it. Those are the only people that can get that.

It's not even the, quote, unquote, routine murders, a single murder, one person killing another person. These are extremely—they would be death penalty cases if they were over age 17.

And for our family to know that we really did not ever have to deal with that again, that agony, those years of the trials and the hearing, that was just unbelievably important to us.

Mr. LUNGREN. Was there a sense of closure?

Ms. BISHOP-JENKINS. Closure is never a word I use. I work with victims every day, and I would never use that word. There was legal finality, and there was a peace that allowed me to do extraordinary things.

The last 20 years, I have been doing work with victims every day. I have been working with Dr. White. I have been working with many organizations. I have been working for violence prevention. I work with troubled youth.

I have been able to do that because I have the peace of mind of not having to worry that the extreme guy in our case could ever get out.

Now, I realize that there's a spectrum here, and there are cases at this end and there are cases at this end. Clearly, Anita's brother is a case at this end, and my case is at this end. There's no question about that. And I believe, as I said in my testimony, that we do need to come together to talk about what we can do at the cases at this end.

But to retroactively require parole hearings on families where, like my case, where he was only 4 weeks away from his adult birthday, clearly was adult in his behavior. He was not on drugs. He was not acting with people. He was extremely intelligent. He came from a very advantaged family. It's just a very, very different situation.

And, by the way, the vast majority of these cases nationwide, the vast majority of them are more like mine than they are like Anita's.

Mr. SCOTT. Has the gentleman concluded?

Mr. LUNGREN. Yes.

Mr. SCOTT. The gentleman's time has expired.

The gentleman from Texas, Mr. Poe.

Mr. POE. Thank you, Mr. Chairman.

I thank all of you for being here. I believe that all of you have intentions to make our system a better system, and I thank you for that.

Spending most of my life in the criminal justice system as a prosecutor and a judge, I saw a lot of folks work their way to the courthouse or the palace of perjury, as I referred to it in those days. And trying 25,000 felony cases, I came to believe that our system discriminates against victims based on the age of the offender; and because a victim is victimized by someone under a certain age, that victim does not receive the same justice in our court of law as a person who may have been victimized by someone that was an adult.

As you know, Professor, in Texas, a 17 year-old is an adult. And having tried two cases where a 17 year-old was charged with capital murder trying to murder a Houston police officer at the age of 14 and did not succeed because the gun jammed and then being successful as a 17 year-old in murdering a Houston peace officer, a jury sentenced him to death.

And then the two girls, Elizabeth Pena and Jennifer Erdman, had the misfortune of coming across a bunch of gangsters, teenage gangsters who kidnapped them and sexually assaulted them, brutalized them, tortured them and killed them. But the gangsters were 17. Although they all received the death penalty, the Supreme Court now, using international law, for some reason, has said that 17 year-olds aren't quite competent to be executed; and now they are all supposedly serving life without parole in Texas penitentiaries.

Based on what I have seen, there is no such thing as life without parole. People always get out of the penitentiary eventually.

I have seen statistics where people spend the rest of their natural life in prison, but those are very rare. And when you bring in the concept to a victim that we are going to reexamine these cases again, that brings the whole case back. When we have had these hearings, these appellate hearings and sentencing hearings and writs of mandamus—or writs of habeas corpus, rather, heard on these cases, they relive every minute of the entire case. It's never over.

My friend from California talked about closure. You are right, Ms. Bishop-Jenkins. There's no such thing. It's never over. And now we are asking them to relive the entire episode every 3 years so that maybe this person will be released and maybe they won't.

It seems to me that punishment hearings should incorporate punishment. I do not believe that a punishment hearing should be therapy, where we try to talk through a crime with an individual and then, when they understand they did wrong, let them go. I am not of that school. I saw too much at the courthouse with those people who came through the courthouse.

And before I get to specific questions, I have had a lot of lawyers, including many of my friends who are in the defense bar, agree

that some of the meanest people, unfortunately, in our culture, are teenagers. They are as mean as some of these 40-year-olds that have led a life of crime all their lives. And that is a societal problem that we have got to correct somewhere to prevent people from getting into the system. Because once they are in the system, they are going to stay in the system. Almost all of them do.

Professor, since your own notice as to what question I am going to ask you, since it was in the paper today—by the way, my daughter teaches at Baylor, so I am familiar with your reputation, and it's excellent. Why is not this a States rights issue?

Mr. OSLER. Well, I think that you and I probably agree, and the Ranking Member as well, in terms of federalism in a broad sense. If I had it to do and construct government, I would have States taxed for the things that they do and not—and start with the Edward Byrne Act and not have the funding that comes with the mandates.

The fact is, though, that right now what we have is a number of mandates that go with funding, a number of restrictions, in a broad array of areas. And it seems to me that, given that that's the reality, that if we are going to stop that, this bill being the stopping point would be unfortunate where it involves an important issue that involves children.

I think that, again, in the broad sense, I certainly agree with you about the role of federalism and States rights. But the fact is that this bill has to do with and in a way amends what already is a gigantic body of law that is built on those mandates.

In terms of juveniles and the way that that plays in, children are different. I agree with you. And, as a prosecutor and as a defense attorney, I have seen that there are children capable of vicious, cruel acts that would be terrible by someone of any age. What is different, though, is that they are not emotionally mature, that there is capability to change there, and that we have to look at that differently, as we do in almost every other area of the law, that children are different.

Mr. POE. And if I may have one other question, Mr. Chairman.

Ms. Bishop-Jenkins, I know of your case, of course; and being the chairman of the Victim's Right Caucus, along with my friend, Mr. Costa of California, we are aware of your situation. If this bill doesn't help pick out those certain juveniles serving time that can come back into society, what would you suggest?

Ms. BISHOP-JENKINS. Thank you so much for asking that very important question, because I do think that, clearly, there is a need for criminal justice reform in every aspect of our society, not just in juvenile life sentencing but across the board. There are people oversentenced in our prisons. There are people innocent in our prisons. We need to create better processes for addressing those.

But I will tell you what we have been asking everyone to focus on. Because remember what I said in my testimony, the key problem with this bill for families, most of the families across the country—and there's probably about 10,000 people like me across the country—the problem is the retroactivity and the retroactivity with regard to a mandate to parole. Because, again, many States don't have parole. So that was never even a possibility in our system.

And to prepare for a parole hearing, where we would then have to take off work, travel, go and fight this every 3 years, we would have to have documents and evidence and witnesses available to us that are not now and never can be. So the retroactivity is a real problem. The parole piece is a real problem.

But what we do suggest as an organization, our National Organization of Victims of "Juvenile Lifers" is suggesting that all legislative reform that is seen to be necessary, where it is necessary—and I think in some cases it may be, and in some cases it may not be—is to do it at the input end. That's where it makes sense, is to put in those layers of protection so that any juvenile that's going to be transferred to an adult court has that very specific—where it's discretionary, where it's case by case, where the people who know the case best can evaluate, yes, this guy should; no, this guy should not.

Obviously, the problem with Anita's case was the mandatory nature of it, a judge saying he didn't even want to do it.

So I think what you do is you give district attorneys, you give judges and the people who know the cases the best and you give the offenders that extra layer of protection on the input end, where they are able to demonstrate and argue in special hearings, yes, they should be transferred to adult court; no, they should not. And once that determination is made, you have to leave that stand.

Because the problem is that you—this bill's model actually is not fixing the problem. It is not fixing the problem. It is not addressing the problem that's getting juveniles into the system in the first place.

This bill is only punishing the victims. That's all it is doing, and it's not even guaranteed to get out the people who need to get out, because it is parole boards, and they don't always do the right thing.

Mr. POE. Thank you.

Mr. SCOTT. Ms. Bishop-Jenkins, do I understand you would support the bill if it did not have the retroactivity and if you eliminated the mandatory minimums?

Ms. BISHOP-JENKINS. I would support the bill if it were prospective only and it focused on asking States in some way that doesn't violate—I agree with all the federalism concerns. But focused on requiring States to eliminate the mandatory transfer of juveniles to adult court, yes.

Mr. SCOTT. And the mandatory sentence. Because some of them get mandatory sentences for involvement in a crime where their involvement may not have been much criminality at all.

Ms. BISHOP-JENKINS. I believe that the issues of felony murder, accomplices murder, is a very different question that has to be examined by States.

Because, in fact, you know, there is an accomplice and there is an accomplice. There is the accomplice that handed the offender the gun. He, in my mind, is more culpable. And then there are, you know, lesser offenses, obviously, in terms of felony murder. But felony murder statutes are a whole different question.

I think the question before this body is the question of transferring juveniles to adult court. That is the key, and I think that with

extra protections you could solve the problems without doing it on the backs of the victims' families.

Mr. SCOTT. Well, I will let my colleagues know that I want a transcript of this proceeding because of all of the federalism concerns. Because we will be quoting you—be quoting you. Because a lot of the problems we have is because of the violation of the concept of federalism, that the States do what we passed. And a lot of criminal laws where there is no real Federal interest, occasionally, just occasionally, the Supreme Court will correct us on that.

In the school drug-free zone—I think it was the Lopez case—we went too far because there is no Federal interest in that and we have done that quite frequently.

I would ask unanimous consent that the Nuñez case be placed in the record of the hearing.

Without objection.

[The information referred to follows:]

173 Cal.App.4th 709, 93 Cal.Rptr.3d 242, 2009 WL 1154200 (Cal.App. 4 Dist.), 09 Cal. Daily Op. Serv. 5396, 2009 Daily Journal D.A.R. 6307

Briefs and Other Related Documents

Court of Appeal, Fourth District, Division 3, California.
In re Antonio De Jesus NUÑEZ, on Habeas Corpus.

No. G040377.
April 30, 2009.
As Modified May 27, 2009.

Background: Defendant was convicted following jury trial in the Superior Court, Orange County, No. 01ZF0021, William R. Froeberg, J., of kidnapping for ransom and was sentenced to life in prison without parole (LWOP). Defendant appealed, and the Court of Appeal, 2004 WL 2943644, Ikola, J., affirmed. Defendant filed petition for habeas corpus, alleging sentence was unconstitutional.

Holdings: On order to show cause issued by the Supreme Court to prison custodian, the Court of Appeal, Aronson, J., held that:
(1) statute prescribing sentence of LWOP for a no-injury kidnapping for ransom violated state proscription against cruel or unusual punishment in purporting to punish a juvenile kidnapper under age 16 more severely than if he or she had murdered the victim;
(2) statute violated State Constitution as applied in present case; and
(3) sentence was so arbitrary as to violate Eighth Amendment proscription against cruel and unusual punishment.

Petition granted.

West Headnotes

[1] KeyCite Citing References for this Headnote

197 Habeas Corpus
197III Jurisdiction, Proceedings, and Relief
197III(A) In General
197k603 k. Laches or Delay. Most Cited Cases

As general rule, a habeas corpus petition must be filed as promptly as the circumstances allow.

[2] KeyCite Citing References for this Headnote

197 Habeas Corpus
197III Jurisdiction, Proceedings, and Relief
197III(A) In General
197k603 k. Laches or Delay. Most Cited Cases

Any significant delay in seeking collateral relief by way of habeas corpus petition must be fully justified.

[3] KeyCite Citing References for this Headnote

197 Habeas Corpus
197III Jurisdiction, Proceedings, and Relief

197III(A) In General
197k603 k. Laches or Delay. Most Cited Cases

Delay in bringing habeas corpus petition is measured from the time a petitioner knew, or reasonably should have known, the information in support of the claim and the legal basis for the claim, beginning as early as the date of conviction.

[4] KeyCite Citing References for this Headnote

197 Habeas Corpus
197III Jurisdiction, Proceedings, and Relief
197III(A) In General
197k603 k. Laches or Delay. Most Cited Cases

Habeas corpus petition, filed six months after defendant personally gained knowledge of legal basis for claim when he was contacted by nonprofit legal assistance organization, was not barred for untimeliness; although Supreme Court had denied review over two years prior to the petition after Court of Appeal affirmed defendant's conviction on direct appeal, defendant likely did not receive notice of Supreme Court's denial of review.

[5] KeyCite Citing References for this Headnote

197 Habeas Corpus
197II Grounds for Relief; Illegality of Restraint
197II(B) Particular Defects and Authority for Detention in General
197k503 Judgment, Sentence, or Order
197k507 k. Excessiveness. Most Cited Cases

197 Habeas Corpus KeyCite Citing References for this Headnote
197III Jurisdiction, Proceedings, and Relief
197III(A) In General
197k603 k. Laches or Delay. Most Cited Cases

When the question raised in a petition for writ of habeas corpus is one of excessive punishment, it is a proper matter for court to consider on a writ of habeas corpus, despite petitioner's delay in asserting the claim.

[6] KeyCite Citing References for this Headnote

197 Habeas Corpus
197III Jurisdiction, Proceedings, and Relief
197III(C) Proceedings
197III(C)1 In General
197k674 Allowance and Issuance of Writ or Rule to Show Cause
197k674.1 k. In General. Most Cited Cases

Supreme Court, in issuing order to show cause, determined that habeas corpus petitioner had met prima facie burden of showing that he might be entitled to relief. Cal.Rules of Court, Rule 4.551(c)(3).

[7] KeyCite Citing References for this Headnote

197 Habeas Corpus
197III Jurisdiction, Proceedings, and Relief
197III(C) Proceedings

197III(C)3 Hearing
197k745 Criminal Cases
197k751 k. Sentence and Punishment. Most Cited Cases

A hearing to evaluate petitioner's claim that he suffered from posttraumatic stress disorder (PTSD) was unnecessary in habeas corpus proceeding challenging life-without-parole sentence as excessive under State and Federal Constitutions, as Attorney General's return in response to show cause order merely contained a general denial of the PTSD claim, thus indicating a willingness to rely on trial record and documentary evidence submitted by petitioner as exhibits to his petition. U.S.C.A. Const.Amend. 8; West's Ann.Cal. Const. Art. 1, § 17.

[8] KeyCite Citing References for this Headnote

197 Habeas Corpus
197III Jurisdiction, Proceedings, and Relief
197III(C) Proceedings
197III(C)1 In General
197k678 Operation and Effect of Writ or Application
197k678.1 k. In General. Most Cited Cases

197 Habeas Corpus KeyCite Citing References for this Headnote
197III Jurisdiction, Proceedings, and Relief
197III(C) Proceedings
197III(C)1 In General
197k680 Return or Answer
197k680.1 k. In General. Most Cited Cases

It is the duty of the party who is ordered to show cause why a writ of habeas corpus should not issue to present all its evidence at the time it makes its return.

[9] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(A) In General
350Hk1434 Scope of Prohibition
350Hk1435 k. In General. Most Cited Cases

Under state constitutional proscription against cruel or unusual punishment, the state must exercise its power to prescribe penalties within the limits of civilized standards and must treat its members with respect for their intrinsic worth as human beings, and punishment which is so excessive as to transgress those limits and deny that worth cannot be tolerated. West's Ann.Cal. Const. Art. 1, § 17.

[10] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1482 k. Proportionality. Most Cited Cases

A prison sentence runs afoul of state constitutional proscription against cruel or unusual punishment if it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity. West's Ann.Cal. Const. Art. 1, § 17.

[11] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1482 k. Proportionality. Most Cited Cases

A defendant attacking his sentence under State Constitution as cruel or unusual must demonstrate his punishment is disproportionate in light of (1) the nature of the offense and defendant's background, (2) the punishment for more serious offenses, or (3) punishment for similar offenses in other jurisdictions; defendant need not establish all three factors, as one may be sufficient, but the defendant nevertheless must overcome a considerable burden to show the sentence is disproportionate to his level of culpability. West's Ann.Cal. Const. Art. 1, § 17.

[12] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1480 k. In General. Most Cited Cases

In analyzing nature of the offense and of the offender, as factor in determining whether sentence is cruel or unusual so as to violate State Constitution, court is required to show particular regard to the degree of danger both present to society. West's Ann.Cal. Const. Art. 1, § 17.

[13] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1480 k. In General. Most Cited Cases

The consequences of the defendant's actions inform the nature of the offense and are important in assessing, under State Constitution, the penalty the state may impose. West's Ann.Cal. Const. Art. 1, § 17.

[14] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1480 k. In General. Most Cited Cases

Perpetrator's age is an important factor in assessing whether a severe punishment falls within constitutional bounds under state's proscription against cruel or unusual punishment. West's Ann.Cal. Const. Art. 1, § 17.

[15] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1480 k. In General. Most Cited Cases

The diminished degree of danger that a youth may present after years of incarceration has constitutional implications under state proscription against cruel or unusual punishment. West's Ann.Cal. Const. Art. 1, § 17.

[16] KeyCite Citing References for this Headnote

231E Kidnapping
231Ek11 Statutory and Constitutional Provisions
231Ek13 k. Validity. Most Cited Cases

350H Sentencing and Punishment KeyCite Citing References for this Headnote
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1497 k. Kidnapping and False Imprisonment. Most Cited Cases

Statute prescribing sentence of life in prison without parole (LWOP) for kidnapping for ransom violated state proscription against cruel or unusual punishment to the extent it purported to punish a juvenile kidnapper under age 16 more severely than if he or she had murdered the victim. West's Ann.Cal. Const. Art. 1, § 17; West's Ann.Cal.Penal Code §§ 190, 190.2(a)(17)(B), 190.5(a), 209(a).

See Annot., Comment note. Length of sentence as violation of constitutional provisions prohibiting cruel and unusual punishment (1970) 33 A.L.R.3d 335; Cal. Jur. 3d, Criminal Law: Post-Trial Proceedings, §§ 165, 166; 3 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Punishment, § 109.

[17] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1480 k. In General. Most Cited Cases

In analyzing an as-applied challenge under state proscription against cruel or unusual punishment, court must consider the nature of the offense and the offender in the concrete rather than the abstract. West's Ann.Cal. Const. Art. 1, § 17.

[18] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1480 k. In General. Most Cited Cases

The defendant's individual culpability, as analyzed in an as-applied challenge to a sentence under state proscription against cruel or unusual punishment, is shown by such factors as his age, prior criminality, personal characteristics, and state of mind. West's Ann.Cal. Const. Art. 1, § 17.

[19] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1480 k. In General. Most Cited Cases

The circumstances of the defendant's particular offense, including such factors as its motive, the way it was committed, the extent of the defendant's involvement, and the consequences of his acts,

mark an objective relation between culpability and punishment in the context of an as-applied challenge to a sentence under state proscription against cruel or unusual punishment. West's Ann.Cal. Const. Art. 1, § 17.

[20] KeyCite Citing References for this Headnote

231E Kidnapping
231Ek41 k. Sentence and Punishment. Most Cited Cases

350H Sentencing and Punishment KeyCite Citing References for this Headnote
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1497 k. Kidnapping and False Imprisonment. Most Cited Cases

Sentence of life in prison without parole (LWOP), imposed for kidnapping for ransom, violated state proscription against cruel or unusual punishment, though defendant acted with significant culpability and exposed victim and others to substantial likelihood of death by firing between 11 and 18 shots at vehicle that was pursuing defendant and his coperpetrators, where defendant was only 14 years old at time of offense, no injuries resulted from the crime, and there was unrebutted testimony that defendant suffered from posttraumatic stress disorder (PTSD) that profoundly affected his behavior during car chase. West's Ann.Cal. Const. Art. 1, § 17; West's Ann.Cal.Penal Code § 209(a).

[21] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1482 k. Proportionality. Most Cited Cases

The Eighth Amendment prohibition against cruel and unusual punishments prohibits not only barbaric punishments but also encompasses a narrow proportionality principle applicable to sentences for terms of years. U.S.C.A. Const.Amend. 8.

[22] KeyCite Citing References for this Headnote

231E Kidnapping
231Ek41 k. Sentence and Punishment. Most Cited Cases

350H Sentencing and Punishment KeyCite Citing References for this Headnote
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1497 k. Kidnapping and False Imprisonment. Most Cited Cases

Sentence of life in prison without parole (LWOP) for kidnapping for ransom, as imposed on a defendant who fired shots at pursuing vehicle but caused no injury, was only 14 years old at time of offense, suffered from posttraumatic stress disorder (PTSD), and did not have a history of violent crime, was so arbitrary as to constitute cruel and unusual punishment in violation of Eighth Amendment, where defendant was the only known youth under age 15 sentenced to LWOP for a nonhomicide, no-injury crime in any state in the country or anywhere in the world. U.S.C.A. Const.Amend. 8; West's Ann.Cal.Penal Code § 209(a).

[23] KeyCite Citing References for this Headnote

231E Kidnapping

231Ek41 k. Sentence and Punishment. Most Cited Cases

350H Sentencing and Punishment KeyCite Citing References for this Headnote
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1497 k. Kidnapping and False Imprisonment. Most Cited Cases

Defendant's youth at time of kidnapping for ransom was relevant to determining whether sentence of life in prison without parole (LWOP) constituted cruel and unusual punishment under Eighth Amendment because the harshness of the penalty must be evaluated in relation to the particular characteristics of the offender. U.S.C.A. Const.Amend. 8; West's Ann.Cal.Penal Code § 209(a).

[24] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1482 k. Proportionality. Most Cited Cases

The type of punishment imposed is the most prominent objective factor a court evaluates in conducting proportionality review of a sentence under Eighth Amendment proscription against cruel and unusual punishment. U.S.C.A. Const.Amend. 8.

[25] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1482 k. Proportionality. Most Cited Cases

Laws enacted by legislatures across the nation provide the clearest and most reliable objective evidence of contemporary values in the context of proportionality review of a sentence under Eighth Amendment. U.S.C.A. Const.Amend. 8.

[26] KeyCite Citing References for this Headnote

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1482 k. Proportionality. Most Cited Cases

Data reflecting sentencing outcomes, where available, can afford a significant and reliable objective index of societal mores in the context of a proportionality review of a sentence under Eighth Amendment. U.S.C.A. Const.Amend. 8.

West Codenotes

Held Unconstitutional

West's Ann.Cal.Penal Code § 209(a).

**246 Equal Justice Initiative of Alabama, Bryan A. Stevenson, Montgomery, AL, pro hac vice; and Jack M. Earley, Irvine, for Petitioner.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Arlene A. Sevidal, Deputy Attorneys General, for Plaintiff and Respondent.

*714 OPINION

ARONSON, J.

***1 Antonio de Jesus Nuñez filed a petition for habeas corpus in the California Supreme Court on grounds, inter alia, that his sentence of life in prison without parole (LWOP) for kidnapping for ransom (Pen.Code, § 209, subd. (a)) [FN1] an offense he committed when he was 14 years old-constitutes cruel and unusual punishment under the Eighth Amendment or, alternatively, cruel or unusual punishment in violation of article I, section 17, of the California Constitution. Concluding Nuñez established a prima facie case for relief, the Supreme Court ordered Nuñez's prison custodian to show cause before this court justifying the constitutionality of Nuñez's LWOP *715 sentence.[FN2] After we placed the matter on calendar, petitioner and the Attorney General submitted briefs and argued the matter.

FN1. All further unlabeled statutory references are to the Penal Code.

FN2. The Supreme Court's order states, in pertinent part: "The Director of the Department of Corrections and Rehabilitation is ordered to show cause, before the Court of Appeal, Fourth Appellate District, Division Three, when the matter is placed on calendar, why petitioner's sentence of life in prison without possibility of parole is not grossly disproportionate to his offense. (U.S. Const., amend. 8; Cal. Const., art. I, § 17; *Solem v. Helm* (1983) 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637; *In re Lynch* (1972) 8 Cal.3d 410, 105 Cal.Rptr. 217, 503 P.2d 921.)"

Petitioner contends his LWOP sentence violates article I, section 17's proportionality requirement based on, among other factors, his youth, the lack of injury to any victim, and the circumstance that LWOP is not a sentencing option for kidnappers his age who-unlike petitioner-murder their victims. We agree that under our state Constitution the LWOP sentence imposed on petitioner is void both in the abstract for society's most youthful offenders and as applied to petitioner in particular. We do not reach this conclusion lightly. As stated by our Supreme Court in *In re Lynch* (1972) 8 Cal.3d 410, 414-415, 105 Cal.Rptr. 217, 503 P.2d 921 (*Lynch*): "We recognize that in our tripartite system of government it is the function of the legislative branch to define crimes and prescribe punishments, and that such questions are in the first instance for the judgment of the Legislature alone. [Citations.] [¶] Yet legislative authority remains ultimately circumscribed by the constitutional provision forbidding the infliction of cruel or unusual punishment, adopted by the people of this state as an integral part of our **247 Declaration of Rights. It is the difficult but imperative task of the judicial branch, as coequal guardian of the Constitution, to condemn any violation of that prohibition." When such a showing is made, as here, "we must forthrightly meet our responsibility 'to ensure that the promise of the Declaration of Rights is a reality to the individual.' [Citation]." (*Id.* at p. 415, 105 Cal.Rptr. 217, 503 P.2d 921.)

And because petitioner is the only known offender under age 15 across the country and around the world subjected to an LWOP sentence for a nonhomicide, no-injury offense, we also conclude his severe sentence is so freakishly rare as to constitute arbitrary and capricious punishment violating the Eighth Amendment. Accordingly, as required by the state and federal Constitutions, we vacate defendant's LWOP sentence on his kidnapping conviction and remand to the trial court for resentencing.

*716 I

FACTUAL AND PROCEDURAL BACKGROUND

We set out the facts of petitioner's offense as stated in our opinion rejecting his direct appeal from his conviction, in which he did not raise the constitutional claims he now asserts. (People v. DeJesus Nunez (Dec. 21, 2004, G032462) 2004 WL 2943644 [nonpub. opn.] (*Nunez I*).) As will become apparent, the background circumstances revealed in petitioner's habeas petition present a very different view of petitioner's culpability.

A. *The Facts of the Offense as Recited in our Earlier Opinion on Direct Appeal*

" *The Kidnapping of Delfino*

***2 "The Moreno brothers, Delfino, Abel, and Isaac, had been promised $200 per person to transport 11 illegal immigrants from Arizona to California. The brothers left Arizona in two vehicles: Abel drove a white van with Isaac as a passenger along with seven illegal immigrants; Delfino drove a sport utility vehicle loaded with four illegal immigrants. They planned to arrive at Santa Ana in the early morning hours of April 24, 2001, and to meet at Delfino's apartment.

"Delfino arrived first and waited in the parking lot for Abel and Isaac. According to the prosecution's witnesses, as Abel pulled up, Perez, Nunez, and one other person got out of a white parked car and, armed with an AK-47 rifle, a shotgun, and a handgun, approached Abel's van. The three men surrounded the van and yelled at Abel to get out of his car. But Abel put the van in reverse and fled. Perez, Nunez, and the third person started shooting at the van. Perez was shooting with the assault rifle and Nunez with a handgun. Abel and Isaac escaped, although one of the van's side windows was shattered by a blast and Abel suffered cuts on his face and arms.

"Delfino was not so lucky. Again, according to the prosecution's witnesses, Perez pushed the AK-47 into Delfino's ribs and Nunez held a gun to Delfino's head, forcing him into the back seat of the waiting car. Two other persons were in the front seats. Perez and Nunez sat on either side of Delfino in the back seat. Perez took Delfino's cell phone away from him, and the car was driven over a series of freeways to Los Angeles. Upon leaving the freeway in Los Angeles, Delfino's face was covered with a black ski mask and he was taken to an abandoned apartment where defendants tied his hands and feet.

*717 "Meanwhile, after making his escape, Abel called Delfino's wife and asked her to check on Delfino. She had just heard the shots, and when Abel called to tell her **248 what had happened, she called 911. While on the phone with the dispatcher, she received another call on her call waiting service and the dispatcher instructed her to answer it. A male voice told her 'they had taken [Delfino].' When officers from the Santa Ana Police Department arrived at the apartment complex, she gave them Delfino's cell phone number. An officer called the number, spoke to a male in Spanish, and asked him where Delfino was. The person on the phone responded that Delfino was okay, and asked who was calling. The officer responded by identifying himself as a Santa Ana police officer. The person on the phone hung up, and subsequent calls were not answered.

" *The Ransom Demand and Negotiation*

"The police attached a listening device to Abel's cell phone to monitor any calls. Shortly after 3:00 o'clock that afternoon, Abel received a call from the kidnappers and they demanded $100,000 and a kilo of cocaine by sunrise the next morning in exchange for Delfino's return. Delfino got on the phone briefly, but only greeted Abel before the caller took the phone back. When the caller got back on the phone, Abel negotiated the ransom price-two kilos of cocaine and $50,000. An hour later, Abel received another call. This time, Delfino told Abel he was 'Okay,' and asked, 'Is everything okay there?' Abel asked the caller for more time to obtain the money because the banks were closed. After another series of phone calls, by late the next afternoon, Abel and the caller had agreed to meet at a Pavilions store in Long Beach to exchange Delfino for the ransom. The kidnappers told Abel they would be in a green Cherokee. But the exchange never took place. Delfino, who was driving around with the kidnappers while they were discussing where to meet with Abel, said Perez and Nunez left the Pavilions area because they said, 'there were narcos.'

" *The Chase*

***3 "Sergeant Ruben Ibarra, Investigator Carol Salvatierra, Officer John Rodriguez, Investigator John Garcia, Officer Paul Hayes, and Investigator Dean Fulcher, all of the Santa Ana Police

Department, assisted in the surveillance of the Pavilion's parking lot. Ibarra was driving an unmarked Chevrolet Venture with Salvatierra as his partner. Ibarra was wearing shorts and a t-shirt, but he was also wearing a bullet-proof vest that had the word 'POLICE' inscribed across the front. Salvatierra was wearing a similar vest, but it was not marked with the word 'POLICE.' Rodriguez was driving a Chevrolet Astro Van with Garcia as his partner, and Hayes was driving a Dodge Intrepid with Fulcher as his partner.

***718** "As Ibarra and Salvatierra were leaving the parking lot at the Pavilions store, Ibarra noticed an Oldsmobile traveling southbound on Woodruff Street. Ibarra turned and pulled into the lane next to the Oldsmobile. Ibarra's suspicion was aroused, even though he had been looking for a green Jeep, because the occupants of the Oldsmobile were looking around nervously, the driver was talking on a cell phone, the driver matched the description of one of the kidnappers, and the passenger in the back seat looked 'stiff' and was not looking around. Ibarra continued to follow the car through a residential area.

"Contacted by radio, Rodriguez, Garcia, Hayes and Fulcher joined the pursuit. The Oldsmobile eventually turned against traffic to get onto the southbound 405 freeway. The officers chased the Oldsmobile to the Seal Beach Boulevard exit where the Oldsmobile turned off the freeway. Near the end of the exit ramp, the Oldsmobile suddenly stopped. Ibarra stopped ****249** immediately behind it. Suddenly, three to six shots were fired from the Oldsmobile in the direction of Ibarra's car. The rear window on the passenger side of the Oldsmobile was blown out and Officer Rodriguez, who had stopped his car behind Ibarra, saw a muzzle flash coming from the passenger side of the Oldsmobile. The driver's window on Ibarra's vehicle was shattered. Delfino, who was sitting handcuffed in the back seat of the Oldsmobile, testified that Nunez was firing the assault rifle from the front passenger seat.

"The chase moved back to the northbound 405 freeway. Officer Hayes' vehicle became the lead. As the chase continued, a marked police car containing Officers Holderman and Saunders joined the chase near Palo Verde. As the Oldsmobile left the freeway at Woodruff, the marked police car became the lead vehicle. Its overhead red and blue lights were on and its siren was sounding. According to Delfino, at this point Perez told Nunez to shoot the police. At Los Coyotes Boulevard eight to 10 shots were fired from the passenger's side of the Oldsmobile at the marked police car. Numerous bullet holes were later found on the front hood, right door frame, right sideview mirror, and inside of the car including a bullet hole one foot from the location of Holderman's head and four to six inches from Saunders' head. Ibarra's vehicle, which had continued the chase after the first shooting, was also struck.

***4** "The chase ended when the Oldsmobile crashed at the end of Los Coyotes on Carson. Nunez and Perez ran from the vehicle. Delfino was found sitting in the back of the car and appeared 'pretty shaken up.' His hands were handcuffed in front of him. An assault rifle and a handgun were recovered from the front passenger side of the Oldsmobile. Nunez and Perez were chased down and arrested. When Perez was arrested he had a Ruger nine ***719** millimeter handgun in his waistband and was carrying Delfino's cell phone. Perez's jacket was also recovered. A magazine for the nine millimeter pistol was found inside the jacket.

" *Defense Evidence*

"Perez called Christian Eaton to testify he had observed Abel's van being chased by a person shooting a nine millimeter handgun. As Abel's van sped away, Eaton testified he heard one shot fired from the driver's side of the van. Perez also called Delfino to testify that during his confinement in the apartment, Nunez kept a gun pointed at him.

"Nunez called his mother to testify he was at home with her on the nights of April 23rd and 24th, and was still at home when she woke up the mornings of April 24th and 25th. She also testified he was with her continuously from the time he woke up on April 25th until 5:00 p.m., when she dropped him off at his uncle's house.

"Nunez testified in his own defense. He said he was home with his mother at the time of the initial kidnapping. Nunez had never met Perez or Delfino before the kidnapping, but he had seen them

around the neighborhood. After being dropped off at his uncle's house, Nunez went to a 'ditching' party with a friend. Delfino was at the party and so was Perez. Delfino was not in handcuffs. Delfino approached and asked Nunez if he wanted to make some money. Nunez agreed, so Delfino told Nunez he wanted him to pick up some money and drugs from Delfino's brothers and to act as if he [Delfino] had been kidnapped.

"Before the exchange took place, however, Delfino pointed out that a van was following them. The chase ensued. At the end of the off-ramp at Seal Beach Boulevard, Nunez fired the assault weapon ***250** at the following car because he 'was scared ... that they're following us.' Nunez explained that the blast of the gun caused a ringing in his ears, and he could not hear very well after that. He professed neither to have seen the marked police car nor to have heard the siren. He shot the second time because he saw two vans following them and he thought they were 'gonna try and do something to us.' During the second shooting episode, his vision was impaired because the rear window was shattered, and he was shooting through the open hole in the window." (*Nunez I, supra.*)

B. *Petitioner's Background and Lesser Culpability, According to His Habeas Petition*

Nuñez grew up in a dangerous South Central Los Angeles neighborhood where, according to his mother and father, as many as 10 people were shot ***720** and killed nearby and the sound of gunshots was not uncommon. His mother would force her children to the floor for fear of shots hitting the house. Nuñez wanted his mother to flee the violence *in* the home. He witnessed weekly and sometimes nightly domestic violence inflicted by both parents on each other and his four siblings, including an incident at age eight where he intervened to protect his mother but his father threw him aside. Nuñez also regularly heard each parent threaten the other with death or violent injury and watched on one occasion as his mother feigned a heart attack to stop her husband's abuse. The police often responded to domestic violence calls at the home, some made by Nuñez. Nuñez became hysterical when his parents fought and often woke up crying with night terrors.

***5** Nuñez was physically and verbally abused by his alcoholic father, who whipped the children with a belt, extension cords, and TV cables, leaving marks on their legs, arms, and buttocks. His mother and grandmother joined in beating him with a belt to correct his misbehavior and his older sister, to discipline him while babysitting, broke a broomstick with blows to his body. He performed poorly in school. The only school activity Nuñez's mother recalled participating in was his graduation from an elementary school Drug Abuse Resistance Education program. He was excited to have his photograph taken with the officer and wanted to be a policeman when he grew up.

Nuñez joined a criminal street gang at age 12, but was a member for less than a year. During that time, his participation in the gang consisted solely of associating with other members at parties and spraying graffiti.

In September 1999, 13-year-old Nuñez was shot multiple times in a random gangland shooting while riding his bicycle in the street near his home. His 14-year-old brother, José, heard him cry out and ran to his aid. The perpetrator shot José in the head, killing him. Nuñez suffered severe internal damage and bleeding from the gunshots to his abdomen. After his recovery, Nuñez left California and stopped associating with the gang, covered his tattoos, and became an obedient and helpful middle-schooler while living with his aunt's family in Nevada.

California probation authorities, however, required Nuñez to return to Los Angeles.[FN3] Living just blocks from where he was shot and his brother was killed, Nuñez suffered trauma symptoms, including ***251** flashbacks, an urgent need to avoid the area, a heightened awareness of potential threats, and an intensified need to protect himself from real or perceived threats. He obtained a gun for self-defense and, shortly thereafter, was arrested for possessing the ***721** weapon. Back in juvenile camp briefly, supervisors reported he eagerly participated in and positively responded to the structured environment and guidance of staff members. He was released two months before the present offense.

FN3. Nuñez was on probation following his adjudication as a ward of the court for a burglary offense.

Three defense witnesses and two of the state's three eyewitnesses testified Nuñez was not present on April 24, 2001, when Delfino was abducted. Nuñez testified he met Delfino and 27-year-old Perez at a party the following day in the late afternoon of April 25, 2001. Delfino asked him to help extract some money from his brothers by pretending that he (Delfino) had been kidnapped. According to Nuñez, the jury's numerous requests for readback of testimony concerning the initial kidnapping suggest the jury did not convict him of participating in the initial abduction and conspiracy to commit kidnapping on April 24th, but only with respect to the events on the following day.

Nuñez acknowledged responsibility for his actions on April 25th, the day following Delfino's initial kidnapping. He testified he willingly entered the vehicle with Delfino and Perez to perpetrate the fake kidnapping, and admitted he knew there were two guns in the car. Perez drove as Delfino gave directions; Nuñez never had been in the area before. Delfino pointed out they were being pursued by a gray van with dark tinted windows, driven by a Hispanic man with a Hispanic passenger. The van followed them even as Perez exited and reentered the freeway. Nuñez feared the occupants of the van would shoot him, just as he had been shot the day his brother was killed. Nuñez fired his gun at the vehicle chasing them. The gun recoiled and hit him in the face, blurring his vision, and the loud report of the gun stunned and deafened him. The shot shattered the back window of the car, making it impossible to see through the glass.

***6 Nuñez ducked down as Perez drove away. The van continued to follow them and soon a second van with two Hispanic male occupants joined the pursuit. Perez was going to stop the vehicle, but Delfino shouted at them "to keep on going and to keep on shooting." Nuñez again fired at his pursuers. Perez proceeded down Los Coyotes Diagonal, kicking up so much dust and debris that the police officers driving the pursuing vehicles testified they could not see inside the car. A marked police car joined the pursuit and was hit by bullets from Nuñez's gun. According to Nuñez, when he saw the police vehicle activate its lights, he dropped his gun to the floor and left it there. Seconds later, Perez slammed on the brakes and crashed into some trees.

In an attachment to his habeas petition, petitioner included the declaration of a psychiatrist, Dr. Zakee Matthews. Based on several interviews he conducted with petitioner in March 2007, Matthews concluded petitioner suffered from posttraumatic stress disorder as a result of being shot ***722** and witnessing his brother's slaying. Matthews explained that the condition could result in a heightened awareness of potential threats, coupled with a powerful impulse to protect oneself from real or perceived threats, particularly life-threatening ones.

Matthews opined that Nuñez's posttraumatic stress disorder, a "major mental illness[,] profoundly affected his behavior during the car chase." Matthews noted: "This offense occurred almost immediately ****252** after Antonio was sent home from camp ... to the site of his shooting and his brother's death. The intense symptoms he re-experienced upon being forced to return to that neighborhood were exacerbated by the threats made on Antonio and his family and by his traumatized mother's hypervigilant behavior. She moved the entire family into a relative's spare bedroom and rarely let Antonio out of her sight for fear that he would be gunned down in the street. Antonio spent the period immediately prior to this offense in a near-constant state of high alert, from which he sought relief (numbing) by using alcohol and marijuana."

According to Matthews: "Viewed in the context of post-traumatic stress disorder, Antonio's behavior is most accurately described as impulsive and self-protective. His perception that the unknown persons pursuing him in the unmarked vans would hurt or kill him was informed by his trauma history of having been shot, his brother being shot and killed, his life being threatened, and seeing people shot and killed in his neighborhood. Antonio's awareness of potential threats heightened, but his need to protect himself in response to threats likewise was heightened. The intensity of Antonio's hyperarousal state was exacerbated when an adult confirmed that his life was in danger and ordered him to fire, and the pursuers continued to chase him."

Matthews concluded that "at the time of the offense," petitioner "lacked ability to control his impulses, comprehend the consequences of his actions, plan or make informed decisions, and was

highly susceptible to the negative influences of people older than him." Additionally, "Mr. Nuñez's mental functioning and behavior was diminished beyond that typical of 14-year-old children by mental illness, namely post-traumatic stress disorder and major depression, as well as adverse developmental factors including early alcohol and drug use, neglect and abuse, and possible cognitive deficits."

***7 In a general denial in his return, the Attorney General asserted "no knowledge of" petitioner's factual allegations concerning his history of posttraumatic stress disorder and domestic violence.

*723 II
DISCUSSION

A. *Preliminary Issues*

[1] [2] [3] The Attorney General contends petitioner's habeas claim is not cognizable because it is untimely. Neither the Legislature nor the Supreme Court has established an express time limit within which a petitioner must seek habeas relief. (*In re Huddleston* (1969) 71 Cal.2d 1031, 1034, 80 Cal.Rptr. 595, 458 P.2d 507.) Nor does the Attorney General identify any particular window of time pertinent to petitioner's federal claim. Rather, the general rule is that a petition must be filed "as promptly as the circumstances allow." (*In re Clark* (1993) 5 Cal.4th 750, 765, fn. 5, 21 Cal.Rptr.2d 509, 855 P.2d 729.) " ' "[A]ny significant delay in seeking collateral relief ... must be fully justified. [Citations.]" [Citation.] ...' " (*In re Sodersten* (2007) 146 Cal.App.4th 1163, 1221, 53 Cal.Rptr.3d 572.) Delay is measured from the time a petitioner knew, or reasonably should have known, the information in support of the claim *and the legal basis for the claim* (*In re Robbins* (1998) 18 Cal.4th 770, 780, 77 Cal.Rptr.2d 153, 959 P.2d 311 (*Robbins*)), beginning as early as the date of conviction (*In re Clark, supra,* 5 Cal.4th at p. 765, fn. 5, 21 Cal.Rptr.2d 509, 855 P.2d 729).

[4] The Supreme Court, in March 2005, denied review of our opinion affirming petitioner's conviction. In addition to four unanswered letters petitioner already **253 had sent his appellate counsel before that date asking about the status of his appeal, petitioner sent counsel another inquiry postmarked August 22, 2006. Petitioner's appellate counsel, in a sworn statement attached to the present petition, admitted "it is *likely* that Mr. Nuñez did not receive notice of the California Supreme Court's denial of his petition for review." (Italics added.) We infer from this statement either that petitioner's former appellate counsel failed to notify petitioner of the Supreme Court's denial of review, or that notice was not transmitted to petitioner. There is no reason to suppose petitioner personally knew of a legal basis for asserting his present claims until he was contacted by the Equal Justice Initiative (EJI) in October 2006, well after the Supreme Court denied review. We do not consider the six months between October 2006 and April 2007, when EJI filed this petition on petitioner's behalf, to constitute a significant delay, particularly where the Attorney General attributes no prejudice to that period or, indeed, to the timeliness of the petition generally. We therefore conclude petitioner's request for habeas relief is not barred for untimeliness.

[5] The Attorney General next contends petitioner has forfeited his claim because appellate counsel, familiar with petitioner's youth and presumably *724 familiar with the state and federal Constitutions, knew or should have known of the legal basis on which petitioner now seeks habeas relief. (See *Robbins, supra,* 18 Cal.4th at p. 780, 77 Cal.Rptr.2d 153, 959 P.2d 311.) But when "the question raised in a petition for writ of habeas corpus 'is one of excessive punishment, it is a proper matter for us to consider on a writ of habeas corpus, despite [the petitioner's] delay." (*People v. Miller* (1992) 6 Cal.App.4th 873, 877, 8 Cal.Rptr.2d 193.)

***8 [6] Finally, the Attorney General asserts the petition fails to establish the requisite prima facie case to avoid summary denial. But the Attorney General overlooks that the Supreme Court, in issuing the order to show cause, already has determined that petitioner met his prima facie burden. (*People v. Duvall* (1995) 9 Cal.4th 464, 475, 37 Cal.Rptr.2d 259, 886 P.2d 1252 (*Duvall*); see also Cal. Rules of Court, rule 4.551(c)(3) ["An order to show cause is a determination that the petitioner

has made a showing that he or she may be entitled to relief"].)

[7] [8] Moreover, with respect to petitioner's claim of posttraumatic stress disorder, which the Attorney General denies generally, we note the Supreme Court's "disapproval of the practice of filing returns that merely contain a general denial of a habeas corpus petitioner's factual allegations." (*Duvall, supra,* 9 Cal.4th at pp. 480-481, 37 Cal.Rptr.2d 259, 886 P.2d 1252.) "It is the duty of the party who is ordered to show cause to present all its evidence ... at the time it makes its return...." (*In re Nesper* (1990) 217 Cal.App.3d 872, 876, 266 Cal.Rptr. 113, abrogated on another ground in *People v. Jack* (1997) 60 Cal.App.4th 1129, 1133, 70 Cal.Rptr.2d 676.) Where the respondent alleges only a conclusory statement of fact or law in the return, the respondent indicates a willingness to rely on the trial record and the documentary evidence submitted by petitioner as exhibits to his petition. (*Duvall,* at p. 476, 37 Cal.Rptr.2d 259, 886 P.2d 1252.) Accordingly, we find it unnecessary to order a hearing to evaluate petitioner's medical claims, and instead turn immediately to the merits of his constitutional claims.

B. *Petitioner's LWOP Sentence Violates Article I, Section 17*

[9] [10] Article I, section 17, of our Constitution proscribes "cruel or unusual punishment."***254** Our Supreme Court has explained that, just as"[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man" (*Trop v. Dulles* (1958) 356 U.S. 86, 100, 78 S.Ct. 590, 2 L.Ed.2d 630 (*Trop*)), under our constitutional analogue, "the state must exercise its power to prescribe penalties within the limits of civilized standards and must treat its members with respect for their intrinsic worth as human beings: 'Punishment which is so excessive as to transgress those limits and deny that worth cannot be tolerated.' [Citation.]" (*People v. Dillon* (1983) 34 Cal.3d 441, 478, 194 Cal.Rptr. 390, 668 P.2d 697 (*Dillon*).) A prison sentence runs afoul of ***725** article I, section 17, if it is "so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." (*Lynch, supra,* 8 Cal.3d at p. 424, 105 Cal.Rptr. 217, 503 P.2d 921 [reversing life term for second indecent exposure conviction].)

[11] A petitioner attacking his sentence as cruel or unusual must demonstrate his punishment is disproportionate in light of (1) the nature of the offense and defendant's background, (2) the punishment for more serious offenses, or (3) punishment for similar offenses in other jurisdictions. (*Lynch, supra,* 8 Cal.3d at pp. 425, 431, 436, 105 Cal.Rptr. 217, 503 P.2d 921.) The petitioner need not establish all three factors-one may be sufficient (see *Dillon, supra,* 34 Cal.3d at p. 487, fn. 38, 194 Cal.Rptr. 390, 668 P.2d 697), but the petitioner nevertheless must overcome a "considerable burden" to show the sentence is disproportionate to his level of culpability (*People v. Wingo* (1975) 14 Cal.3d 169, 174, 121 Cal.Rptr. 97, 534 P.2d 1001). As a result, "[f]indings of disproportionality have occurred with exquisite rarity in the case law." (*People v. Weddle* (1991) 1 Cal.App.4th 1190, 1196, 2 Cal.Rptr.2d 714.) Applying the factors enumerated in *Lynch,* we conclude this case is among the rarest of the rare in which the punishment imposed violates article I, section 17 of the California Constitution.

***9** Petitioner contends an LWOP sentence imposed on offenders his age for kidnapping for ransom (§ 209, subd. (a)) that does not result in the victim's death or injury violates article I, section 17, for society's most youthful offenders generally and as applied to him in particular.[FN4] We agree.

FN4. Section 209, subdivision (a), provides as follows: " *Any person who* seizes, confines, inveigles, entices, decoys, abducts, conceals, *kidnaps or carries away another person by any means whatsoever with intent to hold or detain, or who holds or detains, that person for ransom,* reward or to commit extortion or to exact from another person any money or valuable thing, or any person who aids or abets any such act, *is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act* suffers death or bodily harm, or *is intentionally confined in a manner which exposes that person to a substantial likelihood of death,* or shall be punished by imprisonment in the state prison for life with the possibility of parole in cases where no such person suffers

death or bodily harm." (Italics added.)

1. *LWOP Under § 209, Subd. (a) Is Void for Offenders Younger than 16*

[12] ☑ We evaluate petitioner's general challenge first, utilizing the *Lynch* factors. The first factor requires us to examine both the "the nature of the offense" and "of the offender," with "particular regard to the degree of danger both present to society." (*Lynch, supra,* 8 Cal.3d at p. 425, 105 Cal.Rptr. 217, 503 P.2d 921.) We recognize that "when it is viewed in the abstract" ***255** (*Dillon, supra,* 34 Cal.3d at p. 479, 194 Cal.Rptr. 390, 668 P.2d 697), even *simple* kidnapping-quite apart from the aggravated nature of petitioner's crime-presents a grave risk of danger. (See ***726** *In re Earley* (1975) 14 Cal.3d 122, 132, 120 Cal.Rptr. 881, 534 P.2d 721 ["asportation gave rise to dangers, not inherent in robbery, that an auto accident might occur or that the victim might attempt to escape from the moving car or be pushed therefrom"].) A demand for ransom, as here, aggravates the crime because protracted confinement and the forcible control necessary to maintain it dramatically increase the danger to the victim. (See *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1228, 277 Cal.Rptr. 382 (*Ordonez*).) Petitioner exacerbated an already high level of danger by discharging his firearm repeatedly, jeopardizing not only his victim's life but the lives of motorists and pursuing peace officers.

In *Dillon,* the Supreme Court observed generally that the nature of a crime subject to the felony-murder rule "presents a very high level of ... danger, second only to deliberate and premeditated murder with malice aforethought." (*Dillon, supra,* 34 Cal.3d at p. 479, 194 Cal.Rptr. 390, 668 P.2d 697.) The danger inherent in the nature of petitioner's actions here indisputably rises to the level of danger the felony-murder rule is designed to combat. (See *Ordonez, supra,* 226 Cal.App.3d at p. 1228, 277 Cal.Rptr. 382 [kidnapping for ransom supports a conviction for felony murder because the offense "is inherently dangerous to human life"].) As the Attorney General observes, it is fortuitous that no one died or was injured as a result of petitioner's conduct.

[13] ☑ But as *Dillon* teaches, the consequences of the defendant's actions inform the nature of the offense and are important in assessing the constitutional penalty the state may impose. (*Dillon, supra,* 34 Cal.3d at p. 479, 194 Cal.Rptr. 390, 668 P.2d 697.) The nature of petitioner's offense, in which the victim and others were "expose[d] ... to a substantial likelihood of death" (§ 209, subd. (a)), but no one was killed or injured, is more akin to attempted rather than completed murder. Lesser prescribed punishment for attempted crimes than completed ones, including murder (compare § 664, subd. (a), with § 190, subd. (a)), embody a core principle of justice that, simply put, consequences matter in apportioning punishment. As our Supreme Court recognized in *Lynch,* " '[T]here are rational gradations of culpability that can be made on the basis of injury to the victim.' " (*Lynch, supra,* 8 Cal.3d at p. 426, 105 Cal.Rptr. 217, 503 P.2d 921.)

***10 [14] ☑ [15] ☑ Age also matters. As part of the "nature of the offender" prong of our analysis, *Dillon* instructs that the perpetrator's age is an important factor in assessing whether a severe punishment falls within constitutional bounds. (*Dillon, supra,* 34 Cal.3d at p. 479, 194 Cal.Rptr. 390, 668 P.2d 697.) Youth is generally relevant to culpability (*ibid.;* cf. Cal. Rules of Court, rule 4.413(c)(2)(C)), and the diminished "degree of danger" (*Lynch, supra,* 8 Cal.3d at p. 425, 105 Cal.Rptr. 217, 503 P.2d 921) a youth may present after years of incarceration has constitutional implications (see *In re Barker* (2007) 151 Cal.App.4th 346, 375, 59 Cal.Rptr.3d 746 (*Barker*)).

***727** In *Barker,* the court "agreed with the observations of the federal district court in *Rosenkrantz v. Marshall* (C.D.Cal.2006) 444 F.Supp.2d 1063 that ' "the general unreliability of predicting violence is exacerbated in [a] case by ... petitioner's young age at the time of the offense [and] the passage [in that case] of nearly twenty years since that offense was committed...." ' [Citation.]" ***256** (*Barker, supra,* 151 Cal.App.4th at p. 376, 59 Cal.Rptr.3d 746.) Relying on Supreme Court precedent, *Barker* noted that " ' "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." [Citations.] ...' " (*Id.* at pp. 376-377, 59 Cal.Rptr.3d 746, quoting *Johnson v. Texas* (1993) 509 U.S. 350, 368, 113

S.Ct. 2658, 125 L.Ed.2d 290.)

These observations, while made in the context of due process considerations pertinent to a parole decision (*Barker, supra,* 151 Cal.App.4th at p. 375, 59 Cal.Rptr.3d 746), apply a fortiori to evaluating whether, under article I, section 17, a categorical no-parole LWOP sentence is disproportional to the "degree of danger" a youthful offender poses, as evidenced by the nature of the offender and his or her offense. (*Lynch, supra,* 8 Cal.3d at p. 425, 105 Cal.Rptr. 217, 503 P.2d 921.) We conclude youth so striking as petitioner's and the absence of injury or death to any victim raise a strong inference that imposition of an LWOP sentence for a kidnapping offense under section 209, subdivision (a), violates article I, section 17. The inference becomes inescapable under *Lynch's* second prong.

Lynch's second prong compares the challenged penalty with the punishment in California for more serious crimes. (*Lynch, supra,* 8 Cal.3d at p. 431, 105 Cal.Rptr. 217, 503 P.2d 921.) As noted, premeditated first degree murder (§ 189) is the most serious offense known to the law (*Dillon, supra,* 34 Cal.3d at p. 479, 194 Cal.Rptr. 390, 668 P.2d 697). Section 190 makes first degree murder punishable by death, LWOP, or 25-years-to-life in prison. Section 190.5, subdivision (a), provides, however, that the death penalty may not be imposed on a person younger than 18 years old at the time he or she committed the crime. And, as petitioner points out, section 190.5, subdivision (b), limits the availability of LWOP as a sentencing option-even for special-circumstance murders committed during a kidnapping (§ 190.2, subd. a(17)(B))-to offenders 16 years of age or older at the time of the offense. [FN5] Consequently, of the penalties prescribed in section 190, i. e., death, LWOP, or a life term with the possibility of parole, only the last is potentially available for a 14-year-old juvenile convicted of first degree murder, even with special circumstances. ***728** (*People v. Demirdjian* (2006) 144 Cal.App.4th 10, 17, 50 Cal.Rptr.3d 184 (*Demirdjian*) ["For juveniles under 16 who were 14 or 15 when the crime was committed, a life term without possibility of parole is not permitted, leaving a term of 25 years to life *with* possibility of parole"]; see Welf. & Inst.Code, § 602 [14 is the youngest age the state may prosecute a juvenile as an adult].)

FN5. Section 190.5, subdivision (b), provides: "The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life."

******11** These gradations in punishment according to age, applicable even to the most heinous acts (see §§ 190.2 & 190.25 [listing special-circumstance murders]), reflect a determination that, as the United States Supreme Court observed recently in *Roper v. Simmons* (2005) 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (*Roper*), "juvenile offenders cannot with reliability be classified among the worst offenders." (*Id.* at p. 569, 125 S.Ct. 1183.) In holding the death *****257** penalty unconstitutional for perpetrators younger than 18, the court focused on "[t]hree general differences" between juveniles and adults. (*Ibid.*) First, juveniles lack maturity and responsibility and are more reckless than adults. Second, juveniles are more vulnerable to outside influences because they have less control over their surroundings. And third, a juvenile's character is not as fully formed as that of an adult. [FN6]

FN6. The *Roper* majority articulated the differences as follows: "First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.' [Citations.] It has been noted that 'adolescents are overrepresented statistically in virtually every category of reckless behavior.' [Citation.] In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent. [Citation.] [¶] The second area of difference is that juveniles are more vulnerable or susceptible to negative

influences and outside pressures, including peer pressure. [Citation.] This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. [Citation.] [¶] The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. [Citation.]" (*Roper, supra,* 543 U.S. at pp. 569-570, 125 S.Ct. 1183.)

The court concluded in *Roper*: "These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.' [Citation.] Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. [Citation.] The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those ***729** of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." (*Roper, supra,* 543 U.S. at p. 570, 125 S.Ct. 1183.)

Before *Roper,* in *Thompson v. Oklahoma* (1988) 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (*Thompson*), the Supreme Court invalidated capital punishment for juveniles younger than age 16 sentenced under statutory schemes specifying "no minimum age at which the commission of a capital crime can lead to the offender's execution." (*Id.* at pp. 857-858, 108 S.Ct. 2687, conc. opn. of O'Connor, J.) Section 209, subdivision (a), specifies no minimum age for imposition of an LWOP sentence. Noteworthy here, the plurality in *Thompson,* relying on earlier Supreme Court precedent, observed: " ' "[A]dolescents, *particularly in the early and middle teen years,* are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults...." ' " (*Thompson,* at p. 834, 108 S.Ct. 2687, italics added.) Additionally: " 'Our history is replete with laws and judicial recognition that minors, *especially in their earlier years,* generally are less mature and responsible than adults. *Particularly***258 "during the formative years of childhood and adolescence,* minors often lack the experience, perspective, and judgment" expected of adults. [Citation.]' [Citation.]" (*Ibid.,* italics added.)

****12** Recent psychosocial research bears out the judicial observations collected in *Thompson* concerning very young offenders. (See Cauffman & Steinberg, Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable than Adults 18 Behav. Sci. & L. 741, 756 (2000) ["the steepest inflection point in the development curve occurs sometime between [age] 16 and 19 years"]; Halpern-Felsher & Cauffman, Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults (2001) 22 J. Applied Developmental Psych. 257 [noting important differences in decision-making competence of early adolescents in contrast with older teenagers].) Consistent with these authorities and with *Roper* and *Thompson,* our Supreme Court has long identified youth as a factor mitigating the defendant's culpability. (See, e.g., *Dillon, supra,* 34 Cal.3d at p. 479, 194 Cal.Rptr. 390, 668 P.2d 697 [reversing 17-year-old's life sentence for robbery-murder].)

Against this backdrop, and in marked contrast to section 190.5, the Penal Code provision under which the trial court imposed the LWOP sentence on petitioner-section 209, subdivision (a)-makes no allowance for the age of the offender. The statute instead provides that anyone who commits a kidnapping "expos[ing]" the victim to a "substantial likelihood" of death "shall be punished by imprisonment in the state prison for life without the possibility of parole...." (*Ibid.*) In other words, the state's sentencing ***730** scheme makes a perverse distinction between juvenile offenders under 16 years old, providing for harsher punishment for those who do not harm a victim kidnapped for ransom than for those who commit murder with special circumstances. (Compare §§ 190, 190.5, and *Demirdjian, supra,* 144 Cal.App.4th at p. 17, 50 Cal.Rptr.3d 184 [maximum penalty for murder for juveniles under 16 is life-with-parole], with § 209, subd. (a) [LWOP for aggravated kidnapping]; see *Dillon, supra,* 34 Cal.3d at p. 488, fn. 38, 194 Cal.Rptr. 390, 668 P.2d 697, original italics

[intrajurisdictional comparison "is particularly striking when a more serious crime is punished *less* severely than the offense in question"].)

Lynch explained the rationale for intrajurisdictional comparison of crimes arises from the fact "the Legislature may be depended upon to act with due and deliberate regard for constitutional restraints in prescribing the vast majority of punishments set forth in our statutes." (*Lynch, supra,* 8 Cal.3d at p. 426, 105 Cal.Rptr. 217, 503 P.2d 921; see Cal. Const. art. XX, § 3 [members of Legislature sworn to uphold both the state and federal Constitutions]; Evid.Code, § 664 [official duty presumed performed].) The sanctions settled upon by the Legislature "may therefore be deemed illustrative of constitutionally permissible degrees of severity; and if among them are found more serious crimes punished less severely than the offense in question, the challenged penalty is to that extent suspect." (*Lynch, supra,* 8 Cal.3d at p. 426, 105 Cal.Rptr. 217, 503 P.2d 921.)

Given the stark difference between murdering a victim and a kidnapping offense where the victim is unharmed, the imposition of greater punishment for kidnapping can only be described as arbitrary and grossly disproportionate. We conclude a statutory regime that punishes the youngest juvenile offenders more harshly for kidnapping than for murder is not merely suspect, but shocks the conscience and violates human dignity. " '[T]his contrast shows more than different exercises of legislative***259** judgment. It is greater than that. It condemns the sentence in this case as cruel and unusual. It exhibits a difference between unrestrained power and that which is exercised under the spirit of constitutional limitations formed to establish justice.' [Citation.]" (*Lynch, supra,* 8 Cal.3d at p. 437, 105 Cal.Rptr. 217, 503 P.2d 921, quoting *Weems v. United States* (1910) 217 U.S. 349, 381, 30 S.Ct. 544, 54 L.Ed. 793.)

****13** [16] Such a sentence serves no valid penological purpose. Valid penological goals include retribution, incapacitation, rehabilitation, and deterrence. (See 1 LaFave, Substantive Criminal Law (2d ed.2003) § 1.5, pp. 37-43.) But, as noted, the Legislature's purported judgment that petitioner's offense warrants greater retribution than for murder of the kidnapping victim is strikingly disproportionate. As a matter of logic, the limiting principle of constitutional proportionality applies not only to retribution, but to incapacitation and deterrence. Incapacitating petitioner far longer than a murderer defies logic. Consequently, permanent incapacitation here results in a grossly ***731** disproportionate sentence, considering the "degree of danger" (*Lynch, supra,* 8 Cal.3d at p. 425, 105 Cal.Rptr. 217, 503 P.2d 921) posed by a 14-year-old youth committing a no-injury offense. And the absence, in the LWOP context, of any rehabilitative outcome demonstrates that any potential deterrent effect, already doubtful for offenders so young (*Roper, supra,* 543 U.S. at pp. 569-570, 125 S.Ct. 1183; *Thompson, supra,* 487 U.S. at p. 843, 108 S.Ct. 2687) is outweighed by constitutional considerations. True, the state conceivably may obtain an increased deterrent effect from grossly disproportionate punishment. But in exceeding any measured relation to culpability, such deterrence is achieved by utilizing the person solely as an object, inconsistent with his or her human dignity. (See *Dillon, supra,* 34 Cal.3d at p. 478, 194 Cal.Rptr. 390, 668 P.2d 697 [the " basic concept" underlying both the federal and state cruel and/or unusual clauses "is nothing less than the dignity of man"]; accord, *Trop, supra,* 356 U.S. at p. 100, 78 S.Ct. 590; see, e.g., Joshua Dressler, *Substantive Criminal Law Through the Looking Glass of Rummel v. Estelle: Proportionality and Justice as Endangered Doctrines* (1981) 34 SW. L.J. 1063, 1076 ["The process of punishment occurs not just because it may be good for society but because it is fair to the person"]; see also H.J. McClosky, *A non-utilitarian approach to punishment,* iN *philosophical perspectives on Punishment* (Gertrude Ezorsky ed. 1972) 122 ["It is logically possible to say that the punishment was useful but undeserved, and deserved but not useful. It is not possible to say that the punishment was just although undeserved"].) Accordingly, we hold section 209, subdivision (a), violates article I, section 17 of the California Constitution to the extent it purports to punish a juvenile kidnapper under age 16 more severely than if he or she had murdered the victim.[FN7]

FN7. As in *Dillon,* we need not reach the third prong under *Lynch,* "a comparison of the challenged penalty with those prescribed for the same offense in other jurisdictions-in order to complete our analysis." (*Dillon, supra,* 34 Cal.3d at p. 488, fn. 38, 194 Cal.Rptr. 390, 668 P.2d 697.) It is sufficient, under the first and second prongs, that "the punishment 'shocks the conscience and offends fundamental notions of human

dignity.' [Citation.]" (*Ibid.*)

2. *Petitioner's As-Applied Challenge*

In *Lynch,* the Supreme Court found the statute prescribing a life sentence for second-offense indecent exposure facially void under California's cruel or unusual punishment****260** prohibition (*Lynch, supra,* 8 Cal.3d at p. 439, 105 Cal.Rptr. 217, 503 P.2d 921), but also as applied to the particular offender. The court concluded, "Not only does the punishment here fail to fit the crime, it does not fit the criminal." (*Id.* at p. 437, 105 Cal.Rptr. 217, 503 P.2d 921.) The same is true here for the LWOP sentence imposed on petitioner under section 209, subdivision (a).

*****14** [17] [18] [19] In analyzing an as-applied challenge, we must consider the nature of the offense and the offender "in the concrete rather than the abstract." (*Dillon, supra,* 34 Cal.3d at p. 479, 194 Cal.Rptr. 390, 668 P.2d 697.) *Dillon* instructs that "the defendant's individual culpability [i]s shown by such factors as his age, prior criminality, personal ***732** characteristics, and state of mind." (*Ibid.*) The circumstances of the defendant's particular offense, "including such factors as its motive, the way it was committed, the extent of the defendant's involvement, and the consequences of his acts," also mark an objective relation between culpability and punishment. (*Ibid.*)

We already have determined petitioner's age and the no-injury consequences of his offense strongly support an inference the imposition of an LWOP sentence violates article I, section 17. The evidence does not support, however, petitioner's suggestion he acted without significant culpability because of the influence of his older coperpetrator, Perez, or his older victim, Delfino, who petitioner claims commanded him to fire at their pursuers. While youth are undoubtedly influenced by, and perhaps even subjected to some control by, their elder peers (see *Roper, supra,* 543 U.S. at p. 569, 125 S.Ct. 1183), it is impossible to overlook that petitioner fired his weapon not just once, but between 11 and 18 times in at least two different volleys separated by an interval of several minutes. It was too much for the jury, or any rational observer, to accept that Perez's or Delfino's asserted Svengali-like control included a shot from the front passenger seat that traveled inside the car to blow out the rear window of the vehicle, not far from Delfino. The circumstances of the offense, in which petitioner's involvement as the triggerman in the exceedingly violent way the offense exposed Delfino (and others) to "a substantial likelihood of death" (§ 209, subd. (a)), together with the reprehensible, danger-enhancing ransom motive, see *ante,* dilute to some degree any constitutional presumption against an LWOP sentence arising from petitioner's extreme youth and the absence of any injury from his actions.

But in addition to the foregoing factors, *Dillon* also requires consideration of petitioner's personal characteristics (*Dillon, supra,* 34 Cal.3d at p. 479, 194 Cal.Rptr. 390, 668 P.2d 697), which included a slender history of criminality and, as in *Dillon,* compelling evidence of a vulnerable and defensive state of mind, here precipitated by a tragic, unrebutted posttraumatic stress disorder condition.

In *Dillon,* the Supreme Court found the life sentence required for felony-murder excessive under article I, section 17, as applied to a 17-year-old defendant. The jury and the trial court concluded defendant's culpability warranted a conviction and punishment less harsh than mandated by the "Procrustean" felony-murder rule. (*Dillon, supra,* 34 Cal.3d at pp. 477, 484-487, 194 Cal.Rptr. 390, 668 P.2d 697.) The Supreme Court observed, "The record fully supports the triers' conclusion. It shows that at the time of the events herein defendant was an unusually immature youth. He had had no prior trouble with the law, and, as in *Lynch* and [*In re Reed* (1983) 33 Cal.3d 914, 191 Cal.Rptr. 658, 663 P.2d 216], was not the prototype of a hardened****261** criminal who poses a grave threat to society." (*Dillon, supra,* 34 Cal.3d at p. 488, 194 Cal.Rptr. 390, 668 P.2d 697.) In reducing defendant's ***733** conviction to second-degree murder, the court explained: " The shooting in this case was a response to a suddenly developing situation that defendant perceived as putting his life in immediate danger. To be sure, he largely brought the situation on himself, and with hindsight his response might appear unreasonable; but there is ample evidence that because of his immaturity he neither foresaw the risk he was creating nor was able to extricate himself without panicking when that risk seemed to eventuate." (*Ibid.;* see *People v. Estrada* (1997) 57 Cal.App.4th 1270, 1279, 67 Cal.Rptr.2d 596 [noting defendant's state of mind as the "principal[ ]" factor under *Dillon*].)

***15 [20] ☑ Here, the unrebutted evidence of petitioner's compromised state of mind, activated by the posttraumatic stress disorder he suffered from his and his brother's shooting, throws the disproportionate harshness of his sentence in sharp relief. The unrebutted expert testimony established that petitioner's posttraumatic stress disorder, a "major mental illness [,] profoundly affected his behavior during the car chase." As Matthews noted, "This offense occurred almost immediately after Antonio was sent home from camp ... to the site of his shooting and his brother's death. The intense symptoms he re-experienced upon being forced to return to that neighborhood were exacerbated by the threats made on Antonio and his family and by his traumatized mother's hypervigilant behavior." As Matthews explained, without contradiction: "Viewed in the context of post-traumatic stress disorder, Antonio's behavior is most accurately described as impulsive and self-protective. His perception that the unknown persons pursuing him in the unmarked vans would hurt or kill him was informed by his trauma history of having been shot, his brother being shot and killed, his life being threatened, and seeing people shot and killed in his neighborhood. Antonio's awareness of potential threats heightened, but his need to protect himself in response to threats likewise was heightened."

While it is true that, as with the defendant in *Dillon,* petitioner " 'trapped' " himself " 'in a situation of [his] own making' " (*Dillon, supra,* 34 Cal.3d at p. 486, 194 Cal.Rptr. 390, 668 P.2d 697), the evidence also showed a mental state reducing petitioner's culpability. Most notably, the unrebutted evidence established "Nuñez's mental functioning and behavior was diminished *beyond* that typical of 14-year-old children by mental illness, namely post-traumatic stress disorder and major depression...." (Italics added.) But the state, in imposing an LWOP sentence, has judged him irredeemable while at the same time extending hope of rehabilitation and parole to all juvenile kidnappers, including those significantly older than petitioner, who murder their victims. This anomaly violates article I, section 17 of the California Constitution. (See *Dillon, supra,* 34 Cal.3d at p. 478, 194 Cal.Rptr. 390, 668 P.2d 697 ["a punishment may violate the California constitutional prohibition 'if, although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity' "].) We *734 therefore vacate, on independent state constitutional grounds, petitioner's LWOP sentence under section 209, subdivision (a), as applied to him.

B. *Petitioner's LWOP Sentence Violates the Eighth Amendment*

[21] ☑ The Eighth Amendment declares: "Excessive bail shall not be required, nor **262 excessive fines imposed, nor cruel and unusual punishments inflicted." The clause "prohibits not only barbaric punishments" (*Solem v. Helm* (1983) 463 U.S. 277, 284, 103 S.Ct. 3001, 77 L.Ed.2d 637 (*Solem*)) but also "encompasses a narrow proportionality principle" (*Harmelin v. Michigan* (1991) 501 U.S. 957, 997, 111 S.Ct. 2680, 115 L.Ed.2d 836 (*Harmelin*) (conc. opn. of Kennedy, J.)) "applicable to sentences for terms of years." (*Lockyer v. Andrade* (2003) 538 U.S. 63, 72, 123 S.Ct. 1166, 155 L.Ed.2d 144 (*Lockyer*); accord, *Ewing v. California* (2003) 538 U.S. 11, 20, 123 S.Ct. 1179, 155 L.Ed.2d 108 (*Ewing*); *Solem,* at p. 284, 103 S.Ct. 3001.)

***16 In *Solem,* the Supreme Court held imposition of an LWOP sentence on an adult offender "grossly disproportionate" (*Solem, supra,* 463 U.S. at p. 288, 103 S.Ct. 3001) to the defendant's "crime of recidivism" (*Harmelin, supra,* 501 U.S. at p. 998, 111 S.Ct. 2680 (conc. opn. of Kennedy, J.)), which was predicated on a current offense of "uttering a 'no account' check for $100" and the defendant's lengthy criminal history that included seven nonviolent felonies. (*Solem,* at pp. 279-281, 103 S.Ct. 3001.) Echoing the trinity of factors articulated in *Lynch, Solem* counseled that "a court's proportionality analysis under the Eighth Amendment should be guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." (*Solem,* at p. 292, 103 S.Ct. 3001.) *Solem* observed that "no one factor will be dispositive in a given case." (*Id.* at p. 291, fn. 17, 103 S.Ct. 3001.)

In *Harmelin,* noting that *Solem* stated "it *may* be helpful to compare the sentences imposed on other criminals in the same jurisdiction" (*Solem, supra,* 463 U.S. at p. 291, 103 S.Ct. 3001, italics added) and that "courts *may* find it useful to compare the sentences imposed for commission of the

same crime in other jurisdictions" (*ibid.,* italics added), Justice Kennedy concluded in his concurrence that *Solem* "did not mandate such inquiries." (*Harmelin, supra,* 501 U.S. at p. 1005, 111 S.Ct. 2680 (conc. opn. of Kennedy, J.)) Rather, "[a] better reading of our cases leads to the conclusion that intrajurisdictional and interjurisdictional analyses are appropriate only in the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality." (*Harmelin,* at p. 1005, 111 S.Ct. 2680.) The facts in *Harmelin* did not rise to that level.

***735** There, Justice Kennedy joined four other justices to hold that an LWOP sentence imposed on an adult offender for possessing 1.5 pounds of cocaine, sufficient to yield between 32,500 and 65,000 doses, did not violate the Eighth Amendment. Based on the pernicious connection between massive drug quantities and crime, Justice Kennedy explained that the court rejected defendant's assertion his possession was "nonviolent and victimless," as follows: "[A] rational basis exists for Michigan to conclude that petitioner's crime is as serious and violent as the crime of felony murder without specific intent to kill, a crime for which 'no sentence of imprisonment would be disproportionate ...' [Citation]." (*Harmelin, supra,* 501 U.S. at p. 1004, 111 S.Ct. 2680 (conc. opn. of Kennedy, J.); see also *Rummel v. Estelle* (1980) 445 U.S. 263, 295, fn. 12, 100 S.Ct. 1133, 63 L.Ed.2d 382 (dis. opn. of Powell, J.) ["A professional seller of addictive drugs may inflict greater bodily harm upon members of society than the person who commits a single assault"].)

The Attorney General argues *Solem's* three-part test is no longer good law because****263** it "did not retain the support of a majority of the Supreme Court in *Harmelin.*" Since *Harmelin,* however, the court has expressly reaffirmed *Solem* (*Lockyer, supra,* 538 U.S. at p. 74, 123 S.Ct. 1166) and recounted, without overruling, the relevance of its three prongs (*Ewing, supra,* 538 U.S. at p. 22, 123 S.Ct. 1179).

****17** [22] [23] Even assuming, however, under Justice Kennedy's analysis in *Harmelin* that a threshold inference of gross disproportionality must arise under the first prong of *Solem* before reaching the other two, the unique facts here place this case in the rare category satisfying that standard. While the gravity of petitioner's offense is, as discussed *ante,* second only to the seriousness of first degree premeditated murder, we also must recognize the sentence is the harshest the state may impose on teenage offenders almost four years older than petitioner (*Roper, supra*). Petitioner's youth is relevant because the harshness of the penalty must be evaluated in relation to the particular characteristics of the offender. (*Enmund v. Florida* (1982) 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 [death sentence disproportionate where defendant harbored no intent to kill]; accord, *Solem, supra,* 463 U.S. at pp. 292, 296-297, 103 S.Ct. 3001 [finding, in applying proportionality principle to term of years, the "culpability of the offender," although a recidivist, diminished where prior offenses "were all relatively minor"].) And, in light of *Roper* and *Thompson,* as discussed *ante,* the harshness of the penalty warrants scrutiny because of the relation between age and culpability.

[24] As Justice Kennedy has observed, the "type of punishment imposed" is the "most prominent objective factor" a court evaluates in its proportionality review. (*Harmelin, supra,* 501 U.S. at p. 1000, 111 S.Ct. 2680 (conc. opn. of Kennedy, J.).) On that score, an LWOP sentence is the harshest possible punishment for a juvenile offender, particularly a juvenile under age 16. ***736** " '[L]ife without parole for a juvenile, like death, is a sentence different in quality and character from a sentence to a term of years subject to parole.' " (*Hampton v. Com.* (Ky.1984) 666 S.W.2d 737, 741.) Stated differently by our Supreme Court, the harshness of an LWOP is particularly evident "if the person on whom it is inflicted is a minor, who is condemned to live virtually his entire life in ignominious confinement, stripped of any opportunity or motive to redeem himself for an act attributable to the rash and immature judgment of youth." (*People v. Davis* (1981) 29 Cal.3d 814, 832, fn. 10, 176 Cal.Rptr. 521, 633 P.2d 186; see also *Naovarath v. Nevada* (1989) 105 Nev. 525, 779 P.2d 944, 944 [holding LWOP disproportionate for a 13-year-old as a "denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the defendant], he will remain in prison for the rest of his days"].)

We conclude petitioner's youth, in conjunction with other factors, supports an inference under the first prong of *Solem* that his sentence of life in prison without parole violates the Eighth Amendment's proportionality requirement. Among those other factors, petitioner introduced unrebutted evidence he suffered from posttraumatic stress disorder at the time of the crime, as a result of witnessing his brother's slaying 19 months earlier. (Cf. *Atkins v. Virginia* (2002) 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 [mental disability so mitigates culpability for adult offenders as to preclude death penalty].) Although he "brought the situation on himself" (*Dillon, supra,* 34 Cal.3d at p. 488, 194 Cal.Rptr. 390, 668 P.2d 697), the ****264** exigency of the vehicle chase colors, for an immature youth, "[t]he shooting in this case [as] a response to a suddenly developing situation that defendant perceived as putting his life in immediate danger." (*Ibid.*) We also cannot ignore that petitioner's coperpetrator was almost twice his age. (See *Thompson* and *Roper, supra,* [noting susceptibility of youth to pressure by others, especially elders].) Petitioner's extreme youth and compromised mental state support a conclusion he did not warrant the harshest penalty as one who neither fully grasped "the risk he was creating nor was able to extricate himself without panicking when that risk seemed to eventuate." (*Dillon, supra,* 34 Cal.3d at p. 488, 194 Cal.Rptr. 390, 668 P.2d 697.)

*****18** Also, because the consequences of a petitioner's actions reflect on his or her culpability and, in turn, serve as some measure for the harshness of the sentence imposed (see *Solem, supra,* 463 U.S. at p. 293, 103 S.Ct. 3001 ["It also is generally recognized that attempts are less serious than completed crimes"], citing 4 Blackstone, Commentaries 15), we must recognize that no injuries resulted from his crime. (Compare *People v. Em* (2009) 171 Cal.App.4th 964, 976, 90 Cal.Rptr.3d 264 [observing "the defendant's age matters," but "[i]t is also manifestly true, however, that murder matters"; upholding against federal and state constitutional challenges two consecutive 25 years-to-life terms for a nearly 16-year-old murder defendant].)

Finally, unlike the adult offenders in *Lockyer* and *Ewing,* petitioner did not have a history of violent crime. Before his brother's murder, petitioner had ***737** been adjudicated a ward of the court for committing burglary. He soon returned to juvenile camp for possessing a concealed weapon, but his arrest on that charge, let alone a conviction (*In re Frank S.* (2006) 141 Cal.App.4th 1192, 1199-1200, 46 Cal.Rptr.3d 839), is insufficient evidence the possession was gang-related rather than for self-defense. Similarly, petitioner's other *arrests* for nonviolent offenses that were never adjudicated, such as possessing stolen property and drug possession, do not trigger recidivist treatment. In sum, together with his youth, the foregoing factors support an inference under the first prong of *Solem* that petitioner's LWOP sentence contravenes the Eighth Amendment's proportionality requirement.

[25] [26] Courts turn to intra and interjurisdictional comparisons under *Solem's* second and third prongs in their Eighth Amendment analysis because the cruel and unusual punishment clause "draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society." (*Trop, supra,* 356 U.S. at p. 101, 78 S.Ct. 590.) In discerning those standards, laws enacted by legislatures across the nation provide the "clearest and most reliable objective evidence of contemporary values." (*Penry v. Lynaugh* (1989) 492 U.S. 302, 331, 109 S.Ct. 2934, 106 L.Ed.2d 256 (*Penry*).) Additionally, data reflecting sentencing outcomes, where available, can also afford " 'a significant and reliable objective index' " of societal mores. [FN8] (*Coker v. Georgia* (1977) 433 U.S. 584, 596, 97 S.Ct. 2861, 53 L.Ed.2d 982 (*Coker*) (plur.opn.) (quoting *Gregg v. Georgia* (1976) 428 U.S. 153, 181, 96 S.Ct. 2909, 49 L.Ed.2d 859 (joint opn. of Stewart, Powell, and Stevens, JJ.))).

FN8. We cannot help but observe *Harmelin's* threshold test excludes relevant evidence (Evid.Code, § 351; e.g., *Penry, supra; Coker, supra;* Cal. Const., art. XX, § 3) in the judicial determination of contemporary standards of decency required by the Eighth Amendment. Here, this proves to be of no moment, given we have concluded the threshold test is met.

On the second, intrajurisdictional, prong of *Solem,* petitioner points out that, besides the crime of kidnapping for ransom that exposes the victim to a substantial likelihood of death (§ 209, subd. (a)), the only other offenses short of homicide that California punishes by life in prison without****265** parole are kidnapping for ransom *with* bodily injury (*ibid.*) and attempted trainwrecking (§ 218). As

noted, for offenders who murder their victims, California law restricts the availability of an LWOP sentence to persons 16 years old or older. (*Demirdjian, supra,* 144 Cal.App.4th at p. 17, 50 Cal.Rptr.3d 184.) Although a murderer under age 16 therefore may receive a maximum sentence of life with parole (*ibid.*), which contrasts sharply with petitioner's harsher sentence, petitioner fails to provide objective data to ascertain whether his sentence violates the federal Constitution's "narrow" proportionality principle. (*Harmelin, supra,* 501 U.S. at p. 996, 111 S.Ct. 2680 (conc. opn. of Kennedy, J.)). Such data ***738** would illustrate whether California is uncharacteristically severe in punishing aggravated kidnapping, whether for offenders generally or for society's youngest particularly.

***19** In other words, on the third prong under *Solem,* petitioner fails to specify whether other states have eliminated or restricted LWOP for nonhomicide offenses under their penal schemes generally, or for juveniles. Indeed, petitioner provides no citations at all on the penalties that other state legislatures prescribe for his offense. Consequently, petitioner's showing is inadequate to determine where California's Penal Code lies on a national continuum in this matter. We have no basis for knowing on petitioner's presentation whether providing for LWOP as a legislative response to gravely serious nonhomicide offenses has evolved or is evolving to reflect changing standards of decency, particularly with respect to the youngest juvenile offenders.

Petitioner has shown on the third prong, however, that imposition of an LWOP sentence on society's youngest offenders for a nonhomicide, no-injury offense is freakishly rare-to the point where petitioner's evidence shows he is the only known recipient of such drastic punishment in any state in the country or anywhere in the world. The Attorney General does not dispute this fact. (See Equal Justice Initiative, Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison, 2007 Study, pp. 13, 24, 27 http:// eji. org/ eji/ files/ 20071017 cruel and unusual. pdf [as of April 29, 2009]; see also De la Vega & Leighton, Sentencing Our Children to Die in Prison: Global Law and Practice (2008) 42 U.S.F. L.Rev. 983, 985-986 [juvenile offender may be ineligible for parole only in United States].)

In *Furman v. Georgia* (1972) 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346, the Supreme Court found imposition of capital punishment on two defendants who committed rape violated the Eighth Amendment, with Justice Stewart explaining: "These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual." (*Id.* at p. 309, 92 S.Ct. 2726 (conc. opn. of Stewart, J.).) An arbitrary or capricious sentence serves no valid penological purpose. (See, e.g., *Godfrey v. Georgia* (1980) 446 U.S. 420, 439, fn. 9, 100 S.Ct. 1759, 64 L.Ed.2d 398 (conc. opn. of Marshall, J.).) Because a severe sentence " 'infrequently imposed' upon 'a capriciously selected random handful' " (*id.* at p. 438, 100 S.Ct. 1759)-or in this case, a lone youth under 15 nationwide and across the globe-amounts to a penalty so arbitrary that it constitutes cruel and unusual punishment, we hold defendant's LWOP sentence violates the Eighth Amendment.[FN9]

FN9. Petitioner's evidence shows violent juvenile crime is far from rare, with, in 2001, 100 juveniles arrested for kidnapping and 12,182 arrested for assault- *in California alone.* (See California Criminal Justice Profile (2002) http://stats.doj.ca.gov/cjsc_stats/prof01/00/3C.htm [as of May 22, 2009].) And in the 10-year period between 1995 and 2004, petitioner's evidence indicates 1343 children age 14 or under were arrested for murder or non-negligent manslaughter nationwide. (See U.S. Dept. of Justice, Uniform Crime Reports: Crime in the United States (2004) p. 290 http://www.fbi.gov/ucr/ucr.htm [as of May 22, 2009]; *id.* at p. 280 (2003); *id.* at p. 244 (2002); *id.* at p. 244 (2001); *id.* at p. 226 (2000); *id.* at p. 222 (1999); *id.* at p. 220 (1998); *id.* at p. 232 (1997); *id.* at p. 224 (1996); *id.* at p. 224 (1996); *id.* at p. 218 (1995).) Amidst all these offenses-and incalculably more worldwide-petitioner has been singled out in a manner similar to the arbitrariness of a lightning strike: he is the only youth under age 15 sentenced to LWOP for a nonhomicide, no-injury crime.

***739** III
DISPOSITION

The habeas corpus petition is granted. Let a peremptory writ issue directing the trial court to vacate petitioner's sentence of life in prison without parole. The trial **266 court shall conduct a new sentencing hearing consistent with this opinion.

WE CONCUR: BEDSWORTH, Acting P.J., and IKOLA, J.

173 Cal.App.4th 709, 93 Cal.Rptr.3d 242, 2009 WL 1154200 (Cal.App. 4 Dist.), 09 Cal. Daily Op. Serv. 5396, 2009 Daily Journal D.A.R. 6307

Briefs and Other Related Documents (Back to top)

• G040377 (Docket) (May 19, 2008)
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Mr. SCOTT. Any other comments from the Members?

Mr. GOHMERT. Just that I would like a transcript, too, so we can have you nailed down on your federalism concerns as well. Thank you.

Mr. SCOTT. That is fair enough.

We have received testimony from a large number of groups.

First, I would like to thank the witnesses for their testimony. Members may have additional written questions for the witnesses, and we would ask you to forward answers as promptly as possible so the answers can be made part of the record.

We have received written testimony from a large number of groups, as well as private individuals, which I will ask to be made part of the record:

The Council of Juvenile Correctional Administrators; the General Board of Church & Society of the United Methodist Church; the American Psychological Association; the Campaign for Fair Sentencing of Youth; the National Association of Criminal Defense Lawyers; the Children's Defense Fund; the Human Rights Watch; the Constitution Project; the Center for Law and Global Justice, University of San Francisco Law School; the Louisiana Conference of Catholic Bishops; the Diocese of Des Moines; and Professor Jeffrey Fagan of the Columbia Law School and the Columbia Law School Human Rights Institute.

Without objection, those statements will be made part of the record.

[The information referred to follows:]

HUMAN RIGHTS WATCH

1 onnecticut Avenue, N.W.
Suite 500
Washington, DC 20009
Tel: 202-612-4321
Fax: 202-612-4333
Email: hrwdc@hrw.org

US PROGRAM

David C. Fathi, *Director*
Alice Farmer, *Aryeh Neier Fellow*
Jamie Feilner, *Senior Counsel*
Abigail Marshak, *Associate*
Alison Parker, *Deputy Director*
Sarah Tofte, *Researcher*

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James Ross, *Legal & Policy Director*
Joe Saunders, *Deputy Program Director*
Jane Olson, *Chair, Board of Directors*

HUMAN RIGHTS WATCH

www.hrw.org

May 7, 2009

Members of the Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Representative:

I am writing on behalf of Human Rights Watch to urge your support for H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009. This legislation addresses fundamental problems in the sentencing of juveniles to life without parole in the United States, a practice that violates international law, is plagued by racial disparities, and is inappropriately applied to youthful offenders.

Human Rights Watch has investigated the use of life without parole for youth throughout the United States since 2004. We have found that while there are at least 2,574 people who were convicted of crimes committed as children sentenced to life without parole in the United States, there is not a single individual serving this sentence in the rest of the world.

Based on our research, we support the passage of H.R. 2289 for three main reasons: the sentencing of juveniles to life without parole is frequently disproportionate, it is racially discriminatory, and it violates international law.

First, the sentence of life without parole was created for the worst criminal offenders. But Human Rights Watch estimates that 59 percent of the youth serving life without parole in the United States received this sentence for their very first offense—they had no prior criminal convictions whatsoever, arising from either juvenile or adult courts. Our research has also found that approximately 26 percent of the youth sentenced to life without parole had not actually committed a murder and were convicted for their role in aiding and abetting or participating in a felony. In these cases, someone else was the primary actor in committing the crime.

Recent developments in neuroscience support the view that life without parole is not an appropriate sentence for juveniles. Research has found that teens do not have adults' developed abilities to think, to weigh consequences, to make sound decisions, to control their impulses, and to resist group pressures. Their brains are

anatomically different, still evolving into the brains of adults. While juveniles can commit the same acts as adults, by virtue of their immaturity they are not as blameworthy or culpable. At the same time, their age and level of development make them uniquely amenable to rehabilitation compared to adults. For these reasons, it is singularly inappropriate to sentence juveniles to die in prison without any opportunity for rehabilitation.

Second, we have serious concerns that racial discrimination and disparities plague the sentencing of youth to life without parole throughout the United States. On average across the country, black youth are serving life without parole at a per capita rate that is 10 times that of white youth. Many states have racial disparities that are far greater. Among the 26 states with five or more youth offenders serving life without parole for which we have race data, the highest black-to-white ratios are in Connecticut, Pennsylvania, and California, where black youth are between 18 and 48 times more likely to be serving a sentence of life without parole than white youth.

Finally, we support H.R. 2289 because the US practice of sentencing youth to life without parole violates international law. International law prohibits life without parole sentences for those who commit their crimes before the age of 18, a prohibition that is universally applied outside of the United States. Oversight and enforcement bodies for two treaties to which the United States is a party (the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination) have found the practice of sentencing juvenile offenders to life without parole to be a clear violation of US treaty obligations.

The Juvenile Justice Accountability and Improvement Act of 2009 provides a measured approach to juveniles sentenced to life without parole. It would end such sentencing for juveniles charged with federal crimes, and would give incentives to individual states to provide meaningful access to parole hearings or other review for youth offenders who have served at least 15 years of their sentence.

H.R. 2289 will still allow states and the federal government to ensure that young offenders receive serious punishments to hold them accountable for actions that have caused enormous suffering to victims and their families. However, the bill also reflects the reality that children are different from adults, and the punishment imposed for their offenses should reflect their age and level of development. By providing the opportunity for parole hearings or other review, the bill gives youth an incentive to work toward rehabilitation in prison. Such reviews would also provide a necessary opportunity for victims and their families to be heard.

H.R. 2289 would bring the United States closer to compliance with its treaty obligations and internationally recognized standards of justice. It would recognize that youth are different from adults and provide incentives for rehabilitation that

reflect their unique ability to change. Human Rights Watch urges you to support this bill.

Sincerely,

David C. Fathi
Director, US Program

DIOCESE OF DES MOINES
601 GRAND AVENUE · DES MOINES, IOWA 50309
(515) 237-5039 · FAX (515) 237-5071

Office of the Bishop

June 2, 2009

Dear Honorable Members of the Judiciary Committee:

I am writing, as bishop of the Catholic Diocese of Des Moines, to urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009.

This bill, if made law, would require reviews of life sentences given to youth (individuals under the age of 18) after 15 years of incarceration, and every three years thereafter, which is an appropriate alternative to sentencing youth to life without the possibility of parole. In the United States, there are more than 2,500 people serving life sentences without the possibility of parole for crimes committed before their eighteenth birthday. Here in Iowa, there are more than 40.

We believe in responsibility, accountability and legitimate punishment. While it is crucial to make sure that some people are separated from society until they are no longer dangerous, we support sentencing legislation which considers the minor status of the offender. We oppose sentences of juvenile life without parole (JLWOP) because they disregard the differences between youth and adults and declare that young people are beyond reform. We urge Congress to pass this law to hold youth accountable, prioritize public safety, and protect one's human right to the opportunity for rehabilitation. Offenders who commit very serious crimes when they are juveniles may gain with maturity an understanding of the gravity of their crime and be able to rejoin society under some conditions.

Our country's juvenile justice system was founded on the majority view that children, even those responsible for grave acts, are fundamentally different from adults. The imposition of life without parole sentences on young people is especially cruel and misguided because it ignores the fact that children are different from adults in critical ways. Behavioral research confirms what is recognized by U.S. and state laws: children do not have adult levels of judgment, impulse control, or the ability to assess risks and consequences. We believe that a juvenile who commits a crime may not have the benefit of a fully-formed conscience. They may not be fully aware of the seriousness of their actions.

Punishment of youth should be focused on rehabilitation and reintegration into society. Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean

that violent people will simply be released to the streets. I urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009, which acknowledges the critical difference between youth and adults, and imposes an age-appropriate sentence that recognizes a young person's potential for growth and reform.

I encourage you, Honorable Members, to begin the hard work of discerning where justice truly lies concerning the youth of America. Please help HR 2289 on its way to the full House.

Sincerely yours in Christ,

+ Richard E. Pates

The Most Reverend Richard E. Pates
Bishop of Des Moines

June 2, 2009

The Honorable William Delahunt
2454 Rayburn HOB
Washington, DC 20515

Re: Support for H.R. 2289

Dear Congressman Delahunt:

We are writing to urge you to co-sponsor H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009, which would strike the proper balance between punishment and rehabilitation for youth. As a non-profit organization that serves the youth of Massachusetts, we are acutely aware of the differences between children and adults and the importance of second chances. Massachusetts leads the nation in its protection of important civil rights, such as the right to marry, but we are among a small minority of states in which juveniles charged with murder are automatically tried as adults and, if convicted, are automatically sentenced to a mandatory life term without the possibility of parole.

Youth must be held accountable and punished appropriately, but it is cruel and unjust to decide that a child is irredeemable based on acts that occurred when he or she was as young as 14 years old. This is especially true in light of recent scientific developments showing that the adolescent brain is not fully formed until well into early adulthood, and that youth do not have adult levels of judgment, impulse control, or ability to assess risks.

H.R. 2289 would give all youth a meaningful opportunity to apply for parole. The bill is *not* a ticket out, it would *not* give youth offenders the right to parole or release; it would simply give them the chance to prove to a parole board that they have been rehabilitated after serving a lengthy sentence. Careful periodic reviews will determine whether, 15 years later, youth sentenced to life without parole continue to pose a threat to the community.

Every other country follows this balanced approach to punishment and protecting public safety. In the United States, however, there are more than 2,500 people serving life without parole for crimes committed before their eighteenth birthday. There are no such cases in the rest of the world. Congress must act to reform this law and bring the United States into line with other nations that hold youth accountable *and* protect their human right to rehabilitation.

For these reasons, the Children's Law Center of Massachusetts has been working to understand the impact of this mandatory sentence on youth in the Commonwealth and to gather empirical data that we anticipate publishing this Summer. We look forward to the opportunity to share and discuss our findings with you.

In the meantime, your co-sponsorship of H.R. 2289 can make a critical difference to youth in the Commonwealth and around the country by establishing a more humane, sensible, and proportionate sentencing approach. Youth would still face severe punishment (a sentence of 15 years to life) for committing serious crimes, but H.R. 2289 acknowledges the critical differences between youth and adults by preserving every child's right to rehabilitation.

We urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009.

Sincerely,

Barbara Kaban, Esq.
Deputy Director

Lia Monahon, Esq.

cc: Congressman Robert Scott

Dear Representatives Luis Gutierrez, Mike Quigley and the House Committee on the Judiciary:

We are writing to urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009. This bill, if made law, would require reviews of life sentences given to youth (individuals under the age of 18) after 15 years of incarceration, and every three years thereafter. We believe that this Act provides an appropriate alternative to sentencing youth to life without the possibility of parole (JLWOP).

In the United States, there are more than 2,500 people serving JLWOP for crimes committed before their eighteenth birthday. There are no such cases in the rest of the world. In fact, the practice of sentencing youth to life without the possibility of parole has been denounced by the international community. In a report released last month addressing racism, racial discrimination, xenophobia and other forms of intolerance in the United States, the United Nations Special Rapporteur Doudou Diene urged federal and state governments to ban the sentence of JLWOP for youth under the age of 18.

We oppose JLWOP because it condemns children—our children—to a life in prison without a second chance. In Illinois, a child as young as 13 - who cannot drive, vote or even see an R-rated movie without an adult present – can be sentenced to life in prison without any review of his sentence. Our country's juvenile justice system was founded on the view that children, even those responsible for grave acts, are fundamentally different from adults and can more easily benefit from treatment and rehabilitation. Behavioral research confirms that children are less culpable because they do not have adult levels of judgment, impulse control, or the ability to assess risks and consequences. The U.S. Supreme Court agrees—in *Roper v. Simmons* the Court explained, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

A large portion (60%) of people serving JLWOP sentences are first-time offenders. Here in Illinois, 82% of the 103 youth offenders serving JLWOP sentences are prisoners of color. In fact, 64 of the 73 youth sentenced to JLWOP in Cook County were African-American and Latino. And, in approximately 80% of the Illinois JLWOP cases, the sentence of life without the possibility of parole was mandatory under Illinois law, such that the judge could not exercise his or her own discretion to take into account the youth's age, maturity, background, family circumstances, education or even the youth's role in the offense. This is not justice.

Punishment of youth should be focused on rehabilitation and reintegration into society. Harsh sentencing and perpetual incarceration in general, but especially for youthful offenders, is a costly and ineffective solution for ensuring public safety and healing individuals and their communities. Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released to the streets. Instead, it will allow for careful, periodic reviews to determine whether, 15 years later, people sentenced to life without parole as youth continue to pose a threat to the community. Please co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009, and join us in acknowledging the critical difference between youth and adults and supporting an age-

appropriate sentence that recognizes that we owe our young people—even those who chose wrong over right with the most tragic consequences—a chance at redemption.

Sincerely,

The Illinois Coalition for the Fair Sentencing of Children

Shobha L. Mahadev, Project Director
Patricia Soung, Soros Fellow
Children and Family Justice Center
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, Illinois 60611

Members:

Albany Park Neighborhood Council
Alternatives, Inc.
American Civil Liberties Union of Illinois
Amnesty International of Illinois
Blocks Together
Business & Professional People for the Public Interest
Chicago Council of Lawyers
Children and Family Justice Center, Bluhm Legal Clinic, Northwestern University School of Law
Developing Justice Coalition
DLA Piper
Edwin F. Mandel Legal Aid Clinic, The University of Chicago School of Law
Fearless Leading by the Youth/Southside Together Organizing for Power
First Defense Legal Aid
Human Rights Watch, Chicago Committee
Jewish Reconstructionist Congregation
John Howard Association of Illinois
Juvenile Justice Initiative
Justice Coalition of Greater Chicago
Law Office of the Cook County Public Defender
Protestants for the Common Good
Sargent Shriver National Center on Poverty Law
Southwest Youth Collaborative
Uptown People's Law Center

Dear Honorable John Conyers, Jr. and Honorable Lamar Smith,

I am writing on behalf of myself in support of legislation to eliminate the sentencing of youth to life without the possibility of parole. In the United States, there are more than 2,500 people serving life sentences without the possibility of parole for crimes committed before their eighteenth birthday. There are no such cases in the rest of the world. I oppose sentences of juvenile life without parole (JLWOP) because they disregard the differences between youth and adults and declare that young people are beyond reform.

I spent 27 years at San Quentin State Prison, working my way up through the ranks from Correctional Officer to Warden. I have personally witnessed the positive transformation in young people as they grew and matured while incarcerated. Young people can and do change. Our laws must evolve to recognize that true public safety encourages and rewards offender change and success. I remember a young man who committed a gang murder in LA at the age of 17. When he came into San Quentin prison he looked like he was 14. In prison he was fortunate enough to be surrounded by some long time lifers who got him involved in education and other self help programs. He earned a release date from the Board of Prison Term and he paroled over 10 years ago. Since his release he has led a positive life.

The imposition of life without parole sentences on young people ignores the fact that children are different from adults in critical ways. Our country's juvenile justice system was founded on the majority view that children, even those responsible for grave acts, are fundamentally different from adults. Behavioral research confirms what is recognized by U.S. and state laws: children do not have adult levels of judgment, impulse control, or the ability to assess risks and consequences. There is widespread agreement among child development researchers that young people who commit crimes are more likely to reform their behavior and have a better chance at rehabilitation than adults. The Supreme Court decision in *Roper v. Simmons* supports this belief.

Detailed research on the application of JLWOP sentences around the country documents evidence of **systemic racial disparities, gross failures in legal representation, and many examples of youth being sentenced more harshly than adults convicted of the same crimes.** Despite popular thinking, a large portion of people serving JLWOP sentences are first-time offenders and more than one quarter of people serving JLWOP were convicted of "felony murder," which means they were participants in an underlying crime that resulted in a murder, but did not actually commit it, and *may not have even been present*.

Punishment of youth should be focused on rehabilitation and reintegration into society. Enactment of laws to eliminate life without the possibility of parole for youth would not mean that violent people will simply be released to the streets. Instead, legislation can be enacted to provide periodic reviews to determine whether people sentenced to life without parole as youth continue to pose a threat to the community. I urge you to support legislation to eliminate life without the possibility of parole for youth. We must acknowledge the critical difference between youth and adults, and imposes an age-appropriate sentence that recognizes a young person's potential for growth and reform.

Sincerely,

Jeanne Woodford

Former Warden of San Quentin Prison, 1999-2004
Former Director of the California Deportment of Corrections & Rehabilitation, 2004-2006
Chief of Adult Probation, San Francisco, 2006-2008

Statement of Laurence Steinberg, Ph.D.
on HR 2289, The Juvenile Justice Accountability and Improvement Act of 2009
June 9, 2009

I am a psychologist on the faculty of Temple University, as well as the former director of the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice. I am also the co-author, with Columbia University law professor Elizabeth Scott, of a new book called *Rethinking Juvenile Justice*.

For the past 30 years, I have been conducting research on various aspects of adolescent development, most recently, on the implications of research on brain development during this age period for understanding adolescents' behavior, including behavior that is harmful to themselves and others. What have scientists learned? Two important lessons stand out.

First, we now are certain that brain maturation continues long after childhood, well into the early adult years. Second, the specific nature of this change has important implications for how we view adolescent behavior under the law. So let me begin by describing how the brain changes in adolescence, and then say a few words about why it matters for today's hearing.

Three sets of brain changes take place in adolescence that are especially important. First, early in adolescence, around the time of puberty, there is a dramatic change in brain systems that govern our experience of pleasure, or reward. Receptors in the decision-making regions of the brain for dopamine, a neurotransmitter that is responsible for the sensation of reward, are more active in early adolescence than at any other time in development. This helps explain why adolescents are especially inclined toward sensation-seeking and experimentation with alcohol, tobacco, and other drugs, and why teenagers pay so much attention to the immediate and rewarding aspects of risky behavior that they often ignore its potential costs. During this same period, there are also major changes in the brain systems that process social information, which tells us why adolescents become so sensitive to the opinions of others and so susceptible to their influence.

The second major brain change is that, over the course of adolescence, there is a gradual maturation of brain regions and systems that are responsible for self-control. These systems put the brakes on impulsive behavior. They permit us to think ahead and allow us to more judiciously weigh the rewards and costs of risky decisions before acting. However, unlike the changes in reward sensitivity or social information processing, which take place early in adolescence, the maturation of the self-control system is more gradual, and not complete until the early 20s. As a consequence, middle adolescence – the period from 13 to 17 – is a period of heightened vulnerability to risky and reckless behavior, including crime and delinquency. The engines are running at full throttle, so to speak, but there is not yet a skilled driver behind the wheel.

Finally, throughout adolescence and into young adulthood, the connections between different brain regions are still maturing, allowing for the more efficient use of brain power and the better coordination of emotions and reason. The brain systems that govern complicated decision-making are easily taxed during adolescence. You've probably seen this in your own children. When 16-year-olds are in controlled environments where they have time to think before acting,

and when they can turn to adults for guidance, they often demonstrate adult-like maturity. But their capacity for mature judgment is still fragile at this age, and it is easily disrupted by situations that are emotionally arousing or stressful. The very same teenager who can compose a mature and thoughtful answer to a philosophical question posed in social studies class might behave irrationally and impulsively when with his friends or in the heat of the moment. And because a large proportion of juvenile offenders have substance abuse and other mental health problems, and this may make them all the more vulnerable to lapses in self-control. There are several important implications of this brain research for juvenile justice policy and practice.

A bedrock principle of our criminal law is that offenders are punished in proportion to their level of responsibility for their behavior. Under the law, for example, people are punished less harshly when their behavior is impulsive or coerced by others, or when their actions had potential consequences that they could not have anticipated. But brain science tells us that adolescents are inherently less able than adults to control themselves, to resist peer pressure, or to think ahead – and anyone in this room who has been the parent of a teenager has seen this first hand. In a legal system like ours, which punishes in proportion to an offender's responsibility for his actions, juvenile offenders should not be punished as harshly as we punish mature adults, even when they have committed comparable crimes. The U.S. Supreme Court followed this logic a few years ago when it abolished the juvenile death penalty. Our harshest penalties, the Court ruled, should be reserved for the "worst of the worst." Individuals who are not fully responsible for what they do surely are not in this category.

Second, because we know that brain maturation continues well into the 20s, teenagers are still works in progress, and many of them do things out of youthful impetuousness that they would not do just a few years later, when their brains are more fully developed. It is therefore important that we treat adolescents who have broken the law in ways consistent with the idea that most of them will outgrow this behavior as they mature into adulthood. Studies show that more than 90 percent of adolescents who commit crimes – even very serious crimes – cease their criminal behavior by time adolescence has ended. This finding has been reported by many researchers, and it is one that has once again emerged in our ongoing study of serious offenders here in Pennsylvania. We have not yet followed our research subjects through their 20s, but other studies show that virtually all offenders, even those whose criminal behavior persists into early adulthood, desist from crime by the time they are 30. So holding a juvenile in prison beyond his 30th birthday, at a cost of between $50,000 and $100,000 per year, doesn't make a lot of fiscal sense.

We have always known that adolescents behave differently than adults. Young people are more impulsive, more short-sighted, more willing to take risks, and more susceptible to the influence of their peers. Anyone who has raised a teenager, taught a teenager, counseled a teenager, or been a teenager knows this. Scientific discoveries about brain development have helped us understand *why* this is true, but they haven't changed the basic story line. Those who founded a separate system of juvenile justice in America some 100 years ago had it right, even without the benefit of brain scans, when they made a commitment to treating young people who have violated the law differently than how we treat adults. Recent research on brain development should strengthen our commitment to this basic principle.

Juveniles are not as mature as adults, and we recognize this in many ways under the law. Individuals can not vote until they are 18 because we do not believe they are mature enough to exercise this responsibility wisely. They can not enter into legal contracts. They can not purchase alcohol or tobacco. About the only adult privilege we confer to individuals under 18 is the right to drive an automobile, and given what we are learning about brain development, many states are even questioning the wisdom of that. Our willingness to treat juveniles like adults when they commit crimes, and expose them to the same punishments as adults when they are convicted, is inconsistent with virtually every other decision we make about teenagers under federal and state law.

There are some who contend that having life without parole as a potential punishment for juveniles who commit serious offenses will serve the purpose of deterring other would-be offenders from committing crimes. If only our teenagers listened to us enough to plan ahead so well! The fact is that very same limitations that make juveniles less responsible for their acts – their impulsivity, short-sightedness, and susceptibility to peer pressure – also make them less likely to be deterred by the law or by the example of others. And in fact, scientific studies of whether the prospect of a harsh sentence deters young people from committing crimes clearly show that the answer is no.

In the final analysis, there are only two only possible rationales for sentencing juveniles to life without the possibility of parole: they deserve the most severe punishment our system has the capacity to apply or that they are so likely to be dangerous for so long that we need to incarcerate them for life to protect the community. As to the first of these rationales, I believe, as the Supreme Court ruled in the juvenile death penalty case, that by virtue of their inherent immaturity, adolescents should not be exposed to punishments we reserve for the worst of the worst. And as to issue of public safety, the data show very clearly that even the worst juvenile offenders are unlikely to pose much of a threat once they have reached the age of 30.

Juveniles who commit crimes should be held responsible for their behavior, punished for their offenses, and treated in a way that protects the community. But we have the capacity to do this without locking them up for life and wasting taxpayers' dollars unnecessarily.

LOUISIANA HOUSE OF REPRESENTATIVES

600 Carondelet, 9th Floor
New Orleans, LA 70130
Email: legerw@legis.state.la.us
Phone: 504.556.9970
or 504.556.9971
Fax: 504.556.9972

Appropriations
Education
Joint Legislative Committee
on the Budget
Judiciary

WALT LEGER, III
State Representative ~ District 91

Testimony of State Representative Walt Leger
HR 2289 Juvenile Justice Accountability and Improvement Act of 2009

Committee on the Judiciary
Subcommittee on Crime Terrorism and Homeland Security
June 9, 2009

Chairman Conyers, Ranking Member Smith, members of the committee on the Judiciary, thank you for the opportunity to provide this statement of support for the record of your hearing on the Juvenile Justice Accountability and Improvement Act of 2009. As a former prosecutor and current State Legislator I share this committees goal of promoting public safety while simultaneously ensuring justice and due process. HR 2289 relates to the review of sentences of 15 and 16 year olds who were sentenced to life without the possibility of parole in adult prisons. I know that you understand that to get these sentences you would have been convicted of a very serious or violent offense.

To victims that are in the audience today and victims that have contacted my and your legislative offices, my heart goes out to you. Please accept my heartfelt sympathy and sorrow for your and your family's loss. The heartbreak and grief felt by each of you is a suffering that can only be understood by those who have experienced the loss of a family member to a senseless act of violence. This year, in the Louisiana State Legislature we have been evaluating over 11 different bills that either put stricter punishment on offenders or provide additional protections for victims. Protecting my own family is what motivates my work at the legislature and I assure you that this bill is no compromise of that commitment.

As a prosecutor I was responsible for sending people to prison for life without the possibility of parole. Fortunately, I was never tasked to send a juvenile to prison for the rest of their lives. Had I been, I would have been forced to follow the mandatory sentencing requirements laid out by the Louisiana law, however, I would have seriously questioned the legitimacy of believing that children cannot be rehabilitated.

In Louisiana and in the United States at large, we have historically recognized that children are different from adults in regards to drinking, smoking, the right to vote, the right to enroll in the military and the right to join into contracts among numerous other protections. However, over the last 100 years, as the criminal and juvenile justice systems have continued to evolve for some reason we have believed that children should in some cases be treated as adults. Why?

I believe this has stemmed from a fear of a growing juvenile crime problem that never actually materialized[1] and a lack of knowledge about brain development. We are now aware that the portion of the brain, which understands consequences and allows us to make rational judgments, is the last portion of the brain to develop and continues to develop well into our twenties. [2 3 4]

Now I am not going to say that children do not know the difference between right and wrong or that the lack of a requisite mental capacity should in someway mean that a person shouldn't be punished—however, our new found knowledge regarding the efficacy of crime deterrence and brain development proves that in our *modern* criminal justice system we need to prioritize rehabilitation over absolute punishment.

We spend billions of dollars each year in this country and tens of millions of dollars in the states alone rehabilitating people in the criminal justice system.[5] Criminal justice continues to be a top priority when it comes to government spending and for good reason—we bank on rehabilitation because we know that failing to rehabilitate will cost us far more.

The administration of law enforcement and criminal procedure is a incredibly difficult—that is why we have chosen you all to be here, to make these tough decisions in light of your expertise and your experience. There has been a lot said about HR 2289, and efforts to reform juvenile sentencing practices used solely by the United States, that I would like to correct.

First, this bill will not release a single prisoner. Under this bill youth under the age of 18 will merely become parole eligible, they will simply be able to apply for parole.

Additionally, this bill does not deny the importance of punishment—punishment is certainly due. However, if our goal is public safety and crime prevention, studies have shown that extremely harsh sentences do nothing to deter crime, especially in children.[6]

This bill simply recognizes that the millions of dollars that we spend to promote a rehabilitative criminal justice and correctional system is worthwhile, that it works and is capable of changing people and that our parole board is capable of judging if whether or not a person has in fact been rehabilitated. I have had

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[1] P Allard, M Young, 2002. "Prosecuting Juveniles in Adult Court: Perspectives For Policy Makers and Practioners." The Sentencing Project, Washington D.C.
[2] Goldberg, E. (2001). The Executive Brain: Frontal Lobes and the Civilized Mind. Oxford: Oxford University Press.
[3] Arnsten, A.F., Shansky, R.M. (2004). Adolescence: Vulnerable period for stress-induced prefrontal cortical function. Annals of the New York Academy of Sciences 1021: 143-147.
[4] Spear, L.P. (2000). The adolescent brain and age-related behavioral manifestations. Neuroscience and Biobehavioral Reviews, 24: 417-463.
[5] During the 2008-2009 fiscal year the recommended Louisiana state budget for corrections services was $490,723,255, according to Executive Budget of 2009. Additionally, during the 2008-2009 Fiscal year the requested federal budget for the Department of Justice was $22.7 Billion, with $5.5 Billion being allocated to the Bureau of Prisons according to the Presidents Budget Request.
[6] Nagin, D.S., 1998. Criminal deterrence research at the outset of the twenty-first century. In M. Tonry (Ed), Crime and justice: A review of research Vol. 23 (pp. 1-42). Chicago, IL: University of Chicago Press

the privilege of working with both those who serve in and lead our correctional system and am entirely confident in their ability to rehabilitate and protect public safety.

In Louisiana, in an effort to reform our own sentencing laws concerning juveniles in the adult criminal justice system we have drafted House Bill 715: The Youth Rehabilitation Review Bill. [7] This piece of legislation would corect the mandatory and automatic sentencing laws that prohibit meaningful review of defendants as well as correct an unfortunate gap in the sentencing practices for juveniles bringing us closer to the provisions of HR 2289.

In Louisiana, the intersection of juvenile transfer laws and mandatory sentencing laws for adults have lead Louisiana to incarcerate youth under the age of 18 for the rest of their lives with no possibility for parole review at a higher rate than any other state in the country. Our markedly high rate of incarceration is due in large part to the fact that Louisiana judges have no discretion to evaluate the mental capacity, involvement in the commission of the crime, or capability to rehabilitate before a youth is transferred to adult court.[8]

Additionally, HR 2289 offers a potential resolution to an unfortunate gap in the sentencing practices for juveniles. In Louisiana courts, if a juvenile (between the ages of 14 - 16) is charged with certain serious offences (listed in Ch. C. Arts. 305A(1) and 857A) they face three possible fates. If they are 14 years old, pursuant to Children's Code Article 857A, judges are authorized to conduct transfer hearings to determine if they will stay in juvenile court or be transferred to adult court. If they remain in juvenile court they will face a mandatory sentence to be served in a juvenile facility and they will be released at the age of 21. If a judges determines the 14-year-old's case should be heard in adult court, they will be transferred to adult court where they will be subject to mandatory sentencing that will allow them automatic release at the age of 31 (pursuant to Children's Code Article 857B).

On the other hand, if a juvenile is 15 or 16 years of age and charged with these same offenses, the juvenile is *automatically* transferred to adult court pursuant to Children's Code Article 305A. Once in adult court, they are subject to the *mandatory* adult sentencing laws and if found guilty will be *automatically* sentenced to life without the possibility of parole. Their age, maturity, sophistication, vulnerability, and ability to be rehabilitated are never taken into consideration.

Attached to this letter, I have included letters from organizations and individuals here in Louisiana and nationally that have joined our Louisiana coalition in support of HB 715:.

From the Juvenile Justice Project of Louisiana that has worked closely with the 164 people that will be affected by this bill and have found very important statistics regarding mental capacity, involvement in offenses and even attainment of college credits and certification that speak to the achievement of rehabilitation of which they have discussed in their own written testimony.

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[7] *see attached*

[8] In accordance with La. Children's Code, Tit. III, Ch. 4, Art. 305 the case of a child who is charged with certain serious offences (listed in Ch. C. Arts. 305A(1) and 857A) and was at least 15 at the time of commission, is under the exclusive jurisdiction of the adult criminal court.

From numerous victims that overtime have come to not only believe in criminal rehabilitation but have fought and continue to fight against the incarceration of juveniles for life.

From correctional administrators that speak to the capability of rehabilitation in the criminal justice system and to potential good that allowing review of prisoners could provide within correctional facilities

From the chief of child psychiatry at LSU that speaks to adolescent brain development and the physical potential for rehabilitation that exists in children

From the right reverend Joe Morris Doss of the Episcopal church

From the action council of the children's defense fund

From the Louisiana federation of families for children's mental health

From agenda for children

From the sentencing project

From the prison fellowship

From the campaign for youth justice

From human rights watch

These organizations and individuals recognize that it is not only important to be tough on crime but to be smart. They also recognize that from a moral perspective incarceration of 15 or 16 year old children for life does not measure up to the Christian values on which this country was founded.

In closing, I want to note that often times in the legislature we are called to make difficult decisions—to many this maybe one of them. But to me, our failure to pass this Bill not only means the failure of a piece of legislation it means the failure of we as legislators—entrusted with the responsibility to make tough and important decisions for our states and our country—have failed to recognize an outdated and insufficient sentencing practice with no basis in reason but only in fear.

the CAMPAIGN for the FAIR SENTENCING of YOUTH

National Coordinator
Judy René

Advisory Committee
Pat Arthur
Senior Attorney
National Center for Youth Law

Sarah Breyer
Director
National Juvenile Justice Network

Bernardine Dohrn
Director
Children & Family Justice Center
Associate Clinical Professor
Northwestern University School of Law

Dana Kaplan
Director
Juvenile Justice Project of Louisiana

Deborah LaBelle
Director
Juvenile Life Without Parole Initiative, ACLU

Kim McGill
Youth Justice Coalition

Liz Monahon
Equal Justice Works Fellow
Children's Law Center of Massachusetts, Inc.

Alison Parker
Deputy Director, U.S. Program
Human Rights Watch

Liz Ryan (consulting member)
Chief Executive Officer
Campaign for Youth Justice

Bryan Stevenson
Executive Director
Equal Justice Initiative

June 9, 2009

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
2409 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Conyers and Ranking Member Smith,

I am writing on behalf of the Campaign for the Fair Sentencing of Youth in support of the Juvenile Justice Accountability and Improvement Act of 2009. This bill, if made law, would require reviews of life sentences given to youth (individuals under the age of 18) after 15 years of incarceration, and every three years thereafter. This practice is an appropriate alternative to sentencing juvenile offenders to life without the possibility of parole ("JLWOP").

The Campaign for the Fair Sentencing of Youth is composed of national and state-based organizations, and individuals dedicated to ending the practice of sentencing youth to life in prison without hope for release. We believe that youth should be held accountable for their crimes in a way that reflects their age and potential for growth. Punishment of youth should be focused on rehabilitation and reintegration into society.

We work in more than fifteen states around the country to research current practices and advocate for fair, equitable sentencing of youth. Commendably, ten states either forbid JLWOP or presently have no such juvenile offenders that we know of serving that sentence. The states that currently prohibit JLWOP are: Alaska, Colorado, Kansas, Kentucky, New Mexico, and Oregon. The District of Columbia also forbids JLWOP. The states where there are no people known to be serving JLWOP are: Maine, New Jersey, New York, Vermont, and West Virginia. The federal government also sentences youth to LWOP—there are currently at least 37 people serving JLWOP in federal prison.

Despite popular thinking, JLWOP is not reserved for only the most serious crimes or the most violent criminals. The majority of people serving JLWOP were first-time offenders. One-quarter of them were convicted of "felony murder," which means they were participants in an underlying crime, which resulted in death. In other words, while these youth may have intended to commit some crime (for instance, robbing a store), they did not intend for anyone to be killed. Others sentenced to life without parole were convicted of crimes on a theory of accountability, which means that they were not the actual perpetrators of the crime.

The Supreme Court decided last month to rule on Eighth Amendment challenges to two JLWOP sentences next term. The cases, *Joe Harris Sullivan v. Florida* and *Terrance Jamar Graham v. Florida*, are striking examples of just how wrong-headed this law is. They highlight the fact that action is needed so that all 2,574 of these youth cases can be reviewed.

Notably, there are no other countries in the world that sentence youth to life without the possibility of parole. International human rights law prohibits life without parole sentences for those who commit their crimes before the age of 18, a prohibition that is universally applied outside of the United States. The United Nations Convention on the Rights of the Child (CRC), which only the United States and Somalia have refused to ratify, explicitly prohibits life without parole sentences. Additionally, JLWOP violates or drastically undermines at least three international treaties to which the United States is a party: the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the International Convention on the Elimination of All Forms of Racial Discrimination. The international committees responsible for monitoring compliance with these treaties have criticized the United States for its continued use of JLWOP as a form of punishment.

Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released to the streets. Instead, it will allow for careful, periodic reviews to determine whether, 15 years later, people sentenced to life without parole as youth continue to pose a threat to the community. Significantly, in the last two weeks we have received letters from over 200 people representing more than 20 different states supporting this legislation. These letters were sent from organizations, advocates, friends and family members of individuals serving JLWOP, as well as from those currently serving JLWOP. Attached you will find letters from a few of the individuals serving JLWOP because their voices are an essential part of this debate about HR 2289. I have redacted names and personal information for privacy purposes. Additionally, I have attached a statement in support of elimination of JLWOP with signatures of 20 former prosecutors and judges that we have received in the last 10 days.

We urge the esteemed members of the Judiciary Committee to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009, which

acknowledges the critical difference between youth and adults, and imposes an age-appropriate sentence that recognizes a young person's potential for growth and reform.

Sincerely,

Jody Kent
National Coordinator

cc: House Judiciary Committee

May 20, 2009

My name is [redacted] and I am serving a life sentence for a crime I committed when I was a juvenile. In July 1997 when I was fifteen years old, I was arrested and charged with second degree murder in [redacted] Soon thereafter I was indicted by a grand jury and charged as an adult. In March 1999 I was brought to trial and convicted by a jury. I was then sentenced to the mandatory term of life imprisonment without the benefit of parole. In [redacted] a life sentence means exactly that: life.

I take full responsibility for the crime I committed. I am cognizant of the pain I caused my victim's family and friends, my own family, and the community where I committed my inexcusable crime. I am ashamed of and remorseful for my actions and wish there was some way I could make amends with those I have hurt.

I grew up in a good community with a great family. My parents and two sisters were always loving and supportive of me. I was a gifted student and a talented athlete in school. As a teenager I became civically active and got involved in local and statewide political campaigns. At the age of fourteen I began hosting a political commentary program on a local television station. I aspired to study political science in college and eventually go to law school. Before the murder I committed, I had never been arrested or in any kind of trouble.

Although I was fifteen years old when I committed my crime, my victim was only fourteen. I constantly remind myself that not only did I destroy what may have been my own bright future, but I stole all of the opportunities my victim may have had. I am responsible for a tragedy that can never be undone.

While the sentence I received means I will die in prison I have never given up on living a life with meaning and purpose. Immediately upon entering the custody of the [redacted] I decided I would not succumb to a prison environment that sometimes cultivates criminal behavior. I planned to build upon the skills I already had and make improvements in the areas of my life where I was flawed.

Because I was incarcerated before I could complete high school, my first priority after arriving at a state prison in March 1999 was to continue my education. After spending the minimal time period in the G.E.D. program I received my diploma in October 1999 and was named valedictorian of the prison's graduating class. Since then I have earned college credits through classes offered on institutional grounds from [redacted] Technical College and through correspondence from [redacted] State University.

Since being in prison my Catholic faith has had a more prominent role in my life. Due to my age I did not have the opportunity to receive the sacrament of confirmation before my arrest. In June 2000 I completed my confirmation process and have regularly attended Catholic services and functions. My faith has sustained me and shaped how I live my life today.

I have taken full advantage of rehabilitative opportunities since my incarceration. During my first year at a state prison I completed the institution's anger management course. I also began to take part in AVP (Alternatives to Violence Program). I completed several AVP workshops, which promote non-violent conflict resolution. I was chosen to be trained as an apprentice facilitator for AVP workshops, completed the trainers' course, and eventually became an AVP lead facilitator.

In 1999 and 2000 I worked on the institution's renowned Toy Project. The Toy Project consisted of inmates handcrafting toys for several months out of the year. We would build toys after our normal work hours and on weekends and the toys would be given to community groups for proper distribution to needy children during the Christmas holidays.

I joined the prison's Jaycees club in 2001 and immediately became an active member. While a member I chaired a job fair sponsored by the club in conjunction with the state labor department. I also helped form a new Jaycee chapter, completed the U.S. Jaycees Business Advancement Program, and won a Jaycees chairman's planning guide national competition. I served as the Jaycee club president in 2002 and was awarded the A. Keith Cox Memorial Award by the [redacted] Jaycees at year-end. I was the first prison club president to ever receive this award, which is presented to the top chapter president in the state each year. Furthermore, my club was recognized as the top institutional Jaycee club in the United States the year I was president. I also eventually became the third inmate to ever become a 10th Degree Jaycee, the highest achievement a member can attain.

In 2003 I became a member of Toastmasters International and have dedicated much of my time to the program. I served as club president in 2004-2005, area governor in 2005-2006, and am currently serving as division governor for 2008-2009. I was named District 68 Toastmaster of the Year for 2007-2008, becoming the first prisoner to receive this distinction. I currently have achieved the status of Advanced Communicator Gold and Advanced Leader Bronze and will earn Distinguished Toastmaster status in a few weeks.

During my incarceration, I've maintained an outstanding work and conduct record. I have held jobs that require me to perform mostly clerical duties. I have developed organizational and computer skills, routinely compile advanced reports, and have acquired good work ethics. I have never been reassigned from a job for poor performance, and the few jobs I've been assigned to during my

imprisonment I've held for long periods of time. I have had zero disciplinary violations during my incarceration and have always strived to be a model prisoner.

My sentence does not presently allow me much hope for a future outside of prison. Nonetheless, I feel that the abilities I have attained during my incarceration, in addition to my lack of criminal history, age at arrest, and behavior since imprisonment, show I may be worth a second chance in society.

I am not bitter about my situation. I understand I committed a violent crime that deserves a severe sentence. I alone am responsible for being a prisoner. While my life was once filled with many goals, my greatest ambition today is to be as good of a son to my parents as they have been parents to me. I would like to be a productive citizen, rather than a burden. I want to make them proud and prove that I can be a very successful individual. And most of all, I want to be there for them in their time of need as they get older.

I understand that the issue of juveniles serving life sentences without the possibility of parole is a very sensitive issue. I am very aware of the position of victim rights groups and law enforcement officials that may have serious reservations about giving such offenders a second look. And I know there are some that say that such sentences are only handed out to the "worst of the worst."

While my crime was very serious, I believe I am not the "worst of the worst." I believe I am worth a second chance at some point in the future. I believe I can serve some greater purpose outside of prison walls. I would cherish the opportunity to make amends with those I have wronged. If ever given a chance, I will live a positive, law-abiding life.

I only hope for an opportunity to show a parole board that I am worth a review. I hope that one day my imprisonment is evaluated and qualified individuals can determine if I'm worth another chance at life.

Thank you for your time and consideration in this matter.

Sincerely,

[redacted]

Dear Members of the Committee,

My name is [redacted]
I am writing to humbly ask that this Committee Strongly considers passing HR 2289 "Juvenile Justice Accountability and Improvement Act of 2009". Sponsored by Mr. Scott of Virginia and Mr. Conyers.

I am Someone who is currently serving a life sentence without the possibility of parole, for a crime I committed when I was 17 years old. I take full responsibility for my actions, they were horrendous, irreparable, and not a day goes by that I do not regret my actions. Because of me a life was taking and I have to live with the pain suffered at my hands for the rest of my days. There's no "sentence" that can match that. I was convicted of capital murder, Attempt robbery, 2 counts of use of a Firearm at 18 years old. I am 28 years old now and have been incarcerated for 11 years. It took half of that time to gain a full realization and understanding of the consequences of my actions. Since that realization I've spent the other half of that time becoming the man I am today. The complete opposite of the "kid" who committed that crime. This mostly came through self-want, but age, maturity, experience a better understanding, and comprehension skills also played a significant role. Things that all youth lack.

I speak for myself and many other youth in my shoes when I say that a change has and can occur. There are endless reports that support and show the receptiveness and rehabilitive nature that youths are capable of during thier years of incarceration. On behalf of all the youth and those who were youths sentenced to life without parole I ask that you pass this Bill. Allow us the chance to prove to a Parole Board that change affore mentioned. I believe that if a crime was committed, than those reponsible should be punished. However I dispute the fact that we are sentenced to die in prison, not allowed the opportunity to earn, to show, to prove we deserve a chance to be "reviewed" or considered for Parole. Please allow those who have changed, continue to strive in a positive way, who will be positive contributors in society, a chance to do just that. I know your time is valuable and I thank you for taking the time to read and hopefully consider everything I've had to say. I've found it in my heart to forgive myself, which is the first step to positive change and I hope you allow someone to find it in there heart to forgive me. God Bless you!

Sincerely,

[redacted]

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
MAY 20, 2009
REPRESENTATIVES:

I HAVE BEEN ASKED TO WRITE TO YOU IN SUPPORT OF HR-2289. THIS IS A DIFFICULT TASK TO UNDERTAKE. IT SEEMS CONCEITED TO EVEN THINK THAT MY OPINION WOULD MATTER; AFTER ALL, WHO AM I BUT A 31 YEAR OLD MAN SERVING LIFE WITHOUT PAROLE? WHAT HAVE I DONE TO EARN ANY CONSIDERATION OF WHAT I HAVE TO SAY? I AM NO SOCIOLOGIST OR SCHOLAR, I HAVE NOT STUDIED THE PHYSICAL DEVELOPMENT OF CHILDREN'S BRAINS, I HAVE NOT EVEN STUDIED THE PRACTICE OF SENTENCING JUVENILES TO LONG ADULT SENTENCES IN AMERICA. I AM NO EXPERT.

BUT ONE THING WHICH I CAN OFFER YOU IS MY PERSONAL LIFE EXPERIENCE AS A 15 YEAR OLD KID WHO THREW HIS LIFE AWAY AND WOULD BE SENTENCED TO A LIFETIME IN A HELLISH ZOO. I SUPPOSE MY PERSONAL EXPERIENCE MAY HUMANIZE THE FACTS AND FIGURES FROM THE MANY STUDIES WHICH SUPPORT TREATING JUVENILE OFFENDERS DIFFERENTLY THAN ADULT OFFENDERS. I HOPE MY WORDS AT LEAST ADD TO YOUR JUDGMENT SO YOU CAN MAKE A JUST DECISION. I DO NOT ENVY BEING IN YOUR POSITION WITH SUCH GRAVE MATTERS OF CONSEQUENCE TO DECIDE.

I DON'T KNOW IF MY MENTALITY AND MATURITY AT 15 WAS LIKE MANY OTHER CHILDREN'S. SEE, I LIVED A LIFETIME OF PHYSICAL, SEXUAL AND EMOTIONAL TERROR IN A HOUSEHOLD WHICH CAN ONLY BE TERMED BIZZARRE. REALITY AND ME DIDN'T REALLY MEET UNTIL I WAS LOCKED UP AND INTRODUCED TO THE REAL WORLD. IF YOU

HAD ASKED ME IF IT WAS WRONG TO MURDER I WOULD HAVE REPLIED, "YES." AND YET WHILE I WAS SITTING IN JAIL AFTER FREELY CONFESSING TO KILLING MY ABUSIVE MOTHER AND STEP-FATHER I WAS WORRIED ABOUT GETTING IN TROUBLE FOR THE SMALL BIT OF MARIJUANA IN MY BEDROOM AND THAT I DID NOT GET MY SCHOOL WORK FOR THE DAY. I DID NOT COMPREHEND THAT I WAS IN TROUBLE, I SERIOUSLY THOUGHT THAT THERE WOULD BE NO CONSEQUENCES TO MY ACTIONS. WHAT I WOULD GIVE TO TAKE IT ALL BACK.

I'M NOT SAYING THAT BECAUSE I ENDED UP WITH 2 LIFE SENTENCES WITHOUT PAROLE. AS BAD AS PRISON IS, NO MATTER HOW HELLISH AND SOUL DESTROYING IT CAN BE, THE CONSEQUENCE WHICH HURTS FAR FAR MORE AND WHICH COMPLETELY BLINDSIDED ME WAS THE PAIN I CAUSED OTHERS. ALL I WANTED WAS MY PAIN AND MISERY TO GO AWAY. I DIDN'T WANT TO CAUSE ANYBODY PAIN, NOT EVEN MY PARENTS. BUT ONCE THEY WERE DEAD AND I REALIZED THE HORROR OF IT ALL IT HURT TO MY SOUL.

THE NEXT DAY I SAW MY OLDER BROTHER IN SCHOOL AFTER THE SCHOOL OFFICIALS FOUND OUT WHAT HAPPENED AND DETAINED ME. HE HAD MOVED OUT OF THE HOUSE TO ESCAPE THE TORMENT. WHEN I SAW HIM [redacted] BITTER GRIEF BROKE OPEN FROM MY HEART A WELLSPRING OF SORROW I NEVER WISH TO FEEL AGAIN. IT WAS AT THAT POINT I REALIZED MY ACTIONS HAD CONSEQUENCES FAR BEYOND MY SHORT SIGHTED DESIRE TO ESCAPE MY MISERY. I BROKE DOWN AND CRIED UNCONTROLLABLY. ALL I COULD SAY AND THINK WAS, "I'M SORRY," AS I REALIZED I HAD KILLED MY BROTHER'S MOM AS WELL. I DID NOT THINK OF THAT BEFOREHAND, I COULD NOT SEE PAST MY SITUATION. HE TRIED TO COMFORT ME

AS THE SHOCK SETTLED IN FOR HIM.

SLOWLY MY AWARENESS SPREAD LIKE THE RIPPLES OF PAIN I CAUSED. I BEGAN TO SEE THE PAIN I CAUSED MY MORE DISTANT FAMILY, FRIENDS FROM SCHOOL, AND NEIGHBORS. IT BECAME TOO MUCH FOR ME TO BEAR, I WAS TOO WEAK TO DEAL WITH THE EXTREME PAIN AND SORROW I FELT AS I REALIZED HOW MANY PEOPLE WERE HURT BY MY ACTIONS. IT TOOK MANY YEARS FOR ME TO START COMMING TO TERMS WITH IT, TO BE STRONG ENOUGH TO FACE THE CONSEQUENCES OF MY ACTIONS WHICH MATER THE MOST. WHILE I FLED THAT SORROW I PLAYED THE BLAME GAME AND PROBABLY SEEMED UNREMORSEFUL. IT WASN'T MY FAULT SO MANY PEOPLE GOT HURT, IF SOCIAL SERVICES ACTED WHEN MY BROTHER REPORTED THE ABUSE IT WOULDN'T'VE HAPPENED. IF MY MOTHER WASN'T SO INCREDIBLY CRUEL... IF THE SCHOOL COUNSELOR HAD ONLY DONE HIS JOB WHEN I TRIED TO TELL HIM... IF ONLY, IF ONLY, IF ONLY. I TRIED TO ESCAPE THE REAL "IF ONLY'S" — IF ONLY I WASN'T TOO WEAK TO SPEAK OUT FULLY ABOUT WHAT WAS GOING ON INSTEAD OF DROPPING RED FLAGS AND IF ONLY I WASN'T TOO COWARDLY TO STAND UP TO THEM AND NOT FEAR HAVING TO CONFRONT THEM PUBLICALLY.

THE TRUTH USUALLY LIES BETWEEN TWO EXTREMES. I AM TOO COMMITTED TO PERSONAL RESPONSIBILITY TO ACCEPT THE TRUTH IN MY HEART AND TRULY BELIEVE THAT IT IS NOT ALL ABOUT ME HAVING BEEN TOO WEAK AND COWARDLY TO DO THE RIGHT THING, BUT REALLY HAVING BEEN ABLE TO. BUT OBJECTIVELY I CAN SEE THAT I REALLY WAS NOT CAPABLE OF STANDING UP MANFULLY AGAINST THEM. I WAS A BROKEN DOWN TERRIFIED KID AND THE RED FLAGS I DROPPED ALL OVER WHICH WERE IGNORED AND THE SCREAMING FROM THE MOUNTAIN TOP WHICH AMMOUNTED TO A FLEA'S SQUEAL FROM A

DOG'S TAIL WAS ALL THAT I WAS CAPABLE OF. AFTER BEING TOLD FROM THE AGE OF 4 THAT IF I TOLD THE COPS WHAT WAS GOING ON THE AUTHORITIES WOULD SEE WHAT A BAD ROTTEN CHILD I WAS AND WOULD REWARD MY PARENTS WITH MEDALS FOR WHAT THEY DID, WHAT CHANCE DID I REALLY HAVE? THAT FEAR STILL HAUNTS ME TO THIS DAY, THE FEAR THAT I DESERVED IT ALL. I'M A 31 YEAR OLD MAN STILL STRUGGLING WITH THAT FEAR, WHAT CHANCE DID THE 15 YEAR OLD HAVE OF OVERCOMMING IT? THERE WAS NO WAY THAT CHILD COULD UNDERSTAND HIS OPTIONS AND DETERMINE REAL FEARS FROM DEMONS. ALL HE KNEW WAS UTTER DESPAIR AND NO WAY OUT.

KNOWING NOW THE HORRIFIC CONSEQUENCES MY ACTIONS HAD IN HURTING SO MANY PEOPLE I AM EVEN MORE GRIEVED BY HOW UNNECESSARY THOSE ACTIONS WERE. LOOKING BACK NOW AFTER 16 MORE YEARS OF EXPERIENCE AND MATURITY I SEE SO MANY BETTER WAYS I COULD HAVE DEALT WITH THE SITUATION, WAYS I WAS COMPLETELY BLIND TO THEN. IT IS ONE THING TO LIVE WITH THE PAIN OF HURTING OTHERS WHEN IT WAS "NECESSARY," IT IS QUITE ANOTHER WHEN YOU REALIZE IT WAS UNNECESSARY. KNOWING THAT THE PAIN WAS CAUSED OUT OF BLINDNESS AND IGNORANCE ONLY MAKES MY SORROW MORE BITTER.

BUT THAT IS ONLY THE STORY OF MY EXPERIENCE AS A LOST TERRIBLY DAMAGED KID WHO ACTED IN COWARDNESS AND PAIN. MY STORY DOES NOT END THERE. TO TRULY HAVE THE BENEFIT OF UNDERSTANDING THE EXPERIENCE OF A YOUNG JUVENILE OFFENDER SERVING LIFE I MUST TELL YOU OF MY GROWTH.

IT IS TRITE TO SPEAK OF RELIGIOUS CONVERSIONS IN PRISON. JUST LIKE THERE ARE NO ATHIESTS IN FOXHOLES THERE ARE NO ATHIESTS IN PRISON. IT IS WHEN WE ARE AT OUR MOST HOPELESS THAT WE TURN TO GOD AS OUR "LAST HOPE." IT IS HUMAN NATURE.

AND IT SHOULD NOT SURPRISE ANYONE THAT PRISONERS ARE HUMAN TOO AND REACT LIKE ANYBODY ELSE. THE REAL TEST FOR THE "FOX-HOLE BELIEVER" IS NOT HOW SINCERE HE IS WHEN SHELLS ARE FALLING BUT HOW SINCERE HE IS WHEN ALL IS CALM AND GOOD IN HIS WORLD.

I HAVE YET TO LIVE IN THAT CALM AND GOOD WORLD SO I WON'T PREACH TO YOU ABOUT RELIGIOUS CONVERSION. UNTIL I FACE THE REAL TEST YOU CAN'T KNOW IF I'M JUST A "FOXHOLE BELIEVER." BUT I WILL TELL YOU THIS, MY LIFE SEEMS TO BE THE EPITOME OF ROMANS 8:28 - "ALL THINGS WORK TOGETHER FOR GOOD FOR THOSE WHO LOVE GOD." WHAT I CAN'T PUT MY FINGER ON IS IF WHETHER HE SUPERNATURALLY BRINGS GOOD OUT OF BAD SITUATIONS OR IF THE CHARACTER OF THOSE WHO LOVE GOD [redacted] FORCES THEM TO SEE AND CULTIVATE THE GOOD IN ANY SITUATION. I'LL LEAVE GREATER MINDS TO DECIDE THAT.

PRISON CAN BE A GREAT FIELD. IF ANY OF YOU HAVE A GREEN THUMB YOU KNOW THAT MANURE WILL MAKE YOUR PLANTS GROW BIG AND FRUITFUL. IF YOU HAVE A NOT-SO-GREEN THUMB THEN PERHAPS YOU'VE ALSO LEARNED THAT TOO MUCH OF THAT KIND OF FERTILIZER WILL SCORCH AND KILL YOUR PLANTS. PRISON IS A WELL-MANURED FIELD. SEEDS WHICH ARE HEARTY ENOUGH CAN GROW AND PROSPER WHILE OTHERS WILL WILT AND DIE.

COMMING TO PRISON AS A KID WAS BOTH SCARRY AND EXCITING. IT WAS GREAT TO NOT BE AROUND SO MANY JUVENILES. IN COUNTY JAIL I COULD NOT BE AROUND ADULTS AND THERE WAS NOTHING TO DO SO THE JUVENILE UNIT WAS WILD AND CRAZY. IT WAS NICE TO BE AWAY FROM THAT MADNESS BUT NOW I WAS AROUND GUYS MUCH BIGGER THAN ME AND WHOSE FAVORITE CONVERSATIONS SEEMED TO BE TALES OF PRISON MURDERS AND KNIFE FIGHTS. I COULD

SEE WHAT HAPPENED TO THE GUYS WHO DIDN'T FOLLOW THE CONVICT'S RULES. THOSE WHO WENT TO THE OFFICERS FOR PROTECTION QUICKLY ENDED UP BECOMMING A HOMOSEXUAL OR TORMENTED AND EXTORTED WHEREVER HE WENT. THOSE WHO DID NOT GO ALONG WERE BEATEN AND OSTRACIZED BY EVERYBODY AND LEFT TO THE MERCY OF THE SHARKS. INFORMANTS WALKED AROUND WITH A BULL'S EYE ON THEIR BACK WITH SOME ANIMAL JUST WAITING FOR THE OPPORTUNITY TO GET AWAY WITH HURTING HIM. YOU QUICKLY HAVE TO DECIDE IF YOU WANT TO FIT IN OR STICK OUT. THOSE WHO DON'T FIT IN PAY DEARLY.

I AM FORTUNATE. I CHOSE TO FIT IN BUT THE GRIEF WITHIN ME PREVENTED ME FROM BECOMMING AN ANIMAL, I DID NOT WANT TO HURT ANY MORE PEOPLE. PRISON IS A VIOLENT PLACE SO THERE WERE TIMES I HAD TO STAND MY GROUND TO PROTECT MYSELF AND, AS I LEARNED TO DO SO, THE HUSK OF THAT POOR BATTERED LITTLE BOY I WAS FELL AWAY AND STRENGTH AND CONFIDENCE BEGAN TO TAKE ROOT. I GREW STRONG ENOUGH TO FACE MY DEMONS AND INNER TORMENT. THE GRIEF I FELT, THE REMORSE FOR HURTING SO MANY, KEPT ME HUMAN IN A WORLD OF BEASTS BUT THE CONFLICT ALLOWED ME TO GROW.

IT DID NOT TAKE LONG FOR ME TO NOT LIKE WHAT I SAW AROUND ME. BEING A KID I NATURALLY WANTED TO FIT IN EVEN IF OUTCASTS WERE NOT VICTIMIZED, BUT I BEGAN TO SEE THE NEGATIVITY IN MY PEERS AND IT DISGUSTED ME. THEY REVELED IN OTHER'S PAIN AND THEIR LIVES REVOLVED AROUND DRUGS AND FRIVOLITY. THAT IS NOT WHO I WANTED TO BE AND I HAD AN URGE TO MAKE UP FOR WHAT I HAD DONE. I BEGAN TO WORK ON MY ATTITUDES AND LIFE OUTLOOK, I WANTED TO BE THE OPPOSITE OF WHAT I SAW AROUND ME.

I TURNED TOWARDS EDUCATION AND CONTEMPLATION. OVER THE YEARS I WORKED TO EARN A DOCTORATES DEGREE IN

THEOLOGY FROM CALVARY CHRISTIAN COLLEGE AND SEMINARY IN SOUTH BEND INDIANA. I STUDIED HISTORY, POLITICS, AND PHILOSOPHY. I LATCHED ON TO ANYTHING WHICH WOULD PROVIDE SUBSTANCE AND MEANING TO MY LIFE. I TRY TO VICARIOUSLY LIVE THROUGH THE GUYS I MEET IN HERE WHO HAVE THAT SPARK OF HUMANITY LEFT IN THEM AND WHO ARE GETTING OUT. I WANT NOTHING MORE THAN TO LIVE A QUIET NORMAL LIFE AND RAISE A FAMILY, SO WHEN I FIND SOMEONE WITH THAT SPARK BUT WHO IS NOT ON THE RIGHT PATH I COAX THEM ON OVER. IT DELIGHTS ME TO SEE THEIR GROWTH OUT OF CRIMINAL MENTALITIES AND TOWARDS A PURPOSFUL LIFE. WHEN THEY GET OUT AND WRITE TO ME, TELLING ME ABOUT THEIR JOBS AND WIVES I FEEL LIKE A PIECE OF ME IS OUT THERE WITH THEM IN THE REAL WORLD. THAT IS THE ONLY WAY I CAN LIVE MY DREAMS.

I ENJOY HELPING PEOPLE. I TAUGHT GUYS WHO SCORED FROM KINDERGARDEN TO 2ND GRADE FOR A FEW YEARS AND EVEN HELPED A FEW OBTAIN THEIR GEDs. I ESPECIALLY LOVED TEACHING MATH. MOST OF THE GUYS HATED MATH AND COULDN'T UNDERSTAND IT. I HAVE ALWAYS LOVED MATH AND FOUND GREAT SATISFACTION IN BEING ABLE TO CONVEY IT TO THE GUYS IN WAYS THEY COULD UNDERSTAND. AFTER CAUSING HARM IT FEELS REDEEMING TO UPLIFT AND BRING POSITIVITY TO PEOPLE.

THE TREMENDOUS GUILT I CARRY FOR MY CRIMES IS THE ENGINE WHICH PUSHES ME TO BE THE BEST MAN I CAN BE AND THIS ENVIRONMENT GIVES ME UNENDING LEARNING EXPERIENCES. I WANT TO BE WORTHY OF THE LOVE OF MY FAMILY WHO STILL SUPPORTS ME DESPITE HOW MUCH I'VE HURT THEM. I WANT TO BE A WORTHWHILE PERSON, TO NOT BE THE WRETCHED CREATURE I WAS WHO ACTED BLINDLY OUT OF PAIN. THAT HAS BEEN MY GOAL ALL

THESE YEARS WITH NO GLIMMER OF FREEDOM ON THE HORIZON. NOW THAT THERE'S A HOPE OF HAVING THE OPPORTUNITY OF FREEDOM... I AM AWESTRUCK BY THE POSSIBILITIES.

I HOPE I WAS ABLE TO PROVIDE YOU WITH SOME INSIGHT FROM MY EXPERIENCES WHICH WILL AID IN YOUR DECISION. SORRY FOR THE SPELLING MISTAKES AS I DON'T HAVE A DICTIONARY AND PLEASE EXCUSE THE ROUGHNESS OF THIS LETTER. I DID NOT WANT TO REWRITE IT AND REFINE IT LEST IT TAKE AWAY FROM ITS GENUINENESS. MAY WISDOM AND PRUDENCE GUIDE YOUR DECISION.

[redacted]

Statement in support of elimination of juvenile life without parole sentencing

We, the undersigned current and former prosecutors and judges, write in support of changing state and federal laws to ensure that any life sentence imposed in a case where the defendant was under the age of eighteen at the time of the offense, receives meaningful periodic reviews. As those who have served as prosecutors and judges, we are well aware of the need to protect our community and ensure that individuals who commit serious offenses are sentenced appropriately. We question, however, whether it makes sense to send a youth to prison for the rest of his/her life (known as a life without parole or "LWOP" sentence) with no opportunity for review and no ability to assess whether the individual has been reformed and is safe to return to the community at some point before he or she dies. We thus support a carefully tailored review at an appropriate time to determine whether these individuals should remain incarcerated.

Scientific evidence proves that youth are fundamentally different from adults because of their immature brain development, and their weaker impulse control and reasoning abilities. Indeed, these exact factors led the U.S. Supreme Court a few years ago to conclude that youth should be treated differently by the criminal justice system because of their developmental differences. In the decision, Justice Kennedy, who wrote for the majority, noted the fact that youth have more potential to reform their behavior and be rehabilitated than adults. As such, the Supreme Court ruled that it is unconstitutional to execute those under the age of 18 at the time they committed a crime.[1]

Juvenile LWOP is not only an unduly harsh and inappropriate penalty for youth, it is also extremely costly to taxpayers. In the United States, we spend approximately $90 million per year to incarcerate people serving juvenile LWOP sentences. Assuming they are incarcerated at age 17 (many are younger) and live to the average life expectancy of 78, we are spending a total of about $5.5 billion to incarcerate people who may at some point in their lives pose no threat to society and could be productive members of our community.

We know there are some people who have committed heinous crimes and are unfit to be released into the community regardless of their age when they committed the crime. Elimination of juvenile LWOP will not allow these people to be released to the streets. Instead, it will allow for careful reviews to determine whether, years later, individuals sentenced to life without parole as youth continue to pose a threat to the community.

For all of these reasons, we believe that it is both inappropriate and unjust to sentence juveniles to life without the possibility of parole.

Anthony S. Barkow, *Assistant United States Attorney, Southern District of New York, 2002-2008; Assistant United States Attorney, District of Columbia, 1998-2002; Trial Attorney, Attorney General's Honors Program in the Office of Consumer Litigation, United States Department of Justice, 1996-1998*

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[1] *See Roper v. Simmons, 543 U.S. 551, 569–73 (2005).*

Shay Bilchik, *Assistant State Attorney, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, 1993-2000; Administrator, Miami-Dade State Attorney's Office, Florida, 1977-1999*

Robert J. Del Tufo, *Attorney General, State of New Jersey, 1990-1993; United States Attorney, District of New Jersey, 1977-1980; First Assistant State Attorney General and Director of New Jersey's Division of Criminal Justice*

Michael H. Dettmer, *United States Attorney, Western District of Michigan, 1994-2001*

Bennett Gershman, *Prosecutor, Manhattan District Attorney's Office, 1967-1972*

Isabel Gomez, *Former Judge, Hennepin County Circuit Court, State of Minnesota*

Joseph R. Grodin, *Former Associate Justice, California Supreme Court*

Shirley M. Hufstedler, *United States Secretary of Education, 1979-1981; Judge, United States Court of Appeals for the Ninth Circuit, 1968-1979; Associate Justice, California Court of Appeal, 1966-1968; Judge, Los Angeles County Superior Court, 1961-1966*

Bruce Jacob, *Former Assistant Attorney General, State of Florida*

Anne Kenner, *Assistant United States Attorney, Northern District of California, 1990-2000, Eastern District of New York, 1986-1989*

William A. Kimbrough Jr., *United States Attorney, Southern District of Alabama, 1977-1981; Assistant United States Attorney, Southern District of Alabama, 1961-1965*

Gerald Kogan, *Former Chief Justice, Supreme Court of the State of Florida; Former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida*

Miriam Krinsky, *Assistant United States Attorney, Central District of California; Assistant US Attorney, Central District of California 1987-1988, 1990-2002, District of Maryland, 1988-1999; Chief, Criminal Appellate Section, Central District of California 1992-2000; Chief, General Crimes Section, Central District of California, 1991-1992.*

Mark Osler, *Assistant United States Attorney, Eastern District of Michigan, 1995-2000*

A. John Pappalardo, *United States Attorney, District of Massachusetts, 1992-1993*

H. James Pickerstein, *Chief Assistant United States Attorney, District of Connecticut, 1974-1996; Court Appointed United States Attorney, District of Connecticut, 1974-1975*

Richard A. Rossman, *Chief of Staff, Criminal Division, United States Department of Justice, 1998-1999; United States Attorney, Eastern District of Michigan, 1980-1981;*

Chief Assistant United States Attorney, Eastern District of Michigan, 1977-1980; Chief Deputy Federal Defender, Eastern District of Michigan, 1972-1975

Heidi Rummel, *Assistant United States Attorney, District of Columbia, 1994-1996, Los Angeles, California, 1996-2005*

Patricia Wald, *United States Judge to the International Criminal Tribunal for the Former Yugoslavia, 1999-2001; Judge, United States Court of Appeals for D.C. Circuit, 1979-1999, Chief Judge, 1986-1991*

James J. West, *United States Attorney, Middle District of Pennsylvania, 1985-1993*

HUMAN RIGHTS WATCH

EXECUTIVE SUMMARY **MAY 2008**

The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008

Youth (persons below the age of 18) can and do commit terrible crimes, causing enormous suffering to victims and their families. When youth commit such crimes, they should be held accountable, but in a manner that reflects their age and immaturity and their special capacity for rehabilitation. Instead, in 39 US states and under federal law, teens who are too young to vote, buy cigarettes, or serve on the juries they appear before, are tried as adults and, if convicted, are sentenced to juvenile life without parole (JLWOP). Life without parole means that a young person is sentenced to die in prison.

This brochure updates *The Rest of Their Lives*, a report first published in 2005.

A sentence of juvenile life without parole is cruel, unfair, and unnecessary. It sends an unequivocal message to youth that they are beyond redemption. It erroneously presumes that allowing youth offenders a parole hearing (which is not a guarantee of release) would fail to protect public safety and be unfair to victims. It also ignores the differences between adults and children—differences we accept as a matter of common sense, and which science fully recognizes.

Summary of New Findings in 2008

- There are currently 2,484 persons in US prisons serving sentences of life without parole for crimes committed when they were under the age of 18.
- In 11 states, black youth arrested for murder are significantly more likely to be sentenced to JLWOP than are white youth arrested for the same crime.
- There are no youth serving JLWOP anywhere else in the world.

There are 2,484 youth serving life without parole in the US and none in the rest of the world.

Four youth offenders serving life without parole sentences in US prisons; the pictures depict each of them within a few months of his or her arrest. They were (from left to right) age seventeen, fourteen, sixteen, and fifteen when they committed their crimes. © 2005 Private.

Life without Parole for Youth: A Nationwide Problem

As of May 2008, Human Rights Watch has calculated that there are 2,484 youth offenders serving life without parole in the United States—up from the 2,225 we reported in 2005. The higher number is due primarily to improvements in state data reporting rather than significant increases in JLWOP sentencing rates.

California, Florida, Louisiana, Michigan, and Pennsylvania have the largest numbers of youth sentenced to JLWOP, and they all impose the sentence on a presumptive or mandatory basis for some categories of offense.

Youth serving JLWOP across the country are predominantly male (only 2.6 percent are female), and the majority are black (60 percent). Sixteen percent were 15 or younger when they committed their crimes. Figure 1 (below) gives the state distribution of the 2,484 youth serving JLWOP sentences.

In some states, a sentence of JLWOP is mandatory once a youth is convicted of certain crimes; in others, the sentencing judge has discretion. California, Florida, Louisiana, Michigan, and Pennsylvania have the largest numbers of youth sentenced to JLWOP, and all but California impose the sentence on a mandatory basis. In California, youth convicted of certain categories of murder are presumptively sentenced to JLWOP, since California law states that in such cases youth "shall be" sentenced to JLWOP unless a judge finds "good reason" to instead impose a sentence of 25 years to life.

Harsh Sentencing Practices

The number of youth offenders entering prison with JLWOP sentences each year began to increase in the late 1980s, reaching 50 in 1989. It peaked in 1996 at 152, and then began to decline; in 2003, 54 youth offenders entered prison with the sentence. But states have by no means abandoned the use of life without parole for youth offenders, and in many cases they have treated them more harshly than adults.

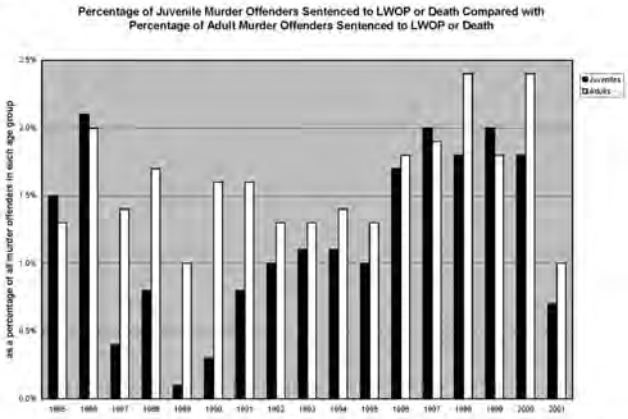
In 11 of the 17 years between 1985 and 2001, youth convicted of murder in the United States were more likely to enter prison with a life without parole sentence than were adults convicted of the same crime. As shown in Figure 2, even when we consider murderers sentenced to either life without parole or death, in four of those 17 years, youth were more likely than adults to receive one of these two most punitive sentences.

Figure 1 – State Distribution of 2,484 Juvenile Offenders Serving JLWOP

State	Total	State Law	State	Total	State Law
Alabama	62	Mandatory	Nebraska	24	Mandatory
Alaska	0	No JLWOP	Nevada	16	Discretionary
Arizona	32	Discretionary	New Hampshire	3	Mandatory
Arkansas	73	Mandatory	New Jersey	0	Mandatory
California	227	JLWOP Presumption	New Mexico	0	No JLWOP
Colorado	48	No JLWOP post-2005	New York	0	Mandatory
Connecticut	9	Mandatory	North Carolina	44	Mandatory
Delaware	7	Mandatory	North Dakota	1	Discretionary
Florida	266	Mandatory	Ohio	0	Mandatory
Georgia	8	Discretionary	Oklahoma	48	Discretionary
Hawaii	4	Mandatory	Oregon	0	No JLWOP
Idaho	4	Mandatory	Pennsylvania	444	Mandatory
Illinois	103	Mandatory	Rhode Island	2	Discretionary
Indiana	2	Mandatory	South Carolina	26	Mandatory
Iowa	42	Mandatory	South Dakota	9	Mandatory
Kansas	0	No JLWOP	Tennessee	4	Discretionary
Kentucky	5	Ban on sentencing to JLWOP under court challenge	Texas	1	Mandatory
Louisiana	334	Mandatory	Utah	1	Discretionary
Maine	0	Discretionary	Vermont	0	Discretionary
Maryland	13	Discretionary	Virginia	48	Mandatory
Massachusetts	53	Mandatory	Washington	28	Mandatory
Michigan	316	Mandatory	West Virginia	0	Discretionary
Minnesota	2	Mandatory	Wisconsin	16	Discretionary
Mississippi	24	Mandatory	Wyoming	6	Discretionary
Missouri	116	Mandatory	Federal Prisons	2	Discretionary
Montana	1	Mandatory	Washington, D.C.	0	No JLWOP

Sources: State prison systems provided data directly to Human Rights Watch as of mid-2004 (except that we used the National Corrections Reporting Program to obtain data for Virginia, and for Alabama, we used its inmate locator system). We updated data between mid-2004 and 2008 using the following methods: state departments of corrections sent updated data directly to Human Rights Watch or to other organizations; post-2004 press reports were checked against inmate records with state departments of corrections; and correspondence received by Human Rights Watch from youth offenders sentenced to life without parole was checked against press reports and state inmate records. The term "mandatory" means judges have no option other than to sentence youth offenders to JLWOP upon conviction for at least one type of offense. Most often that offense is first degree murder.

Figure 2



Source: National Corrections Reporting Program (NCRP). The NCRP is sponsored by the Bureau of Justice Statistics (BJS), US Department of Justice, and was created to address the need to consolidate data on corrections at the national level. NCRP data downloads are available online at http://www.icpsr.umich.edu/NACJD/NCRP/ (accessed September 6, 2005).

In some years, youth convicted of murder were more likely to enter prison with a life without parole sentence than were adults convicted of murder.

Crimes That Can Lead to a Life without Parole Sentence

As youth and adult crime rates rose in the late 1980s and early 1990s, politicians and the public feared they were being besieged by "super-predators"—youth who repeatedly committed violent offenses. In response, states decided to try youth as adults and to send greater numbers of those convicted to adult prison, some with life without parole sentences. The actual profiles of youth sentenced to JLWOP show how misguided and unnecessary those decisions were.

59 percent of youth serving life without parole received the sentence for their first-ever criminal conviction of any sort.

- The majority of youth sentenced to life without parole are first offenders. Prior to the crime for which they were sentenced to JLWOP, an estimated 59 percent had neither an adult criminal record nor a juvenile adjudication.

26 percent of youth serving life without parole were convicted of felony murder.

- An estimated 26 percent of youth offenders were convicted of felony murder. These are crimes in which a teen who commits a non-homicide felony such as robbery is held responsible for a codefendant's act of murder that occurs during the course of the felony. State laws often do not require the teen to

know that a murder will take place or even that the codefendant is armed.

- Many teens serving JLWOP committed their crimes with adults. For example, in 70 percent of JLWOP cases in California in which a teen was acting with codefendants, at least one of the codefendants was an adult. And, in an estimated 56 percent of California cases in which a juvenile who received JLWOP had an adult codefendant, the adult received a more lenient sentence than the teen.

Life without Parole for Felony Murder

Peter A. was 15 years old, a sophomore in high school, and living at home with his family in Chicago when he committed his crime. Peter spent much of his time with his adult brother, with whom Peter would "go to the movies and go go-cart racing" and for whom Peter would sometimes act as a drug courier. After two individuals stole drugs and money from his brother's apartment, Peter, on instructions from his brother, helped to steal a van in order to drive to the individuals' home to recover the drugs and money.

Peter stayed in the van while two others went inside. He heard shots, and a few seconds later one of the men who had gone in came running out of the house. Two people had been killed.

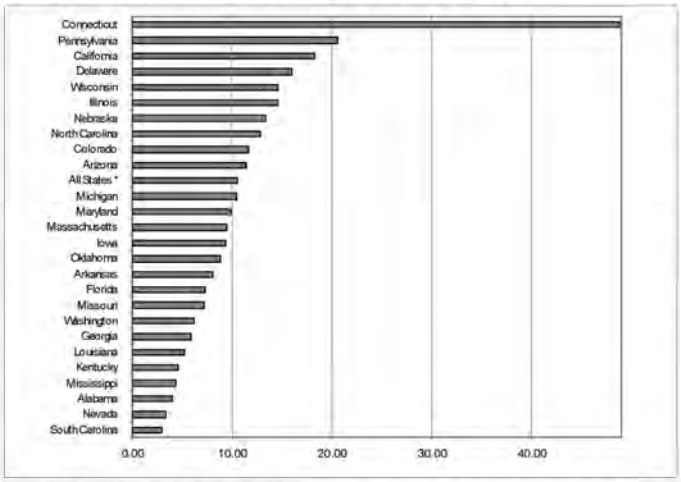
Peter was held accountable for the double murder because it was proven he had stolen the van used to drive to the victims' house. He was sentenced to life without possibility of parole even though the judge called Peter "a bright lad" with "rehabilitative potential." It was a mandatory sentence; the judge had no discretion to decide otherwise.

Racially Discriminatory Sentencing

On average across the country, black youth are serving life without parole at a per capita rate that is 10 times that of white youth. Many states have racial disparities that are far greater. Among the 26 states with five or more youth offenders serving JLWOP and for which we had data on race, the highest black to white ratios are in Connecticut, Pennsylvania, and California, where black youth are between 18 and 48 times more likely to be serving a sentence of life without parole than white youth.

In Connecticut, Pennsylvania, and California, black youth are between 18 and 48 times more likely to be serving a sentence of life without parole than white youth.

Figure 3 – Ratio of Black to White Youth Serving JLWOP Sentences



Sources: See Figure 1 above for JLWOP sentencing data. Population data extracted by Human Rights Watch from C. Puzzanchera, T. Finnegan, and W. Kang, National Center for Juvenile Justice, "Easy Access to Juvenile Populations Online: US Census Population Data," State Population Data with Bridged Race Categories 2004, for ages 14-17, http://www.ojjdp.ncjrs.gov/ojstatbb/ezapop/ (accessed January 2, 2008). Certain states are not included in the above figure because of insufficient data. The ratios were calculated using rates per 10,000 population of youth age 14-17 disaggregated by race and state.

Human Rights Watch challenges the US government's claim that there is no proof that black youth were sentenced to JLWOP because of racial discrimination.

On February 22, 2008, at a hearing before the United Nations Committee on the Elimination of Racial Discrimination (CERD), the US Department of Justice claimed that although black youth are more likely to be sentenced to JLWOP, crime rates among black youth are higher and therefore the "disparate impacts are not per se evidence of racial discrimination. There is no proof that they were sentenced to life without parole because of racial discrimination." Human Rights Watch has found evidence that, while not conclusive, seriously challenges this claim.

Across the US, black youth arrested for murder were sentenced to LWOP at a rate 1.59 times that of white youth arrested for murder.

We gathered data on the race of youth arrested for murder (which is the criminal conviction that most often leads to the life without parole sentence), and the race of youth serving life without parole. Figure 4 presents the ratio of black youth arrested for murder to black youth sentenced to life without the possibility of parole (column A) and the comparable ratio for white youth (column B). The difference between the ratio for black and for white youth is presented as a ratio in column C.

Figure 4 — Sentencing of Black and White Youth to JLWOP After Arrest for Murder

State	A: Black Juvenile Murder Arrest Rate / Black JLWOP Rate	B: White Juvenile Murder Arrest Rate / White JLWOP Rate	C: Black Rate of JLWOP Per Arrests / White Rate of JLWOP Per Arrests
California	21.14	123.31	5.83
Connecticut	17.13	95.00	5.55
Delaware	3.00	12.00	4.00
Colorado	4.23	11.89	2.81
Arizona	16.33	41.00	2.51
*All States	7.98	12.70	1.59
North Carolina	21.19	32.43	1.53
Washington	11.60	17.31	1.49
Illinois	12.74	18.90	1.48
Pennsylvania	1.90	2.82	1.48
Nebraska	4.00	4.50	1.13

Sources: See Figures 1 and 3 above. Murder arrest data extracted by Human Rights Watch from data provided by the Federal Bureau of Investigation (FBI), "Uniform Crime Reporting Program: 1990-2005 Arrest by State" (extracted by code for murder crimes, juvenile status, and race), on file with Human Rights Watch.

Something other than the criminality of black and white youth—such as discrimination—causes JLWOP sentencing disparities.

If race were not related to JLWOP sentencing, we would expect the ratio in column C to be equal to one. However, in 10 states, we found that the ratio was significantly higher. California has the worst disparities in the nation: for every 21.14 black youth arrested for murder in the state, one is serving a JLWOP sentence, while for every 123.31 white youth arrested for murder, one is serving JLWOP. In other words, black youth arrested for murder are sentenced to JLWOP in California at a rate that is 5.83 times that of white youth arrested for murder. Across all 25 states for which we had data, black youth arrested for murder were sentenced to JLWOP at a rate 1.59 times that of white youth arrested for murder.

These disparities suggest that there is something other than the relative criminality of these two racial groups—something that happens after their arrest for murder, such as discriminatory treatment by prosecutors, before courts, and by sentencing judges—that causes the disparities between sentencing of black and white youth to JLWOP.

Life in Prison

No one expects prison to be a pleasant place. But there is a considerable incongruity between the physical and mental maturity of young prisoners and the kinds of people and experiences they confront in prison. The vast majority of youth serving life without parole have had violent experiences in prison.

Many youth get into fights with other prisoners in order to defend themselves from physical violence, including rape:

- Jackson W., who entered prison at age 17 with a life without parole sentence, said that he was hospitalized in prison in Arkansas because "I got stabbed a couple times .... I got my head busted by locks. That's a small weapon, but they still hurt."

"I got stabbed a couple times .... I got my head busted by locks. That's a small weapon, but they still hurt."

- Andrew H., who was 16 at the time of his crime and entered prison with life without parole at the same age, explained that he was hospitalized after being "stabbed in the left shoulder helping a guy that I knew when others tried to rape him."

Rape is a particular risk for youth offenders:

- Luke J., who committed his crime at age 17 and is sentenced to JLWOP, said that he had always been "real skinny" and always looked younger than his age: "When I first came into prison [a] dude told me that he was gonna make me his 'bitch' and he beat me up real bad."

Once in prison, youth offenders sentenced to life without parole believe that society has thrown them away, and their loss of hope can result in self-harm and suicide:

- José F., who committed his crime at age 17 and is sentenced to JLWOP, said: "I went to mental health one time and they put me on a pain killer. I told them I was starting to have suicidal thoughts ... and they said that was normal and just go back to my cell. I cut up my wrist. Well, I thought that drugs helped me to escape. But then reality is still here when I wake up."

"I told them I was starting to have suicidal thoughts ... and they said that was normal and just go back to my cell. I cut up my wrist .... But then reality is still here when I wake up."

Life without Parole and International Human Rights

The global rejection of life without parole for young offenders is overwhelming: The Center For Law and Global Justice at the University of San Francisco, in collaboration with Human Rights Watch, has confirmed that there are no youth offenders serving life without parole sentences anywhere in the rest of the world. In its use of LWOP sentences for youth, the United States is an international anomaly.

In its use of LWOP sentences for youth, the US is an international anomaly.

The United States' practice of sentencing youth to JLWOP is a violation of, or raises concerns under, at least three international treaties to which the United States is party. The Human Rights Committee (the oversight and enforcement body for the International Covenant on Civil and Political Rights) has said that "[t]he Committee is of the view that sentencing children to life sentences without parole is of itself not in compliance with article 24(1) of the Covenant." Moreover, the Committee Against Torture (the oversight and enforcement body for the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) has stated that JLWOP for youth "could constitute cruel, inhuman or degrading treatment or punishment" in violation of the treaty.

Finally, in March 2008, the Committee on the Elimination of Racial Discrimination (the oversight and enforcement body for the International Convention on the Elimination of All Forms of Racial Discrimination) found that, in light of the racial disparities in the sentencing of youth to JLWOP in the US, "the persistence of such [youth LWOP] sentencing is incompatible with article 5(a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against [youth offenders], and review the situation of persons already serving such sentences."

Lawmakers can protect community safety, save on incarceration costs, and save youth from a lifetime in prison.

Fair Sentences for Youth

Lawmakers do not face a choice between being "soft on crime" and supporting life without parole for teen offenders. They can protect community safety, save on incarceration costs, and still save youth from a lifetime in prison. Giving youth offenders a second chance would align US sentencing practices with the rest of the world and with the goals of criminal punishment.

In the United States, criminal punishment has four goals: rehabilitation, retribution, deterrence, and incapacitation. Sentencing youth to life without parole fails to measure up on all four counts.

After years of ignoring the goal of rehabilitation, the United States is moving back to recognizing it as crucial to community safety. Life without parole not only does not advance this goal, it negates it. The sentence sends an unequivocal message to youth offenders that they are banished from the community forever, no matter how they change or grow.

Proponents of life without parole believe the sentence is necessary in order to ensure retribution—that society metes out the worst punishment for the worst offenses. However, while teens can commit the same acts as adults, by virtue of their immaturity they are not as blameworthy or culpable. They do not have adults' developed abilities to think, to weigh consequences, to make sound decisions, to control their impulses, and to resist group pressures; their brains are anatomically different, still evolving into the brains of adults.

Life without parole sends an unequivocal message to youth offenders that they are banished from the community forever, no matter how they change or grow.

Neuroscientists conducting magnetic resonance imaging (MRI) research have uncovered striking physical differences between the brains of adolescents and those of adults, showing that the areas involved in impulse control are less developed in youth. These findings suggest that states should revise their sentencing laws to ensure that youth are not sentenced as if they were adults.

Supporters of the life without parole sentence also claim that teens who pause to consider the consequences before committing crimes will be deterred if they face harsh sentences such as life in prison without parole. But young people are less likely than adults to pause before acting, and when they do, research has failed to show that the threat of adult punishment deters them from crime. Deterrence is also unlikely given research showing that adolescents cannot really grasp the true significance of the sentence.

Finally, incapacitation as a justification for life without parole sentences fails because some youth offenders can be rehabilitated and become productive members of society. No one can deny that life without parole makes some contribution to public safety to the extent that locking up youth prevents them from committing additional crimes. But the need to incapacitate a particular offender ends once he or she has been rehabilitated. There is no basis for believing that all or even most of the teens who receive life without parole sentences would otherwise have engaged in a life of crime. Our research indicates that many teens received life without parole for their first offense. There is little in their histories to warrant the assumption that they would not mature and be rehabilitated if they were spared a lifetime in prison.

The need to protect public safety and to incapacitate a particular offender ends once he or she has been rehabilitated.

The terrible crimes committed by youth can cause injury and death and ruin lives. In

its sentencing choices, the United States must reflect the harm these youth have caused. But it must also acknowledge that they are not all irredeemably violent people. Recognizing their capacity to grow and to transform themselves is deeply embedded in human rights principles. Instead of violating those principles with regularity, the United States should vigorously uphold them.

The United States must reflect the harm that youth have caused, but it must also acknowledge that not all youth serving JLWOP are irredeemably violent people.

Recommendations

The United States must stop sentencing youth offenders to life without possibility of parole. Specifically, Human Rights Watch recommends:

To the federal government

- Abolish the sentence of life without parole for youth charged with violating federal laws.
- Condition federal funding of state programs under the Juvenile Justice and Delinquency Prevention Act upon the state's elimination of life without parole sentences for youth offenders.

To state lawmakers

- Enact legislation that abolishes the sentence of life without parole for any offense committed by a person below the age of 18. Such legislation should include a retroactivity provision enabling youth offenders currently serving life without parole to have their cases reviewed by a court for re-assessment and re-sentencing to a sentence that includes the possibility of parole.
- Develop and publish annual statistics on youth in the adult criminal justice system, including: demographic information (age, race, sex), data on children tried in adult criminal court, the manner by which each child reached adult criminal court (e.g. transfer, direct file), the nature of the crimes alleged, existence of a prior criminal record, and if convicted, the precise sentence received.

Enact legislation that abolishes the sentence of life without parole for any offense committed by a person below the age of 18.

To state and federal departments of corrections

- Take into account the mental and physical maturity of incarcerated youth offenders when allocating cells or other housing within correctional facilities.
- Provide mental health and social services to assist youth offenders with adjusting to prison conditions as well as coping with the length of their sentences.

For more information, including the sources upon which this summary is based, please visit Human Rights Watch's website at: http://hrw.org/reports/2005/us1005/. On the website you can also view photos and listen to audio clips of youth offenders serving life without parole.

State Distribution of Estimated 2,574 Juvenile Offenders Serving Juvenile Life Without Parole

Jurisdiction	Total	State Law	Jurisdiction	Total	State Law
Alabama	62[c]	Mandatory[a]	Nebraska	24[c]	Mandatory
Alaska	0	No JLWOP	Nevada	16	Discretionary
Arizona	32	Discretionary	New Hampshire	3	Mandatory
Arkansas	73	Mandatory	New Jersey	0	Mandatory
California	250[b]	JLWOP Presumption	New Mexico	0	No JLWOP
Colorado	48	No JLWOP post-2005	New York	0	Mandatory
Connecticut	9[c]	Mandatory	North Carolina	44	Mandatory
Delaware	7	Mandatory	North Dakota	1	Discretionary
Florida	266[c]	Mandatory	Ohio	2[c]	Mandatory
Georgia	8	Discretionary	Oklahoma	48	Discretionary
Hawaii	4	Mandatory	Oregon	0	No JLWOP
Idaho	4	Mandatory	Pennsylvania	444[c]	Mandatory
Illinois	103[c]	Mandatory	Rhode Island	2	Discretionary
Indiana	2	Mandatory	South Carolina	26	Mandatory
Iowa	44[c]	Mandatory	South Dakota	9	Mandatory
Kansas	0	No JLWOP	Tennessee	4	Discretionary
Kentucky	5	Bain on sentencing to JLWOP under court challenge	Texas	4[c]	Mandatory
Louisiana	335[c]	Mandatory	Utah	1	Discretionary
Maine	0	Discretionary	Vermont	0	Discretionary
Maryland	13	Discretionary	Virginia	48	Mandatory
Massachusetts	57[b]	Mandatory	Washington	28[b]	Discretionary
Michigan	346[b]	Mandatory	West Virginia	0	Discretionary
Minnesota	2	Mandatory	Wisconsin	16	Discretionary
Mississippi	24	Mandatory	Wyoming	6	Discretionary
Missouri	116	Mandatory	Federal Prisons	37[b]	Discretionary
Montana	1	Mandatory	District of Columbia	0	No JLWOP

urces: Unless otherwise indicated, these figures are based on data provided directly to Human Rights Watch as of mid-2004 xcept that we used the National Corrections Reporting Program to obtain data for Virginia, and for Alabama, we used its mate locator system). Unless otherwise indicated, and where possible, we updated data between mid-2004 and 2009 using e following methods: post-2004 press reports were checked against inmate records with state departments of corrections; d correspondence received by Human Rights Watch from youth offenders sentenced to life without parole was checked gainst press reports and state inmate records.

'he term "mandatory" means judges have no option other than to sentence youth offenders to JLWOP upon conviction for at ast one type of offense. Most often that offense is first degree murder.

n 2009, state department of corrections or Federal Bureau of Prisons sent updated data directly to Human Rights Watch or to rtner organizations.

n 2008, state department of corrections sent updated directly to Human Rights Watch or to partner organizations.

Mr. SCOTT. Without objection, the hearing record will remain open for 1 week for the submission of additional materials.

And without objection—the gentleman from California.

Mr. LUNGREN. Mr. Chairman, does that mean other organizations' victims rights groups would have the opportunity to be able to present? I didn't hear any in your list of outside groups that submitted information. Is there a way for us to contact those groups?

Mr. SCOTT. If I could read the next sentence in my statement.

Without objection, the hearing record will remain open for 1 week for the submission of additional materials.

Without objection, the Subcommittee stands adjourned.

[Whereupon, at 4:35 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

SEP 2 5 2009

September 8, 2009

Member Organizations

National Bar Association
Association of Black Psychologists
National Association of Black Social Workers, Inc.
Howard University School of Law
Congressional Black Caucus Foundation, Inc.
National Dental Association
National Black Caucus of State Legislators
Association of Black Sociologists
National Black Nurses Association, Inc.
National Organization of Black Law Enforcement Executives
National Association of Blacks in Criminal Justice
National Black Alcoholism & Addictions Council, Inc.
Black Administrators in Child Welfare, Inc.
Association of Black Health-System Pharmacists
National Medical Association
National Black Police Association
National Alliance of Black School Educators
National Institute for Law and Equity
National Conference of Black Political Scientists
Black Psychiatrists of America, Inc.
National Black Prosecutors Association
National Organization of African Americans in Housing
Thurgood Marshall Action Coalition

The Honorable Robert "Bobby" Scott
Chair, Subcommittee on Crime, Terrorism
and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Rayburn House Office Building, Room 2138
Washington, D.C. 20515

Dear Congressman Scott:

I am forwarding herewith a "Written Statement" on behalf of the National African American Drug Policy Coalition, Inc. on H.R. 2289, the "Juvenile Justice Accountability and Improvement Act of 2009" with the hope that it will be of some benefit to your Subcommittee in deciding on a course of action to be taken on this proposed legislation. We strongly support this proposed legislation based on the reasons set forth in our Written Statement and the analysis there presented.

I am faxing to you at 202-225-8354 a copy of this letter and the 18-page Written Statement this date. An original of this letter and the signed statement will be placed in the mail for the record, and you should receive them in the next few days.

Sincerely,

Arthur L. Burnett, Sr.
National Executive Director

Enclosure

Center for Drug Abuse Research at Howard University
Phone: (202) 806-8600
2900 Van Ness Street, N.W., Suite 400
Fax: (202) 537-3806
Washington, D.C. 20008
www.naadpc.org

Promoting Health and Justice

WRITTEN STATEMENT

OF

NATIONAL AFRICAN AMERICAN DRUG POLICY COALITION, INC.

IN SUPPORT OF

H.R. 2289, 111 TH CONGRESS, 1ST SESSION

"JUVENILE JUSTICE ACCOUNTABILITY AND

IMPROVEMENT ACT OF 2009"

SUBMITTED

TO THE SUBCOMMITTEE ON CRIME, TERRORISM AND

HOMELAND SECURITY,

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

SEPTEMBER 8, 2009

The National African American Drug Policy Coalition, Inc. had its inception on April 1, 2004, was incorporated on January 12, 2006 as a not-for-profit corporation in the District of Columbia, and was recognized by the Internal Revenue Service on August 30, 2006 as a tax-exempt advocacy and educational charitable organization, retroactive to January 12, 2006. At the present time, its members consist of twenty-five organizations and legal entities as follows: **National Bar Association; Association of Black Psychologists; National Association of Black Social Workers, Inc.; Howard University – School of Law; Congressional Black Caucus Foundation, Inc.; National Dental Association, National Black Caucus of State Legislators; Association of Black Sociologists; National Black Nurses Association, Inc.; National Organization of Black Law Enforcement Executives; National Associatiou of Blacks in Criminal Justice; National Black Alcoholism & Addictions Council, Inc.; Black Administrators in Child Welfare, Inc.; Association of Black Health-System Pharmacists; National Medical Associatiou; National Black Police Association; National Alliance of Black School Educators; National Institute for Law and Equity; National Conference of Black Political Scientists; Black Psychiatrists of America, Inc.; National Black Prosecutors Associatiou; National Organization of African Americans in Housing; Thurgood Marshall Action Coalition; Natioual Historically Black Colleges and Universities Substance Abuse Consortium, Inc. (a group of 82 Historically Black Colleges and Uuiversities); and, National Association of Health Services Executives.** The National Coalition operates through an Advisory Board of Directors which includes a representative of each of these member organization and through its three (3) member Legal Board of Directors, who are also its three (3)

officers, Dean Kurt L. Schmoke of Howard University School of Law who also serves as President of the Coalition, Senior Judge Arthur L. Burnett, Sr., who serves as Vice President of Administration and National Executive Director, and Dr. Ura Jean Bailey, Director, Center for Drug Abuse Research at Howard University, who serves as Secretary-Treasurer of the Coalition. We estimate that through the memberships of individuals in these twenty-five (25) legal entities, the other African Americans in the professions represented by these organizations, and the college, graduate and professional students affiliated with some of these entities, we endeavor to speak as the voice for at least 750,000 to 1,000,000 African Americans who are concerned with issues of substance abuse (alcoholism and illegal drug usage), related co-occurring mental illness, and needed reforms in our healthcare system and in our criminal and juvenile justice systems dealing with behavior and conduct arising out of alcoholism and drug usage, and who are also concerned about our emphasis on eliminating racial and ethnic disparity and discrimination in access to treatment for these underlying causes as a disease to be dealt with by a medical and public health approach rather than criminal prosecution and incarceration for the related conduct and behavior, the quality of treatment actually received, and the application of our criminal justice and juvenile justice systems to such individuals.

Two of the principal objectives of the National African American Drug Policy Coalition, Inc. are relevant to the Bill under consideration. First, the Coalition's objective is to treat illegal drug abuse and addiction as the manifestation of a disease, to be dealt with in a medical manner with a public health approach and emphasis as an alternative to criminal prosecution and incarceration for the possession or dealing in

drugs merely to support the addiction, and also effectively to deal with any related mental health issues, such as stress disorder, depression, anxiety or other defined mental health illness.[1] Second, we strongly support the concept of giving former offenders a Second Chance to re-enter the community with affirmative assistance from community organizations and Churches so as to reduce recidivism and promote positive contribution to society by these individuals. Thus, for individuals who are serving a prison sentence in adult institutions of life without parole for conduct or behavior occurring before the 18th birthday, where there was a related alcohol or drug issue, or a mental health issue, at the time, and where the person after 15 or 20 years imprisonment has become rehabilitated – a changed person – he or she ought to have the opportunity for parole or supervised release in the discretion of a parole board or other release authority, where this can be done without a high risk of danger to individuals in the community and a threat to public safety. For these reasons, we consider it within our mission to speak to the issue of both social policy and the legality of juvenile life without parole sentences.

The stated purpose of H. R. 2289 is "to establish a *meaningful opportunity* for parole or similar release for child offenders sentenced to life in prison, and for other purposes." The Bill, if enacted, would require each State to establish in its laws and policies a system and procedure wherein "each child offender who is serving a life sentence receives, not less than once during the first 15 years of incarceration, and not less than once every 3 years of incarceration thereafter, a meaningful opportunity for

[1] A recent study has suggested that as many as 70 percent of juvenile offenders are affected with a mental disorder – depression, anxiety, post-traumatic stress, conduct disorders – and one in five suffer from a mental illness that impairs their ability to function. Two-thirds of juvenile offenders with any mental health diagnosis most often had a dual diagnosis, typically substance abuse. See Sarah Hammond, National Conference of State Legislatures, *Mental Health Needs of Juvenile Offenders,* at 4-5 (2007); Howard N Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report,* OJJDP National Report (Office of Juvenile Justice & Delinquency Prevention, Wash. D.C.), 2006, at 233.

parole or other form of supervised release." The term "child offender who is serving a life sentence" means an individual who "is convicted of one or more offenses committed before the individual attained the age of 18," and who "is sentenced for such an offense or offenses, to a term of imprisonment of life, or of any number of years exceeding 15 years, cumulatively." This Bill would also establish a parallel system for child offenders serving life sentences at the Federal level. The system shall conform as nearly as practicable to the laws and policies required of a State by this Bill, if enacted. According to the most recent report by Human Rights Watch the federal government and 45 states allow sentences of life without parole for juveniles, while it is prohibited in 5 states and the District of Columbia.[2]

In *Roper v. Simmons,* 543 U.S. 551 (2005) Mr. Justice Kennedy speaking for the majority of the Justices of the Supreme Court on March 1, 2005, cogently observed that as a class, individuals under the age of 18 have diminished culpability for criminal conduct as compared to adult offenders. Differences between adolescents' and adult's thinking and behavior reflect developmental differences in the human brain which does not fully mature until the early twenties.[3] We deem it helpful to quote some of Mr. Justice Kennedy's comments from the majority opinion:

> Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in

[2] Human Rights Watch (2009), State Distribution of Estimated 2,574 Juvenile Offenders Serving Life Without Parole. San Francisco: Human Rights Watch. Available online: http://www.hrw.org/sites/default/files/related_material/JLWOP_Table_May_7_2009.pdf .

[3] Staci A. Gruber & Deborah A. Yurgelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice,* 3 Ohio St. J. Crim. L. 321 (2006).

> adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." [cite omitted].
>
> The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure . [cite omitted] "[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage". This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. . . . "[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting".
>
> The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.
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> * * *
>
> The reality that juveniles still struggle to define their identity means it is less supportable to conclude that a heinous crime committed by a juvenile is evidence of irretrievably depraved character. . . . Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." [cites omitted].
>
> *Roper v. Simmons,* 543 U.S. 551, 569-71

Thus, the Supreme Court held that the Eighth and Fourteenth Amendment combined and as applicable to the States forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. The Supreme Court there recognized that science and research showed that juveniles manifested a lack of maturity and an underdeveloped sense of responsibility that often results in impetuous, impulsive and ill-considered actions and decisions without appreciation of the full consequences thereof.[4] Juveniles are more vulnerable to negative influences and to peer pressure. The character of a juvenile is not as well-formed as that of an adult at that stage in life.

[4] Developments in scientific and psychosocial research have found that anatomical immaturity renders youth less able to assess risks, control impulsive behavior, and engage in moral reasoning than their adult counterparts. Amicus Brief of the American Medical Society, et al., *Roper v. Simmons,* 543 U.S. 551 (2005). This same body of research indicates that youth are also more amenable to rehabilitation than adults because one's character continues to form as the brain matures. *Id.*

The personality traits of a juvenile is more a work in progress rather than being static and fixed as with a more mature adult, thus making them more amenable to rehabilitation.[5]

It is important to emphasize that this proposed legislation would not automatically result in the release of such a youth. It remains a discretionary function, and a parole board or other release authority could consider the nature of the crime, the strength of the evidence against the accused, his or her role in the offense, his or her adjustment since being in prison and behavior, participation in prison-based education, vocational or rehabilitation programs, counseling reports, and psychological evaluations as to what that youth has become as an individual at age 30, 35 or 40.[6] Thus, the objections of the National District Attorneys Association to this Bill as manifested in the Written Testimony of James P. Fox are unfounded and will not interfere with the States' operations of the juvenile justice system or the adult prosecution of teenagers as he graphically claimed, but would only allow on an individualized basis *consideration* for parole or release of an individual by the end of the time of serving 15 years of a sentence, and once every three (3) years afterwards, and would not guarantee that the person would be granted parole or release for those heinous offenses described by Mr. James P. Fox or who had not been sufficiently rehabilitated while in prison to be released to the

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[5] Adolescents' behavioral immaturity mirrors the anatomical immaturity of their brains. To a degree never before understood, scientists can now demonstrate that adolescents are immature not only to the observer's naked eye, but in the very fiber of their brains. Medical and psychiatric experts' briefing to the United States Supreme Court in *Roper v. Simmons, supra.* Vincent Culotta, a Maryland neuropsychologist who specializes in brain development disorders, says research indicates that the human brain continues to develop until at least age 25, as opposed to a previous belief that brain development stops at 16. In some teens, especially those who have experienced severe abuse or malnutrition, this process can be slower than normal. See article, ***Should we treat juvenile offenders as adults?*** Mike Allen, The Roanoke Times, available at http://www.roanoke.com/news/roanoke/wb/216362 setting forth Vincent Culotta's testimony before the Virginia State Crime Commission.

[6] As the Supreme Court stated in *Roper v. Simmons, supra,* "From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." 543 U.S. at 551.

community without being a serious risk to any individual or the public safety of the community.[7] In responding to the position of victims' advocates as to incidents described as being most heinous and showing depravity of the offender, we must be mindful that the opportunity for a parole or release hearing does not assure that the individual will be released. We must trust the integrity and commitment to duty of a Parole Board or Release Authority to carry out its duties as much as we trust legislators to make good laws, and we must strike a balance for those individuals who may have been only marginally involved in the crime and who have truly repented, shown remorse and rehabilitated themselves, to give them the opportunity to convince individual Parole Commissioners or members of such an Authority as truly committed as the original sentencing judge and as the legislators in enacting the laws to achieve justice in the individual case. The positions advocated by the National District Attorneys' Association and by the victims advocates are reflected in the words of the Nevada Supreme Court in *Naovarath v. State,* which poignantly stated: "denial of parole means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [a juvenile], he will remain in prison for the rest of his days." [8]

Further, it is important to note that a 15, 16 or 17 year old youth's ability to marshal mitigating evidence and to communicate with his or her counsel and racial

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[7] In 1990 when Ian Manuel was 13, gang members instructed him to commit a robbery. During the botched robbery attempt in downtown Tampa, Florida, he shot and wounded a woman. He turned himself in to the police. His attorney told him to plead guilty in exchange for a 15-year prison sentence. Ian accepted responsibility and pleaded guilty but was sentenced to life imprisonment without possibility of parole. Further, the victim has forgiven Ian and has petitioned for his release from prison but he still remains incarcerated. If he has had an exemplary prison record showing remorse and rehabilitation, could anyone seriously claim that he should remain imprisoned for his life. See *Manuel* v. *State*, 629 So. 2d 1052 (Fla. Dist. Ct. App. 2d Dist. 1993); http://www.cji.org/cji/files20071017cruclandunusual.pdf

[8] 779 P. 2d at 994 (Nev. 1989).

disparities in sentencing create a special risk that juveniles will receive an unjustified sentence of life without the possibility of parole. DNA has shown that even adult offenders may be convicted by a jury even though factually innocent as a result of being the victim of mistaken identity or implication by fabricated statements of co-defendants or cooperating witnesses. Frequently co-defendants or other cooperating witnesses may implicate a juvenile in an offense to serve his or her own purpose of a lighter sentence for a plea of guilty to a lesser-included offense, when the juvenile may have only been innocently present at the time of the crime incident.[9] Or the juvenile may have participated in the event only knowing that the older persons had some criminal activity in mind, but not even knowing what it was, and acted under threats, duress or coercion, and yet be charged and convicted on a theory of being an aider and abettor in an event in which someone was killed, raped, or subject to an armed burglary or robbery.[10] Thus, they may lack the basic skills to assist counsel in identifying exculpatory facts and effectively communicating them to their counsel, such as potential witnesses who could support the juvenile's claim of unwilling participation in the crime.

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[9] Deon Haynes was 16 when he was arrested and charged with a robbery and murder. He had no previous juvenile record, had completed the 11th grade and was enrolled in school. He remained in the car while his friends went inside a house. While in the house, one of his friends shot and killed a person in the house. In his first two trials, three of his friends testified that Deon had nothing to do with the shooting and the juries hung. In a third trial, one of the individuals was given immunity and implicated Deon. He was convicted and thereafter sentenced to life without parole. What if the immunized witness lied, do we have potentially an innocent man serving life without parole? What if his prison life has been exemplary? Should he have an opportunity for consideration for parole or release? See *People v. Haynes,* 448 Mich. 902 (Mich. 1995).

[10] See, e.g. *People v. Black,* 513 N.W. 2d 152 (Mich. Ct. App. 1994). Amy Black was the victim of sexual abuse when she was only seven years of age and started using drugs and running away from home. When she was 16, she was present when her older boyfriend got into a fight with another man and stabbed him to death. She helped to clean up the mess. When they both were arrested, her boyfriend persuaded her to take the blame for the stabbing since she was only 16. She confessed thinking she would be treated only as a juvenile. The trial judge, deciding that his only option was to sentence her as an adult as there were no appropriate juvenile facilities for females in the State for girl serious offenders, sentenced her in 1991 for aiding and abetting first degree murder to life without parole. See also ACLU of Michigan, Second Chances: Juvenile Serving Life Without Parole in Michigan Prisons 4 (2004), available at http://www.aclumich.org/pubs/juvenilelifers.pdf.

Many research studies show that children with learning, emotional or developmental disabilities make up a disproportionately large percentage of children in the juvenile justice system. Youth charged with crimes which result in juvenile life without parole frequently have emotional and developmental problems,[11] and their immaturity and embarrassment often impedes their disclosure of prior emotional, physical or sexual abuse or trauma, which would be crucial evidence in mitigating the potential sentence which would be imposed.[12]

According to Human Rights Watch 2009 JLWOP Figures, in the United States there are 2,574 people serving life in prison without the possibility of parole for crimes they committed when they were under the age of eighteen.[13] It is significant to look at the racial disparity also in application of the laws. In 2005 an Amnesty International and Human Rights Watch Paper: "The Rest of Their Lives – Life Without Parole for Child Offenders in the United States" at page 2, observed that minority juveniles are far more

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[11] Henry Hill was 16 in 1980 when he and two of his friends got into an argument with an acquaintance at a park. All of the people involved had guns, but Henry Hill and one other juvenile had already left the park when his 18-year old friend shot and killed the acquaintance. Nonetheless, he was charged and convicted of aiding and abetting first-degree murder and sentenced to mandatory life without parole. Prior to his adult trial, despite being evaluated to have the academic ability of a third grader, the mental maturity of a nine-year old, and having psychologists recommend that he be kept in the juvenile justice system, he was waived to adult court for trial and convicted. As of 2004 he had been in prison for over twenty-five years, has earned his GED and vocational qualifications and had exhausted all the programs and resources available to him. Should he now have the opportunity to be considered for parole? See Report, Deborah LaBelle; Anna Phillips; and Laural Horton, ACLU Michigan, Second Chances – Juveniles Serving Life Without Parole in Michigan Prisons, 4 (2004).

[12] See, e.g. *Hernandez v. Stovall,* 2009 U.S. Dist. LEXIS 33269 (E.D. Mich. 2009). Barbara Patricia Hernandez left home at age 14 after having been physically and sexual abused first by her father and then by her stepfather. She left school after the 8th grade and moved in with a boyfriend four (4) years older. He was a drug user and also physically and sexually abused her. When she was 16, the boyfriend coerced her into helping him to steal a car and she brought a man with a car to the house. The boyfriend attacked and killed the victim while she was in another room. She was charged as an adult and convicted of being an aider and abettor in the murder and was given a mandatory sentence of life in prison without the possibility of parole. See also ACLU of Michigan, Second Chances, Juveniles Serving Life without Parole in Michigan Prisons 4 (2004), available at http://www.sclumich.org/pubs/juvenilelifers.pdf.

[13] http://www.hrw.org/sites/default/files/related_material/JLWOP_Table_May_7_2009.pdf

likely to be sentenced to life without the possibility of parole than white youth. It observed that nationwide, the estimated rate at which black youth receive life without parole sentences (6.6 per 10,000) was ten times greater than the rate for white youth (0.6 per 10,000). While blacks constitute 60 percent of the youth offenders serving life without parole, white youth constitute 29 percent. It asserted that in every single state, the rate for black youth sentenced to life without parole exceeds that of white youth.[14]

Turning to some specifics about those individuals serving juvenile life without parole, two-thirds of the individuals serving the sentence for crimes committed as youth are in five States: Michigan (346), Louisiana (335), Pennsylvania (444), Florida (266) and California (250).[15] Despite popular attitudes publicly displayed, many of the individuals sentenced to life in prison without the possibility of parole as youth are not repeat offenders, nor have they been convicted of the most serious crimes.[16] The majority of youth sentenced to life in prison without parole are first-time offenders. Prior to the crime for which they were sentenced to life in prison without the possibility

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[14] Another study reveals that nationwide, 56.1% of the juvenile life without parole population is African American and 11.7% is Hispanic. In some States, the racial and ethnic proportions are even greater. In Alabama of 89 persons serving such sentences, 84.3 % are African American, 14.6% are White and the percentage of Hispanics is unknown. In Illinois of 103 individuals, 71.8% are African American, 9.7% are Hispanic, and 18.4% are Caucasian. In Louisiana, of 133 such individuals 72.9% are African American, 26.3% are Caucasian, and Hispanic percentage is unknown. In Maryland of 19 individuals, 78.9% are African American and 21.1% are Caucasian. In South Carolina of 14 individuals, 78.6% are African American and 7.1% are Caucasian. Finally for Virginia with 28 such individuals, 75% are African American and 25% are Caucasian. A. Nellis and R. King, *No Exit: The Expanding Use of Life Sentences in America.* Washington, D.C.: The Sentencing Project (2009).

[15] Human Rights Watch 2009 JLWOP Figures, available at: http://www.hrw.org/sites.default/files/related_material/JLWOP_Table_May_7_2009.pdf
See also Press Release, Human Rights Watch calls for federal legislation to eliminate juvenile LWOP, available at: http://sentencing.typepad.com/sentencing_law_and_policy/2009/05human-rights-watch-cal . It further asserted that the United States is the only country that uses such sentences for crimes committed by juveniles.

[16] The average age at which juveniles committed the crimes for which they received a life without parole sentence is sixteen (16) years, but in some States judges may impose such sentences on children as young as twelve (12) or thirteen (13) years of age. Amnesty International & Human Rights Watch, For the Rest of Their Lives 1, 25 (2005).

of parole, an estimated 59% had neither a juvenile adjudication nor an adult criminal record.[17]

Where the law makes commission of the crime the basis for a mandatory sentence of life without parole, and thus the punishment is based solely on the seriousness of the offense, this precludes any individualized consideration of the offender and is contrary to the philosophy of looking at the immaturity and impulsivity of a teenager. Such mandatory sentencing structure should also be considered unconstitutional as cruel and unusual punishment and not proportional to the diminished responsibility of the teenager. *In re Antonio De Jesus Nunez,* Super. Ct. No. 01ZF0021, Court of Appeal of California, April 30, 2009. In his arguments, Antonio had contended that his life without parole sentence violated the State Constitution's proportionality requirement based on his youth, where there was lack of injury to any victim. Under California's law even when a person is over 18 and commits premeditated murder, the penalty is either death or life imprisonment, but if life imprisonment, the person still may be paroled. Thus the Court of Appeals responded that "a statutory regime that punishes the youngest juvenile offenders more harshly for kidnapping [with no harm] than for murder is not merely suspect, but shocks the conscience and violates human dignity." The Court went on to find that by sentencing him to life without parole the state had "judged him irredeemable while at the same time extending hope of rehabilitation and parole to all juvenile kidnappers, including those significantly older than petitioner, who murder their victims" – a clear violation of the California Constitution. They indicated that under California's Constitution proportional sentencing would recognize and accommodate a young

[17] See Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, at 110-11.

offender's diminished responsibility. In considering his arguments under the Eighth Amendment of the U. S. Constitution, with Antonio being the only known offender under age 15 around the world with a life without parole sentence for a non-homicide, no-injury offense, the Court found his severe sentence so "freakishly rare as to constitute arbitrary and capricious punishment violating the Eighth Amendment." The Court also reflected how life without parole is the harshest possible punishment for a juvenile offender, as stated in a past California ruling where life without parole for a 13-year old was "denial of hope; it means that good behavior and character improvement are immaterial, it means that whatever the future might hold in store for the mind and spirit of [the defendant], he will remain in prison for the rest of his days." Habeas corpus was granted and the trial court was ordered to conduct a new sentencing hearing consistent with the opinion.

Further it is significant to observe that an estimated 26% of youth offenders were convicted of accomplice liability or felony murder, and State laws often do not require that the teenager even knew that a murder would take place, or even that a co-defendant was armed.[18] Youth can also be sentenced to life without parole for committing crimes where no one was killed. Approximately 111 juveniles are serving life in prison without the possibility of parole for non-homicide offenses.[19] Finally, it is noted that many of

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[18] Id.

[19] Paolo G. Annino, David W. Rasmussen, and Chelsea Boehme Rice, *Juvenile Life Without Parole for Non-Homicide Offenes: Florida Compared to the Nation*, Florida State University, July 2009 See also *Graham v. Florida and Sullivan v. Florida,* 129 S. Ct. 2157 (U.S. 2009). It is significant to note that the offense in *Graham, supra* was for armed burglary, and his subsequent revocation of probation thereon after a subsequent arrest for a home invasion robbery. It has been represented that Florida has handed out more life sentences to juveniles for non-murder crimes than have all other states combined. These life without parole punishments slam the door forever on teenagers sometimes before they have even finished middle school. While we normally think of these youngsters as 16 or 17 years old, in some States children as young as 12 years of age can be subjected to a sentence of life without parole. Critics of this law contend that prosecuting youngsters this young as adults subject to life without parole sentences is far too soon to give up on young people whose minds and morals are still in the formative stage. See article, ***Giving Up too soon on juveniles,*** published August 12, 2009 Herald Tribune, available at:

the teenagers serving life in prison without parole committed their crime with an adult co-defendant. For example, in 70% of cases in California where youth were convicted of crimes committed with at least one other person and sentenced to life without the possibility of parole, the youth was with at least one adult co-defendant, and in an estimated 56% of these cases, the youth's adult co-defendant received a more lenient sentence than the youth. The majority of individuals serving life in prison without the possibility of parole for crimes which occurred when they were juveniles are African American males.[20] In California, African Americans arrested for murder are sentenced to life in prison without the possibility of parole at a rate that is 5.83 times higher than that of white youth arrested for murder.[21] In Michigan, more than two-thirds (69%) of all juveniles serving life without parole sentences are African American, despite comprising only 15% of the youth population. Judges there have imposed life without parole sentences on African American juveniles at a rate about ten times greater than they have on white youths.[22] This result occurred even though a survey showed that nearly half of the juveniles were convicted as accessories to their crimes, rather than as principals.

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http://www.heraldtribune.com/article/20090812/OPINION/908121008/-1/NEWSSITEMAP. See also the case of Demarco Harris of Detroit, Michigan charged with armed robbery and felony murder in the death of Trisha Babcock on August 1, 2009. Article in Free Press Newspaper, **Detroit boy, 12, face life in slaying,** available at: http://www.freep.com/article/20090820.NEWS01/908200447/1001/NEWS/Detroit-boy-12 The author in the Herald Tribune article urges that some of these youths probably could be rehabilitated with education and therapy while in prison. But when there is no hope of ever getting out, there is little incentive for self-improvement or good behavior. *Supra.*

[20] Ashley Nellis and Ryan S. King, *No Exit: The Expanding Use of Life Sentences in America,* The Sentencing Project, Washington, D.C.: July 2009.

[21] Human Rights Watch & Amnesty Int'l, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States,* 107 (2005).

[22] Deborah LaBelle, Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons 4 (2004), available at www.aclumich.org/pubs/juvenilelifers.pdf.

It is significant to note also that the potential for parole or supervised release serves penal purposes as it will promote compliance with prison regulations and rules by individuals who otherwise sentenced to life without parole would have nothing to gain by being on their good behavior. Thus, the incentive to achieve parole or release will help prison officials to better manage the behavior and conduct of their inmates, who will have a motivation and incentive to show rehabilitation and compliance with societal norms. Further, it is unduly costly to taxpayers in incarceration expenses incurred to keep a person in prison after he or she has become rehabilitated and is no longer a danger to the community, where he or she could be safely released to the community.

One objection to this proposed Bill is that it flies in the face of Federalism and results in the Federal government telling the States what they must do as to juvenile offenders subject to life without parole sentences. The answer is that this mandate would be no different than the other four (4) mandates in the Juvenile Justice and Delinquency Act and that if the States want money from the Federal government for its juvenile justice system, it must comply with this mandate just as with the other mandates requiring deinstitutionalization of status offenders requiring States to keep such offenders as truants and runaways out of secure facilities, requiring removal of juveniles from jails and preventing them from being placed in adult jails and lock-ups, and in limited exceptions where they are detained or incarcerated in adult jails or police lock-ups, requiring that they must be separated by both sight and sound from adult offenders. Finally, the States are required to address the disproportionate contact of youth of color with the juvenile justice system and come up with proposed solutions.

If the States want the money, it is fully within the power of the Congress to require compliance under its spending power with such conditions, including the conditions proposed by this Bill. See, e.g. *Madison v. Virginia,* 474 F.3d 118 (4th Cir. 2006). There, the court held that the attempt to protect prisoners' religious rights and to promote rehabilitation of prisoners under the Religious Land Use and Institutionalized Persons Act fell squarely within Congress's pursuit of general welfare under its Spending Clause authority, and because the State voluntarily accepted federal correctional funds, it could not avoid the substantive requirements of the Religious Land Use and Institutionalized Persons Act. The exercise of such a power here is fully analogous. The Spending Clause is a permissible method of encouraging a State to conform to federal policy choices because the ultimate decision whether to conform is retained by the States, which can always decline the federal grant.

To be valid, the Spending Clause legislation must meet several requirements. First, the exercise of the spending power must be for the general welfare. Second, the conditions must be stated unambiguously. Third, the conditions must bear some relationship to the purpose of the federal spending. Fourth, the conditions must not violate some other constitutional command. Fifth, and finally, the financial inducement offered by Congress must not be so coercive as to pass the point at which pressure turns into compulsion. *South Dakota v. Dole,* 488 U.S. 203 (1987). We further note in *Madison v. United States, supra,* the Court observed that four other circuits had help that the Religious Land Use and Institutionalized Persons Act fell within Congress's pursuit of the general welfare under its Spending Clause authority. See also *Rendelman v. Rouse,* No. 08-6150, 4th Cir., decided June 25, 2009 and cases there discussed.

It is significant to note that the reach of the Spending Clause has been extended into other areas as well. Legislation enacted pursuant to Congress' spending power has been upheld to authorize damages actions against state entities receiving federal funds. *See, e.g., Franklin v. Gwinnett County Public Schools,* 503 U.S. 60 (1992), which authorized damages action against school districts for intentional violations of Title IX. See also *Barnes v. Gorman,* 536 U.S. 181, 185 (2002) which held that remedies for violations of Section 504 of the Rehabilitation Act, a spending clause statute, are coextensive with remedies available in a private cause of action brought under Title VI.

We are thus fully satisfied that the provisions of this Bill requiring a parole or release review for juveniles sentenced to life without parole within the first 15 years of such a sentence, and once every three (3) years thereafter, fit comfortably within Congress' Spending Clause authority.

We have arrived at the firm conclusion that the appropriateness of a life sentence imposed on a juvenile offender can properly be measured only by a post-sentencing review of his or her own subsequent development over an adequate period of time and we are satisfied that a 15-year period is sufficient to develop a fact-based empirical record on which to make a sound judgment on an individual basis.[23] We also must keep in mind that decades of social research has shown that most youth age out of engaging in reckless and criminal behavior as they move into mature adulthood. To make sure that those juveniles sentenced to life without parole deserve such a sentence requires the ability to

[23] It has been brought to our attention that Texas this past year changed its legislation to permit teenagers sentenced to life in prison without parole to be considered for parole after 40 years. But that law only operates prospectively, it appears, for crimes occurring after September 1, 2009. See Article, Martha Deller, **Alvarado teen sentenced to life without parole for killing store clerk**, available at: http://www.star-telegram.com/texas/story/1583181.html. In our opinion, such a long period before even being considered eligible for parole consideration, is excessive and beyond the needs of our justice system.

assess that juvenile after he or she has become an adult and there has been sufficient time lapse to determine the extent of that person's development in personality, character, and attitudes to obeying societal norms at that later stage in life. Legislation as proposed here does not prevent a child with major culpability who does not respond to treatment and rehabilitation efforts from serving a very lengthy sentence, as the parole board or release authority will have the power to deny time and time again an application for parole or release, if not satisfied the individual will not be a risk to public safety and the welfare of citizens in the community.

September 7, 2009 was the 35th Anniversary of the Juvenile Justice and Delinquency Prevention Act. It is now appropriate that we strengthen that Act and move forward aggressively with this proposed legislation to ameliorate the harshness of the juvenile life without parole sentencing practice in the United States. Congress should enact this Bill providing for a far more reasonable system of juvenile justice which promotes individualized tailored justice for each individual juvenile under the age of 18 affected by our legal system.

Respectfully submitted:

Arthur L. Burnett, Sr.
National Executive Director
National African American
Drug Policy Coalition, Inc.

Hearings on H.R. 2289

To Establish a Meaningful Opportunity for Parole or Similar Release for Chlid Offenders Sentenced to Life in Prison

U.S. House of Representatives
Committee on the Judiciary

June 9, 2009

PROPORTIONALITY AND JUVENILE LIFE WITHOUT PAROLE

Testimony of Professor Jeffrey Fagan
Columbia Law School

I. Introduction and Summary

Following the U.S. Supreme Court decision in *Roper v. Simmons* (2005), the harshest sentence that a juvenile offender below the age of 18 can receive is life imprisonment without the possibility of parole (JLWOP). Some commentators refer to this as a mandatory natural life sentence, others as "death in prison." This practice casts a very wide net. Recent estimates by Human Rights Watch and Amnesty International[1] claim that at least 2,500 persons were serving LWOP sentences for crimes they committed before reaching age 18. Most were convicted of homicide, but more than one in four were convicted of "felony murder" in which the teen participated in a robbery or burglary during which a co-participant committed a murder that the youth neither knew about nor intended.[2] Half had no prior criminal convictions.. Many were very young: 16% percent were between ages 13 and 15 at the time they committed their crimes.[3] The statutory designs for JWLOP sentences are extraordinarily diverse: while some states reserve natural life sentences for juveniles for those guilty of capital offenses, others have

[1] Human Rights Watch/Amnesty International, The Rest of Their Lives: Life Without Parole for Youth Offenders in the United States in 2008, available at http://www.hrw.org/en/reports/2008/05/01/executive-summary-rest-their-lives

[2] *Id.*

[3] *Id. See, also*, Equal Justice Initiative, Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison (2008), available at http://eji.org/eji/files/20071017cruelandunusual.pdf (documenting 73 cases where 13- and 14-year-old children in the United States have been tried as adults and sentenced to life imprisonment without the possibility of parole).

a very low bar to lifetime imprisonment – such as Two- or Three-Strike laws for minors – that invites its promiscuous and unregulated use.

In the testimony that follows, I analyze the reasons why the *Roper* jurisprudence on proportionality in capital cases should also apply to sentences of natural life for other crimes committed before reaching 18 years of age. First, natural life is a harsh and irreversible sentence that is essentially a slow and delayed death sentence. Minors are excluded from death sentences because such punishments are disproportionately severe relative to their culpability. The same evidence of "marked and well understood" differences between juveniles and adults that the *Roper* Court found persuasive applies to all juvenile offenders: adolescents are "categorically less culpable" than adults because they lack maturity of judgment, they are unduly vulnerable to negative influences and outside pressures, and they have lack control over themselves and their surroundings. Accordingly, juvenile offenders fall outside the category of the "worst of the worst" for whom our harshest punishments are reserved. Their developmental deficits undermine the bedrock Eighth Amendment deterrence and retribution rationales for the death penalty: the same factors that make them less culpable, the *Roper* Court says, make them less deterrable. The *Roper* opinion invoked these factors to create a categorical exemption based on age that applies to death sentences. I argue that this prohibition applies with no distinction as to whether execution is imminent or delayed until natural death.

Next, the *Roper* Court concluded that the trend among states (and the federal government) to ban execution of minors signaled that "standards of decency" had evolved to a consensus that it was cruel and unusual punishment to execute those who committed their crimes as minors. The *Roper* Court focused on the actions of five state legislatures that banned the execution of juveniles following its last opinion on this issue in *Stanford v Kentucky* in 1989, but included abolitionist states in its consensus arithmetic. The *Roper* majority makes much of the consistent direction of the trend to reduce and eliminate death sentences for juveniles, and notes the absence of any sign of a counterfactual trend. Today, as in the period before Roper, there has been a decline in the use of JWLOP sentences since 2001. Legislatures have enacted a recent ban on

JWLOP sentences in Colorado in 2006,[4] or moved legislation to abolish JLWOP sentences in California,[5] Michigan,[6] and Florida.[7] The Texas legislature passed SB 839 by overwhelming majorities in both chambers on June 1, 2009, abolishing life without parole for juveniles,[8] and the bill awaits the governor's signature. In addition to evolving state norms, international norms clearly and broadly stand in opposition to natural life sentences for minors.[9]

Third, the *Roper* Court articulated a proportionality argument based on a maturity heuristic where the lesser emotional, neurological and physical maturation of adolescents significantly discounts their culpability and therefore changes the calculus of penal proportionality, but only when death is at stake. As I discuss below, this logic applies to the severe sentence of prolonged death in prison. For example, for more than 15 years through the early part of this decade, minors convicted of the lesser charge of non-capital murder were more likely to receive LWOP sentences than were adults convicted of the same offense. This sanction is widely used for non-capital offenses, and in many cases, for offenses that are non-violent. That is, juvenile murder arrests, including those

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[4] Colorado House Bill 06-1315 was signed by Governor Bill Ritter in May 2006, eliminating Life Without Parole for Juveniles. See http://www.state.co.us/gov_dir/leg_dir/olls/sl2006a/sl_228.htm

[5] The California Senate passed SB 399 in May, 2009, banning JLWOP sentences. It awaits action in the State Assembly.

[6] Four bills in the Michigan Senate would eliminate LWOP for minors sentenced before their 18th birthday. SB 0006 would change the "Code of Criminal Procedures" to prohibit the court from sentencing youth 17 and under with imprisonment for life without parole eligibility. SB 0009 would change "Corrections Code of 1953" to require that individuals 17 or younger when he or she committed a crime to be eligible for parole after having served a minimum of 10 years. SB 0028 would change the "Probate Code of 1939" to allow the court to impose any sentence upon a juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted, except imprisonment for life without parole eligibility. SB 0040 would amend Michigan Penal Code 1931 PA 328 to include a statement prohibiting individuals 17 and younger from being sentenced to life imprisonment without parole eligibility.

[7] Identical bills were introduced into the Florida House (HB165) and Senate (S152) in the 2007 and 008 legislative terms. No actions were taken, and both will be resubmitted in the next term.

[8] See, http://www.legis.state.tx.us/tlodocs/81R/billtext/html/SB00839I.htm, amending §12.31(a)(1) to exclude from LWOP eligibility any child whose capital felony offense was committed before reaching age 18 and who was transferred to the criminal court under Section 54.02, Family Code. LWOP sentences are only available in Texas for capital crimes.

[9] See, Human Rights Watch/Amnesty International, The Rest of Their Lives: Life Without Parole for Youth Offenders in the United States in 2008, available at http://www.hrw.org/en/reports/2008/05/01/executive-summary-rest-their-lives. *See, also*, Constance de la Vega and Michelle Leighton, *Sentencing Our Children To Die In Prison, Global Law And Practice* 42 UNIVERSITY OF SAN FRANCISCO L. REV. 983 (2007). See, also, Hillary J. Massey *Disposing of Children: The Eighth Amendment And Juvenile Life Without Parole After Roper*, 47 B.C.L. Rev. 1083, 1096

prosecuted under felony murder rules with accomplice liability provisions, cannot account for the more than 2,571 persons sentenced as minors to natural life.[10] The reach of this sanction goes far beyond any notion of the "worst of the worst" of juvenile offenders.

II. Qualifications

I am a professor of law and public health at Columbia University. My research has examined the administration of the system of capital punishment in the U.S., and also changes in homicide rates in American cities over the past three decades. I am also a Fellow of the American Society of Criminology, and a member of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. I am a past Vice Chair of the Committee on Law and Justice of the National Research Council. I teach courses on Criminal Law, Juvenile Justice, Drug Laws, Policing, and Scientific Evidence. My research has been supported by both federal research agencies and private foundations. I frequently publish in peer-reviewed journals, and I serve on the editorial boards of several peer-reviewed journals. I have served on numerous government advisory committees and scientific review boards. I have also received research grants and fellowships from numerous government agencies and private foundations. I received my PhD from The University at Buffalo, State University of New York, where I was trained in econometrics, statistics, and engineering.

III. The Proportionality of Life Without Parole Sentences for Juveniles

A. Constitutional Considerations

Eighth Amendment proportionality analysis requires courts to refer to the United States' "evolving standards of decency" in how it collectively administers punishment.[11] Evolving standards, illustrated through current state practice, have been decisive in Supreme Court death penalty jurisprudence. In *Atkins v. Virginia* and *Thompson v. Oklahoma*, the Supreme Court determined that the nation's evolving standards of

[10] Human Rights Watch/Amnesty International, *id.*

[11] U.S. Const. amend. VIII.

decency prohibited sentencing the mentally retarded and children under sixteen to execution.[12] In both cases, the Supreme Court utilized current state practices (objective indicia) and their own judgment to rule that the death penalty did not meet Eighth Amendment proportionality standards. For instance, in *Thompson*, the court looked at several factors including death penalty age minimums, "respected" professional organizations' viewpoints, and jury bias as indicators of objective indicia.[13] The court based its own judgments on penological concerns: deterrence, retribution, and adolescent culpability.[14] The plurality concluded that because adolescents, as a group, possess a lower culpability than adults (due to cognitive inequities), the goals of deterrence and retribution were not met.[15]

Following the analytical precedent set in *Atkins* and *Thompson*, the court's analysis examined the evolving standards of decency, through the two perspectives: (a) objective indicia and (b) the court's own judgment.[16]

B. Metrics and Indicia of Proportionality

In forming the necessary objective indicia, the court made four conclusions regarding state action consensus. First, a majority of states rejected the juvenile death penalty. Thirty states did not execute juveniles: twelve explicitly prohibited this form of punishment and eighteen states maintained execution via law but by "express provision or judicial interpretation exclude juveniles from its reach."[17] Second, the court looked at the practice of states that had not rejected the juvenile death penalty. Twenty states that did not formally prohibit the punishment of death had not imposed the penalty on juveniles at the time of the case.[18] Although there is no such dissensus now, there is

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[12] 536 U.S. at 312, 318, 319-320 and 487 U.S. 815, 818-838.

[13] *Id.* at 815.

[14] *Id.* at 836-38.

[15] *Id.* (asserting that adolescents were unlikely to be deterred because they are unable to adequately weigh the cost and benefits of their actions).

[16] *Roper v. Simmons*, 543 U.S. 551 (2005).

[17] *Id.* at 553.

[18] *Id.*

extraordinary variability across states in the reach of JLWOP sentences, both in the construction of statutes and in their use.[19]

Third, the court combined these two state trends to conclude that there was a national movement towards juvenile death penalty abolition.[20] A similar trend is developing in the states now with respect to JWLOP statutes, with both a decline in such sentences and in moves by state legislatures to abolish.[21] Lastly, the court found the similarities between the *Atkins* objective indicia and the state practice in this case, highly persuasive.[22] Below, the fit of the Atkins and Roper proportionality arguments to JLWOP sentences and statutes is analyzed.

C. The Supreme Court's Independent Judgment in *Atkins* and *Roper*

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[19] Human Rights Watch, The Rest of Their Lives, 2008 update, *supra* note 6. *See, also*, de la Vega and Leighton, supra note 6. Currently, 42 states permit JWLOP sentences. Among the nine that prohibit JWLOP sentences, four prohibit LWOP sentences at any age. There is no consensus among the states on the minimum age for a natural life sentence: 14 states allow a minor to be tried as an adult at any age and sentenced to LWOP. In 7 states, all life sentences deny the possibility of parole, regardless of age. Some states, such as Alabama and California, limit JWLOP persons convicted of capital crimes or "special circumstances" crimes such as terrorism. Currently, 42 states permit JWLOP sentences. Among the nine that prohibit JWLOP sentences, four prohibit LWOP sentences at any age. There is no consensus among the states on the minimum age for a natural life sentence: 14 states allow a minor to be tried as an adult at any age and sentenced to LWOP. In 7 states, all life sentences deny the possibility of parole, regardless of age. Some states, such as Alabama and California, limit JWLOP persons convicted of capital crimes or "special circumstances" crimes such as terrorism. The HRW-AI report shows enormous variation across states in their use of JWLOP sentences: JWLOP rates in Delaware, Illinois, and Maryland are low despite high juvenile arrest rates for violent crimes, while Pennsylvania and Michigan have high JWLOP rates but low youth violence arrest rates. Juvenile arrests for violence are comparable in Michigan and New Jersey, yet Michigan has sentenced 306 youth to LWOP compared to none in New Jersey. Missouri has high juvenile arrest rates and high rates of youths serving natural life sentences.

There also is wide variability in the willingness of states to use it. First, the temporal trend in JWLOP sentences from 1989 through 2003 is similar to the trend juvenile death sentences in juvenile death sentences during the same period. JLWOP sentences were extremely rare before 1980 (HRW-AI, 2005). The number rose steadily throughout the 1980s, reaching 50 in 1989, and peaked at 152 in 1996; since then, JWLOP sentences declined sharply to 54 in 2003 (see, HRW-AI, 2008). This downward trend mirrors the sharp decline in juvenile death sentences over the same period, a decline through the first half of this decade that exceeded the decline in the rate of juvenile homicide arrests and the overall decline in the homicide and violent crime rates. See, generally, Jeffrey Fagan, *End of Natural Life Sentences For Juveniles*, 6 CRIM. & PUBLIC POL'Y 4, 735, 741

[20] *Roper*, at 553.

[21] Human Rights Watch, *supra* note 15.

[22] *Id.* The court noted that the major difference between the two cases, in *Atkins* there was a greater acceleration of state action banning death penalty for mentally retarded, was offset by the other four consensus points.

In creating an independent judgment, the court relied significantly on juvenile culpability, penological concerns, and the severity of the death penalty.[23] The court stated that capital punishment must be limited to "a narrow category of the most serious crimes."[24] Further, those sentenced to capital punishment must possess a culpability "most deserving of execution".[25] Finally, capital punishment needs to serve the penological interests of retribution and deterrence.[26] The court determined that the juvenile death penalty did not meet the latter two goals. Even if juvenile offenders commit the most serious crimes, they did not deserve the death penalty because they lack the requisite culpability due to their cognitive deficiencies. A diminished culpability mitigates the retributive effect of capital punishment.[27] Further, their cognitive deficiencies, specifically in cost-benefit analysis, makes the deterrent effect of execution on their age group "virtually non-existent".[28]

The court also found the practices of nation-states influential, but made clear that international consensus was not decisive in their independent judgment.[29] The court stated that this international consensus confirmed their judgment about the evolving standards of decency.

IV. Extending *Roper* to Juvenile Life Without Parole

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[23] *Id.* at 553. At the onset, the court rejected the notion that their independent judgment had no bearing on constitutional proportionality analysis. *See Stanford v. Kentucky*, 492 U.S. 361 (Ky, 1989).

[24] *Id. See also, Atkins*, at 319.

[25] *Id.*

[26] *Id.* at 571-72.

[27] *Id.* ("Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.").

[28] *Id.* ("In particular, as the plurality observed in *Thompson*, '[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent.'").

[29] *Id.* at 554 (citing Convention on the Rights of the Child (Art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990); See ICCPR, Art. 6(5), 999 U.N.T.S., at 175 (prohibiting capital punishment for anyone under 18 at the time of offense) (signed and ratified by the United States subject to a reservation regarding Article 6(5), as noted, *supra*, at 1194); American Convention on Human Rights: Pact of San Jose, Costa Rica, Art. 4(5), Nov. 22, 1969, 1144 U.N.T.S. 146 (entered into force July 19, 1978) (same); African Charter on the Rights and Welfare of the Child, Art. 5(3), OAU Doc. CAB/LEG/ 24.9/49 (1990) (entered into force Nov. 29, 1999) (same)).

The *Roper* Court casually entered the debate about JLWOP, perhaps unintentionally. Justice Kennedy's opinion toyed with the notion that for adolescents, a natural life sentence is on the same proportionality plain as a death sentence. First, he noted in passing that "…the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person." Then, he invoked the incomplete development of adolescents as a discount on proportionality, stating that …."[w]when a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life *and his potential to attain a mature understanding of his own humanity*" (emphasis added).[30] The Court seemed to reject *any* punishment that would permanently mortgage or foreclose the possibility of the realization of full human development.

The majority also concluded that minors might well imagine life without parole to be the same if not worse than death because most of their lives lies ahead. "To the extent the juvenile death penalty might have residual deterrent effect, it is worth noting that the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person".[31] This sentence can be read as a rejection of any punishment that denies an adolescent the experience of "full human development" like education, occupation, and relationships.[32] Kennedy further stated that "the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person."[33] By these proportionality standards, both the juvenile death penalty and JWLOP each fail both a constitutional and a commonsense test of the retributive and deterrence goals of punishment. It is only when the sentencing goals drift toward instrumental goals that the *Roper* logic and its extension to JWLOP become moot.

Roper establishes that adolescents legally have a diminished culpability that excludes them from the most severe state punishment. Yet most of this analysis classifies the death penalty as a punishment that requires close scrutiny due to its finality and moral

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[30] *Roper*, at 554.

[31] *Roper* at ___.

[32] *See* Jeffrey Fagan, *End of Natural Life Sentences For Juveniles,* 6 Crim. & Public Pol'y 4, 735, 741.

[33] *Roper,* at 571-72.

implications. Does JWLOP merit the same constitutional logic and regulation? As I discuss later on, the severity of JLWOP sentences suggests that it does.

A. The Thin Line between Death and Delayed Death

Harmelin v Michigan,[34] a test of the penal proportionality of LWOP for non-murder offenses, expressed a spectrum of the opinions regarding the comparative severity between death in prison and execution. Other proportionality cases also reflect sharp differences in caselaw and among individual judges within the same courts. Some believe that death by execution is a categorically different punishment deserving different proportionality requirements; others recognize the extreme harshness of life imprisonment, but require a less strict standard because they deem it less severe than death.

Justice Marshall in *Harmelin*, endorsed a more robust proportionality analysis for less-than-death punishments, where death by execution and death in prison both deny the fundamental right of freedom.[35] Although White's dissent in *Harmelin* joins with Marshall in calling for proportionality in less-than-death sentences, it is Justice Marshall's dissenting opinion that strikes at the core of the equivalence in severity between LWOP and execution: both punishments reject rehabilitation, and therefore the proportionality analysis must stand on other Eighth Amendment prongs.[36] Marshall states:

> "[A] mandatory sentence of life imprisonment without the possibility of parole does share one important characteristic of a death sentence: The offender will never regain his freedom. Because such a sentence does not even purport to serve a rehabilitative function, the sentence must rest on a rational determination that the punished criminal conduct is so atrocious that society's interest in deterrence

[34] *Harmelin v. Michigan,* 510 U.S. 957 (1991).

[35] *Id.* At 1027.

[36] *Id.* at 1028. *See also* Hillary J. Massey *Disposing of Children: The Eighth Amendment And Juvenile Life Without Parole After Roper*, 47 B.C.L. Rev. 1083, 1096 (making the argument that there are two Eighth Amendment proportionality tests: (1) disproportionate according to "evolving standards of decency" that violates the Constitution and thus requires categorical exemption; and (2) gross disproportionality test to determine whether the sentence as applied to the particular offender for the particular offense violates the Constitution) [hereinafter Massey].

and retribution wholly outweighs any considerations of reform or rehabilitation of the perpetrator."[37]

Following this logic, states that have abolished the death penalty use LWOP as a replacement sentence,[38] effectively placing death and LWOP on equal jurisprudential and constitutional ground. Texas, for example, created the alternate sentence of Life Without Parole for adults convicted of capital crimes in 2005, and made the sentence mandatory when death either is not sought or when it is not imposed in the penalty phase of a capital trial.[39] In 2009, the Texas legislature passed SB 839, abolishing life without parole for juveniles,[40] putatively conforming Texas' capital statutes to the *Roper* limitations. Even when state courts regard death by execution as categorically different from LWOP, they note that it fulfills the same penological interests of retribution and deterrence as does death. In the politics of capital punishment, LWOP has been instrumental as a political tool for many anti-death penalty advocates as a moral alternative to state killings.[41] Due to these political and social trends the number of adult prisoners serving LWOP sentences has increased,[42] even as the number of JLWOP sentences has declined.

B. Penological Justifications for LWOP

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[37] *Id.*

[38] For example, in England and Wales, courts fix the type of punishment (severity) so that it's proportional to the crime. In LWOP cases, these countries apply a two-tiered process in which the court imposes a life sentence with out parole, but also sets a minimum term that reflects proportionality to the crime and meets the interests of retribution and deterrence. Catherine Appleton, *The Pros and Cons of Life Without Parole*, 47 Brit. J. Criminology 597, 598, 606 (2007), (quoting Professor James Liebman in the New York Times, who asserted that LWOP has been "absolutely crucial to whatever progress has been made against the death penalty. The drop in death sentences would not have happened without LWOP").

[39] Texas Penal Code, § 12.03, Sec. 12.31. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the institutional division for life without parole or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the institutional division for life without parole. (b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment without parole or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that a sentence of life imprisonment without parole is mandatory on conviction of the capital felony.

[40] The bill awaits the Governor's signature as of today.

[41] Appleton, *supra* note 26 at 605 (citing to NY Times William Bowers and others).

[42] *Id.* at 600. (stating in 2006, one in every 35 people incarcerated was serving an LWOP sentence). See, also, *Note, A Matter Of Life And Death: The Effect of Life Without Parole Statutes on Capital Punishment*, 119 HARVARD L. REV. 1838 (2006).

Proponents of retaining LWOP statutes characterize it as different from death and attempt to morally separate this punishment from state execution. But they concurrently emphasize the severity this sentence inflicts as a penological justification that avoids Eighth Amendment regulation. Proponents raise both utilitarian and retributive arguments that provide a counterweight to the moral distinctions advanced by abolitionists.

First, LWOP fully protects the public from criminals who are kept of the streets.[43] This assurance also mitigates any mistakes made by parole boards.[44] Further, LWOP ensures adequate retribution for those who commit egregious crimes.[45] LWOP also serves as a deterrent for those thinking of committing crime. A "rational" person would not commit a particular crime if he or she knew that they would be incarcerated for life.[46]

But these arguments fall apart under close scrutiny. Recent evidence challenges the ineffectiveness of parole boards in gauging prisoners' culpability and dangerousness to society.[47] Second, there is no conclusive evidence proving that LWOP has had a deterrent effect that is either stronger or weaker than the contested arguments that death itself is a deterrent. Although, studies show that prisoners' serving LWOP detest their sentences, it is unclear whether this sentiment is effectively communicated to the public and has the effect of deterrence.[48] These studies do illustrate the severity of LWOP as a punishment on the prisoners. One study – and there has been only one – found that most LWOP prisoners preferred execution to LWOP because of the detrimental effects of life imprisonment.[49] Additionally, studies that claim the death penalty's deterrence effect trickles down to less severe punishments suffer from logical and statistical errors.[50]

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[43] *Id.* at 603.

[44] *Id.*

[45] *Id.* 605.

[46] *Id.* at 607.

[47] *Appleton* at 603 (citing Cunningham and Reidy 1998). *See also, Naovarath v. State*, 779 P.2d 944, 948 (Nev. 1989) (overturning a juvenile LWOP sentence against a 13 year old, the court stated "[a] strong argument exists for the proposition that the parole board is best suited to make this kind of judgment at some future time.").

[48] *Id.* at 607.

[49] *Id.*

[50] Jeffrey Fagan, *Death and Deterrence Redux: Science, Law And Causal Reasoning on Capital Punishment,* 4 OHIO ST. J. CRIM. L. 255, 258 (2006) (discussing studies that show deterrence effect of death penalty have been use to justify other harsh punishments like "mandatory minimum sentences and

Opponents of LWOP assert several other policy-based arguments to defeat the utilitarian and retributive claims. First, LWOP creates an aging prison population that requires massive public spending on medical and geriatric care.[51] These are unnecessary expenditures particularly because older prisoners are not a great risk to public safety and could be released.[52] Second, LWOP creates the phenomena know as "superinmates" or prisoners who, having nothing to lose because of their life internment, are extremely violent.[53] Their violence creates safety risks for the prison staff and other inmates.

Finally, apart from the jurisprudential considerations, there are a set of normative, constitutional and policy considerations that are specific to juveniles sentence to LWOP that argue for its abolition. Juveniles serving LWOP are denied the opportunity of rehabilitation. This denial is antithetical to the United States' general juvenile justice system's idea that adolescents deserves rehabilitative opportunities.[54] Rehabilitation is important particularly for adolescents, whose character is not fully formed. [55] Rehabilitation should be a primary penological concern for juveniles, particularly because most juveniles serving LWOP are first time offenders.[56] Third, LWOP sentences do not take into account the horrible situations juveniles who commit crimes come from. Many juveniles serving LWOP sentences were abused and neglected by their parents and family.[57] These adolescents resort to crime because they see no way out of their current situation, thus "[t]heir crimes occur in the midst of crisis, often resulting from desperate,

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"three strikes" laws, zero tolerance policies for school children and drug offenders, and mandatory transfer of adolescent offenders from the juvenile court to the criminal court. Thus, the deterrent effects of capital punishment are apparently indefinite and offer execution as a cure-all for everyday crime.").

[50] *Id.* at 269-70. (stating that these studies particularly omit any relevance LWOP statutes have in death penalty sentencing and consequently the potential deterrent effect of the death penalty).

[51] Appleton, *supra* note 47, at 604; Massey, *supra* note 63, at 1116.

[52] *Id.*

[53] *Id.*

[54] Logan, *supra* note 65, at 685.

[55] Brief of Petitioner, at 28, *Pittman v. South Carolina*, (No. 07-84346) (Feb. 1, 2008).

[56] Massey, *supra* note 63, at 1113.

[57] Bryan A. Stevenson, Sentencing Young Children To Die in Prison, Equal Justice Initiative, Statement Before The United States House Of Representatives, The Subcommittee On Crime, Terrorism, And Homeland Security (Sept. 11, 2008).

misguided attempts to protect themselves."[58] Fourth, Juveniles are very susceptible to physical and sexual abuse in prison by older inmates.[59] One study indicates that juveniles in adult prisons are five times more likely to be sexually assaulted, twice as likely to be beaten by prison staff, and fifty percent more likely to be attacked with a weapon, than juveniles in juveniles facilities.[60] Finally, LWOP is harsher for juveniles than adults because it is a longer sentence imposed during the most formative years of youth. Juveniles sentenced to LWOP are denied opportunities in education, employment, and relationships.[61] Additionally, juveniles in adult prisons are denied intellectual development because most statutes make them ineligible for post-secondary education.[62]

C. Jurisprudential Arguments

Despite the fact that abolitionists present JLWOP and the death penalty as similar in severity and moral abhorrence, the Supreme Court has never applied proportionality principles to juvenile life without parole sentences. Lacking guidance, lower courts and state courts have applied various standards of proportionality or no proportionality analysis at all for juvenile LWOP cases.

For both juveniles and adults, LWOP has been labeled "death by incarceration" because it fully deprives the defendant his freedom.[63] This perpetual deprivation is particularly severe for adolescents. The Kentucky Supreme Court stated that "life without parole for a juvenile, like death, is a sentence different in quality and character from a sentence to a term of years subject to parole."[64] Although a sentence of LWOP is considered penultimate in degree of punitive severity to a death sentence, the two

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[58] *Id.* at 5. *Also see* PBS Frontline "When Kids Get Life" *available at* http://www.pbs.org/wgbh/pages/frontline/whenkidsgetlife/view/.

[59] Logan, *supra* note, at 713.

[60] Massey, *supra* note, at 1112-3. *See* DEBORAH LABELLE ET AL., AM. CIVIL LIBERTIES UNION OF MICH., SECOND CHANCES: JUVENILES SERVING LIFE WITHOUT PAROLE IN MICHIGAN PRISONS 3 (2004), http://www.aclumich.org/pubs/juvenilelifers.pdf

[61] *Id.* at 1111.

[62] *Id.* at 1112. (stating that most statutes provide post-secondary education for incarcerated youths under age 25 and getting out in 5 years).

[63] Appleton, *supra* note 47, at 605.

[64] Logan, *supra* note 65, at 713 (citing *Hampton v. Kentucky* 666 S.W.2d 737, 741 (Ky. 1984)).

sentences are arguably similar in that there is no hope of redemption. In this regard, LWOP is a "slow death sentence" that is "equally severe" to a death sentence.[65] In overturning the LWOP sentence of a thirteen-year-old convicted of murder, the Nevada Supreme Court characterized the sentence as a "denial of hope" that rendered "good behavior and character improvement" immaterial.[66] The court concluded the sentence constituted cruel and unusual punishment.

But Eighth Amendment proportionality challenges of juvenile LWOP sentences have met with limited success in state and federal courts. For example, in *People v. Miller*, the court overturned an LWOP sentence for a first-time, fifteen year old offender, after finding the LWOP sentence disproportionate to the defendant's role is a passive lookout.[67] The court did, however, note that under certain circumstances imposing an LWOP sentence on a juvenile offender could be justified.[68] In *Harris v. Wright*, the Ninth Circuit refused to overturn a mandatory LWOP sentence imposed on a fifteen-year-old convicted of murder based on the notion that proportionality analyses are narrowly limited to instances of "gross disproportionality." [69] Like any other prison sentence, it

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[65] Wayne A. Logan, *Proportionality and Punishment: Imposing Life Without Parole On Juveniles*, 33 WAKE FOREST L. REV. 681, 712 (1998) ("Philosopher John Stuart Mill characterized life in prison in a similarly despairing way: 'What comparison can there really be, in point of severity between consigning a man to the short pang of a rapid death, and immuring him in a living tomb, there to linger out what may be a long life in the hardest and most monotonous toil, without any of its alleviation or rewards—disbarred from all pleasant sights and sounds, and cut off from all earthly hope, except a slight mitigation of bodily restraint, or a small improvement of diet?'").

[66] *Naovarath v. Nevada*, 779 P.2d 944, 948 (1989) ("To adjudicate a thirteen-year-old to be forever irredeemable and to subject a child of this age to hopeless, lifelong punishment and segregation is not a usual or acceptable response to childhood criminality, even when the criminality amounts to murder...As said, hopelessness or near hopelessness is the hallmark of [this] punishment. It is questionable as to whether a thirteen-year-old can even imagine or comprehend what it means to be imprisoned for sixty years or more. It is questionable whether a sentence of virtually hopeless lifetime incarceration for this seventh grader 'measurably contributes' to the social purposes that are intended to be served by this next-to-maximum penalty").

[67] *People v. Miller*, 781 N.E.2d 300, 308 (Ill. 2002) ([A] mandatory sentence of natural life in prison with no possibility of parole grossly distorts the factual realities of [this] case and does not accurately represent the defendant's personal culpability such that it shocks the moral sense of the community

[68] Id. at 309 (Ill. 2002) ("Our decision does not imply that a sentence of life imprisonment for a juvenile offender...is never appropriate. It is certainly possible to contemplate a situation where a juvenile offender actively participated in the planning of a crime resulting in the death of two or more individuals, such that a sentence of natural life imprisonment without the possibility of parole is appropriate").

[69] *Harris v. Wright*, 93 F.3d 581, 585 (1995) ("Youth has no obvious bearing on this problem: If we can discern no clear line for adults, neither can we for youths. Accordingly, while capital punishment is unique and must be treated specially, mandatory life imprisonment without parole is, for young and old alike, only

raises no inference of disproportionality when imposed on a murderer."[70] Although, the *Harris* court utilized Kennedy's gross disproportionality test, its rationale reflected Scalia's opinion on less-than-death sentences. In *Rice v. Copper*, the Seventh Circuit affirmed a mandatory LWOP sentence for an illiterate, mildly retarded 16-year-old murderer.[71] Interestingly, the court addressed the culpability of the adolescent, stating that there was no constitutional barrier to the LWOP sentence if the defendant possessed the criminal intent necessary for the crime.[72] Ultimately, the nature of the crime trumped the youthfulness of the defendant.

In *Edmonds v. State*, the Mississippi Court of Appeals upheld an LWOP sentence against a 13-year-old defendant.[73] Similarly, the North Carolina Supreme Court affirmed an LWOP sentence on the juvenile defendant stating that age and reduced culpability were not relevant factors for Eighth Amendment proportionality analysis.[74] In *State v Standard*, the South Carolina Supreme Court upheld an LWOP sentence on a 15-year-old that was convicted of burglary but because he had a previous felony violated the states two-strike statutes.[75] Finally, in *Craig v Louisiana*,[76] the Louisiana Supreme Court upheld a JLWOP sentence ruling that the sentence was not disproportionate to the offense of first degree murder, and rejected the claim that the legislature had failed to assign sentences that were "meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case. The *Craig* court read *Roper* as explicitly upholding Christopher Simmons' (the appellant in *Roper*) sentence of life without parole.[77]

But in *Nuñez*,[78] Justice Richard M. Aronson of Division Three of the 4th Circuit of the California of Appeals echoed *Roper* and then went further in striking down a life

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an outlying point on the continuum of prison sentences. Like any other prison sentence, it raises no inference of disproportionality when imposed on a murderer").

[70] *Id.* at 585. *Also see* Logan, *supra* note 65, at 691.

[71] *Rice v Copper*, 148 F.3d 747, 752 (7th Cir. 1998).

[72] *Id.*

[73] *Edmonds v State*, 955 So. 2d 864, 895-97 (Miss. Ct. App. 2006).

[74] *State v. Green*, 502 S.E.2d at 827-28.

[75] *State v. Standard*, 569 S.E.2d 325, 329 (S.C. 2002).

[76] 944 So.2d 660 (La.App. 1 Cir. 2006)

[77] 543 U.S. at 560, 125 S.Ct. at 1189–90.

[78] *In Re* Antonio De Jesus Nuñez, Super. Ct., No. 01ZF0021 (2009)

imprisonment without parole sentence imposed on Antonio Nuñez, a 14-year-old child convicted of aggravated kidnapping.[79] The Court declared the sentence to be cruel and unusual punishment in violation of the Eighth Amendment and the California Constitution. The court expresses alarm at the notion of a 14-year-old having no future but to live and eventually die in prison for an act done at an age before society generally expects a person to have a fully developed moral capacity. It cites the *Roper* trilogy of basic differences between youth and adults: immaturity, vulnerability to external influences, and unformed character.[80]

Despite the reference to *Roper*, the ruling in Nuñez was narrow and based on circumstances that are "freakishly rare" that were produced by a contradiction in the state's sentencing structure between kidnapping and special circumstances murder.[81] But does provide another perspective on the difficulty of calibrating the threshold when a LWOP sentence may be appropriate for a minor.

Not all lower courts adhere to the *Harris*, *Edmonds*, *Standard* or similar rationales to uphold juvenile LWOP. In *Tate v. State,* a Florida appellate court ruled that LWOP was a cruel and unusual punishment against a 12-year-old defendant.[82] The Supreme Court of Kentucky overturned two LWOP sentences for 14-year-old defendants convicted of forcible rape based on state constitutional principles.[83] The Indiana Supreme

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[79] The facts of the case are nothing short of Dickensian. Antonio Nuñez was shot in his South Los Angeles neighborhood, at age 13, while he was riding his bike. His brother came to his aid and was shot to death in front of him by the same assailants who had shot Nuñez. Nuñez eventually affiliated with a gang for protection, but left the gang and moved with his family to Nevada. Three months after moving, the Los Angeles County Probation Department ordered him to return to his old neighborhood. Once back and affiliated with the same gang at age 14, again for protection, he got into a car with two older men who picked him up at a party. One of the men later claimed to be a kidnap victim. When their car was chased by the police and shots were fired, Nuñez was arrested and charged with, among other offenses, aggravated kidnapping, the crime that led to the JLWOP sentence.

[80] The Nuñez Court leaves unmentioned the fear expressed by both the *Roper* and *Atkins* courts of wrongful convictions stemming from a heightened risk of false confessions).

[81] The statute governing kidnapping a man and putting him in mortal danger requires an LWOP sentence regardless of the perpetrator's age. But the statute dealing with special circumstances murder, including kidnapping, for offenders under 16 allows only life with the possibility of parole. Put another way, Nuñez would have been better off if he had killed the person he was kidnapping. The absence of doctrinal punch in the Nuñez logic means that the ruling may be of limited use to the other 221 persons serving LWOP for crimes committed while adolescents.

[82] 864 So. 2d 44, 54 (Fla. Ct. App. 2003).

[83] *Workman v. Kentucky*, 429 S.W.2d 374, 378 (Ky. 1968).

Court believed youth was a mitigating factor for a 15-year-old convicted of murder, rape, robbery, and other crimes.[84] In reducing the sentence from 199 years to ninety-seven years imprisonment, the Court compared the defendant's offenses to other similar cases and their corresponding sentences.[85]

Finally, in *Naovarath v. Nevada*, which the *Nuñez* court cites in its conclusions, the Nevada Supreme Court reversed an LWOP sentence against a 13-year-old convicted of first-degree murder.[86] The court considered the age and the "probable mental state at the time of the offense", asserting that "[c]hildren are and should be judged by different standards from those imposed upon mature adults."[87] The Court also considered the effect that differential treatment of adolescents would have on retribution and deterrence. In addressing retribution, the individualized facts of the case were compelling. The Court stated, "almost anyone will be prompted to ask whether Naovarath *deserves* the degree of retribution represented by the hopelessness of a life sentence without possibility of parole, even for the crime of murder. We conclude that as "just deserts," for killing his sexual assailant, life without possibility of parole is excessive punishment for this thirteen-year-old boy." [88] The Court found any penological interest in the deterrent effect of LWOP unpersuasive for 12 and 13-year- olds. It stated that, "it is highly doubtful that any twelve or thirteen-year-olds would be more deterred by the penalty imposed on this boy than by a life sentence which is reviewable by the parole board."[89]

Despite the *Roper* Court's holding on youth and reduced culpability, youthfulness also may be an aggravating factor that could bias juries toward harsher sentences. Professor Elizabeth Emens, exploring Justice Kennedy's concern with juries as decision-makers for juvenile execution sentencing,[90] asserts that in *Roper*, Justice Kennedy feared

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[84] 717 N.E. 2d 138, 149. (1999) (finding that the defendant's "youthful age is sufficiently mitigating that the maximum sentence" for each of his convictions is "manifestly unreasonable." *Id.* at 150).

[85] *Id.* at 151.

[86] 779 P.2d 944, 948 (Nev. 1989).

[87] *Id.* at 946-7.

[88] *Id.* at 948.

[89] *Id.*

[90] Emens, *supra* note at 30, at 52-3.

that juries "categorically disfavor" adolescent defendants because of age discrimination.[91] Unlike other scholars who suggest that the diminished culpability (exhibited in adolescent recklessness etc.) favors adolescents for sentencing, Justice Kennedy believed that juries may punish adolescents more severely due to these stereotypes.[92] Kennedy wanted to ensure that youth discrimination would not occur and thus endorsed a categorical ban on juvenile executions.[93]

Emens' analysis of age discrimination can be applied to juvenile LWOP cases. Just as age became an aggravating factor in death penalty cases, this bias potentially exists for juvenile LWOP cases. The bias diffuses from legislatures to juries. Arguably, age discrimination might have a greater effect in LWOP cases because of society's moral distinction between execution and life sentences; that is, where death is not an option, there are fewer constraints and costs to imposing a LWOP sentence on a minor. Age discrimination is not only limited to sentencing; evidence shows that youth face significant bias and errors in successive stages of case processing including "inflated culpability assessments, false confessions, ineffective assistance to counsel"[94] and the construction of presentence investigation reports.

Race as an "aggravating factor" has also been considered in LWOP sentencing. de la Vega and Leighton argue that race and racism are determinate factors in LWOP cases.[95] In 2000, African American children were serving LWOP sentences at a rate that was ten times higher than White children.[96] De la Vega and Leighton argue that racism

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[91] *Id.* (stating that there is "a peculiarly unacceptable type of error: the possibility of executing a young offender because a jury erred based on categorical disfavor; that is, because a jury treated a member of this vulnerable group worse precisely because he is a member of that group.").

[92] *Id.*

[93] *Id.* at 68-9. (stating that Kennedy believes that youth was an imperfect proxy to assess culpability. Further Kennedy believed that the "brutality or cold-blooded nature of any particular crime" could overpower mitigating arguments, even where they should apply, and, second, "a defendant's youth may even be counted against him." *Id.* at 61).

[94] Fagan, *supra* note 28, at 742.

[95] Constance de la Vega and Michelle Leighton, *Sentencing Our Children To Die In Prison, Global Law And Practice* 42 UNIVERSITY OF SAN FRANCISCO L. REV. 983 (2007).

[96] de la Vega and Leighton, *id* at 6 (citing data from 38 states' correctional departments and additional data from Alabama and Virginia and U.S. census data available at: http://www.census.gov/popest/states/asrh/files/SC-EST2003-race6-AL_MO.csv and http://www.census.gov/popest/states/asrh/files/SC-EST2003-race6-MT_WY.csv , accessed on March 4, 2005 (2000 figures)).

significantly affects minority adolescents' treatment within the criminal justice system.[97] They state that within the justice system, there is a " 'cumulative' disadvantage" for minority adolescents that increases throughout the separate processing components i.e. arrest, processed, adjudicated, sentenced, and incarcerated.[98] To prove their assertion, de la Vega and Leighton provide a detailed analysis of state racial disparities for juveniles. For example, in California, 158 of the 227 juveniles serving LWOP sentences are minorities; further, African American youth are twenty times more likely to be sentenced to LWOP than white, while Latino youth are four times more likely.[99]

V. Conclusion

In *Roper*, the Supreme Court concluded "juvenile offenders cannot with reliability be classified among the worst offenders."[100] And in *People v Davis*,[101] the California Supreme Court applied this principle in weighing the harshness LWOP sentences imposed on juveniles: "if the person on whom it is inflicted is a minor, who is condemned to live virtually his entire life in ignominious confinement, stripped of any opportunity or motive to redeem himself for an act attributable to the rash and immature judgment of youth."[102] *Roper* made clear that a new calculus of proportionality is warranted when it considering the severity and finality of punishments for juveniles, punishments whose severity rivals if not equals that of death. For these reasons, HR 2289 should become the law of the land. Foreclosing the possibility of redemption and humanity for persons whose immaturity and incompleteness is an adjudicative fact is a violation of the principled and constitutional ban on cruel punishments. The state's

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[97] *Id.* at 16. ("Though African Americans comprise 16% of the child population in the United States, they comprise 38% of those confined in state correctional facilities. Children of color are also held in custody and prosecuted 'as adults' in criminal courts and given adult sentences more often than white children. Children of color are also much more likely than white youth to do their time in adult prison. . . . 26 out of every 100,000 African American children are serving time in adult prison while for white children the rate is only 2.2 per 100,000.").

[98] *Id.*

[99] *Id.* at 14.

[100] 543 U.S. 551, 559

[101] *People v. Davis* (1981) 29 Cal.3d 814, 832, fn. 10

[102] *Id.* at 833.

interest in the constitutional regulation of punishment should not stop at death when other punishments are proportionately as severe. Functionally, no one can competently argue that the state's crime control interests are better advanced more by a life without parole sentence than by a sentence of 40 or 50 years for a minor. For these reasons, I urge the Congress to enact this bill.

June 4, 2009

Letter from United States and international human rights organizations to the Committee on the Elimination of Racial Discrimination ("CERD")

Re: Clarifications on Juvenile Life Without Parole Sentences: Information Presented by the United States in its Response to CERD's Recommendations (January 19, 2009)

Dear Members of the Committee on the Elimination of Racial Discrimination:

The undersigned organizations submit this letter to clarify information about the United States' practice of sentencing juveniles to life in prison without the possibility of parole ("JLWOP"). We offer these clarifications in reaction to the United States' follow-up report of January 19, 2009, responding to the Committee's recommendations contained in its Concluding Observations on the United States, adopted on March 7, 2008.

We urge that the Committee consider the following.

Paragraph 21: U.S. Response

1. The United States stated that juvenile life without parole sentences are "imposed in rare cases where individuals, despite their youth, have committed gravely serious crimes…--typically murder--…"

In fact, while no other country in the world has imposed this sentence on a juvenile, over 2,500 individuals are serving this sentence in the United States for crimes committed while they were below the age of eighteen.[1] This number illustrates that the sentence is not imposed only "in rare cases," as the United States claims.

In addition, the United States does not reserve the sentence for juveniles convicted of gravely serious crimes. Across the United States, an estimated 26% of juvenile offenders are serving JLWOP for felony or "accomplice" murder, in which the juvenile was not the person who killed the victim.[2]

In some specific state studies, the percentages of youth serving life without parole for felony or "accomplice" murder are even higher. Nearly half of youth sentenced to life without parole surveyed by the American Civil Liberties Union in Michigan were sentenced for aiding and abetting or an unplanned murder in the course of a felony.[3]

[1] These statistics have been gathered by Human Rights Watch, in collaboration with many organizations and state departments of corrections throughout the United States. http://www.hrw.org/sites/default/files/related_material/JLWOP_Table_May_7_2009.pdf.
[2] Human Rights Watch/Amnesty International, *The Rest of Their Lives*, at 27 (2005), available at: http://www.hrw.org/en/reports/2005/10/11/rest-their-lives-0.
[3] American Civil Liberties Union of Michigan, *Second Chances, Juveniles Serving Life without Parole in*

Thirty-three percent of youth sentenced to life without parole whose cases Human Rights Watch investigated in Colorado had convictions based on the felony murder rule.[4] In 45 percent of California cases surveyed by Human Rights Watch, youth sentenced to life without parole had not actually committed a murder and were convicted for their role in aiding and abetting or participating in a felony.[5] These are all cases in which someone else was the primary actor. A significant number of these cases involved an attempted crime gone awry—a tragically botched robbery attempt, for example—rather than premeditated murder.

Still other youths were given the sentence *not* for murder but for lesser crimes. For example, Antonio Nunez was sentenced to LWOP at the age of 14 for a crime that resulted in no bodily injury. (*See, e.g.*, State of California v. Antonio Nunez, 2001).[6]

2. The United States stated that JLWOP is imposed on juveniles "only after a judge has made a determination that the juvenile can be tried as an adult. In such cases, whether a juvenile offender is prosecuted as an adult depends upon a number of factors that are weighed by a court, such as,...the age; personal, family or other relevant circumstances or background...; the juvenile's role in committing the crime; and the juvenile's prior record."

In fact, 19 states require the automatic transfer of a child to adult court when the child is accused of certain crimes, without providing a hearing to make determinations about whether the child *should* be tried as an adult.[7] Once in adult court, 21 states then mandate the LWOP penalty upon conviction of certain crimes.[8] Thus, the court cannot consider the child's age, background, involvement in the crime, or other factors militating against placement in adult court and/or sentencing to this harshest of penalties. While 43 states could allow such a sentence for a juvenile, 38 states actually impose the LWOP sentence on juveniles in practice.[9]

3. The United States stated that H.R. 4300, the Juvenile Justice and Accountability and Improvement Act of 2007, is pending in the United States Congress.

H.R. 4300 was introduced in the House of Representatives in 2007, but it failed to pass. Another bill, HR 2289, was introduced May 6, 2009. However, neither the President nor

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Michigan's Prisons, at 4 (2004), http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf.

[4] Human Rights Watch, *Thrown Away: Children Sentenced to Life without Parole in Colorado* (February 2005) at 18-19, available at: http://hrw.org/reports/2005/us0205/.

[5] Human Rights Watch, *When I Die, They'll Send Me Home: Youth Sentenced to Life without Parole in California,* at 21 (January 2008), available at: http://www.hrw.org/reports/2008/us0108/.

[6] This sentence was recently overturned by a California appellate court and it is uncertain whether the state Attorney General will seek to challenge this ruling before the state's highest court. Meanwhile, two cases involving juveniles sentenced to LWOP for non-homicide convictions (*Graham v. Florida and Sullivan v. Florida*), have been accepted for hearing by the United States Supreme Court in its 2009-2010 term.

[7] De la Vega, C. and Leighton, M., *Sentencing Children to Die in Prison: Global Law and Practice*, 42 USF L. Rev. 983 (Sp. 2008), at http://www.law.usfca.edu/centers/documents/jlwoplawreview.pdf.

[8] Id., *See the law review article's* Appendix for a list of the relevant state laws.

[9] Ibid.

the executive branches of government have yet to support this bill. In fact, not only has the federal government failed to support legislative reform to JLWOP at the state level, the United States did not even alert the Committee to the fact that there are 37 individuals in the federal prison system serving LWOP sentences for federal crimes committed as juveniles. Thus, it is not just the states that impose this sentence but also the federal government.

4. The United States also failed to respond to the Committee's central inquiry about the racially discriminatory practices that lead to the imposition of this sentence on so many youth of color in the United States. For example, according to FBI data, black youth (under age 18) arrested for murder are sentenced to LWOP at rates that are between 1.2 and 6 times that of white youth arrested for murder.[10] On a per capita basis, black youth in the United States are serving LWOP at a rate that is ten times that of white youth, and in some states, the racial disparities are even more stark. The highest black to white ratios are in Connecticut, Pennsylvania, and California, where black youth are between 18 and 48 times more likely to be serving a sentence of LWOP than white youth, on a per capita basis.[11] In U.S. federal prisons, of those youth serving LWOP whose race has been identified, 73% are youth of color and 56% are black.

5. In its response to the Committee, the U.S. devotes several pages to discussion of its investigation of juvenile detention facilities. While we commend any investigation by the federal government into the abuses committed at these facilities, this response is not relevant to the Committee's concerns, since many children sentenced to LWOP are incarcerated in adult facilities while they are still juveniles. Youths convicted of murder in Michigan, for example, are automatically sent to adult prison at ages as young as 14.[12] By transferring juveniles to the adult court system, many states fail to honor the status of these individuals as children.

Moreover, every juvenile offender serving LWOP in the United States serves the bulk of his or her sentence in an adult facility, often entering adult prison at the age of 18, making the United States' lengthy description of its investigations of juvenile facilities inapposite to the Committee's concerns. Although mostly segregated from the adult population, youth in adult facilities are subject to physical violence, abuse and even rape by older inmates.[13] Research on youth in prison, as well as letters our organizations have received from juveniles serving LWOP, demonstrate the tremendous suffering of these young people. This leads them to commit or attempt to commit suicide at greater rates than adults and to suffer lifelong emotional trauma.

In conclusion, we respectfully submit this letter to the Committee for its consideration in interpreting the United States responses to its recommendations. We urge the Committee

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[10] Human Rights Watch, Submission to the Committee on the Elimination of Racial Discrimination (February 2008), available at: http://www.hrw.org/en/node/62449/section/2.
[11] Human Rights Watch, The Rest of Their Lives: Updated Executive Summary (2008), available at: http://www.hrw.org/sites/default/files/reports/us1005execsum.pdf.
[12] LaBelle, et al., *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons* (ACLU, 2004), available at: http://www.aclumich.org/sites/default/files/file/Publications/Juv%20Lifers%20V8.pdf.
[13] De la Vega, C. and Leighton, M., *Sentencing Children to Die in Prison, surpa* note 7.

to consider these points of clarification on the use of JLWOP sentences in the United States, and to reinforce the Committee's conclusion that the imposition of this sentence violates the treaty obligations of the United States and recognized customary international human rights law.

Sincerely,

American Civil Liberties Union
Amnesty International
Center for Constitutional Rights
Center for Law and Global Justice, University of San Francisco School of Law
Children and Family Justice Center, Northwestern University School of Law
Coalition of African, Arab, Asian, European, and Latino Immigrants of Illinois
Columbia Law School Human Rights Institute
Developing Justice Coalition
Four Freedoms Forum, Hawai'i Institute for Human Rights
Human Rights Advocates
Human Rights Watch
Lawyers Committee for Civil Rights Under Law
National Association of Criminal Defense Lawyers
National Coalition for the Fair Sentencing in Youth
Penal Reform International
Sisters in Sobriety, Transformed, Anointed & Healed
The Sentencing Project
University North Carolina, Chapel Hill, Juvenile Justice Clinic

For further information please contact:
Michelle Leighton
Director Human Rights Programs
Center for Law & Global Justice, University of San Francisco School of Law
2130 Fulton Street, San Francisco, CA 94117
mleighton@usfca.edu
(415) 422-3330; fax (415) 422-5440

House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security Chairman, Robert Bobby Scott & Ranking Member, Louie Gohmert
2138 Rayburn House Office Building
Washington SC 20515
Attention: Kimani Little, Kimani@mail.house.gov

OPPOSITION TO: H.R. 2289:

Dear Committee Chairman, Robert "Bobby" Scott and Ranking Member, Louie Gohmert,

I strongly oppose HR 2289.

The sentence, life without the possibility of parole, is reserved for individuals who have committed the most egregious crimes. This bill destroys the punishment that the people, in many states, have voted to enact. In addition state legislatures and Governors across the country have continued to determine that this punishment is suitable for the most violent and dangerous individuals and important to protecting the safety of their citizens.

HR 2289 creates defacto lifer hearings for LWOP juveniles that is costly and unnecessary. Currently, in most states, all persons are afforded ample screening under current laws to determine the appropriate sentence. In the event the convicted does not agree with the sentence, there are remedies such as filing an appeal, or habeas petition - a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. In addition, the Governor of each state has the power to grant clemency and pardons.

For many states, HR 2289 will override the will of the people, by basically overturning statewide initiatives that were voted on by the citizens of that state.

Due to the fact that there are currently legal remedies in place for those who believe that they have been wrongly convicted, there is no justification for this costly, unnecessary legislation.

Julie C.

2201 S. Lakeline Blvd., #3306
Cedar Park, Texas 78613
p.s.
I oppose this bill. The age of accountability is quite a bit younger,. There is no age on a victim and entire generation is destroyed by each murder. Where is the faith in this country when you allow a murderer at any age to be released. The murderer already destroyed the victim's life forever. Why legislate poor behavior. God's laws apply forever to the victims and no one is rehabilited after a murder except if they were soldiers or our police officers. This is a

waste of time for all who work so hard to put them in prison. They need to stay in prison where they can breed upon their own kind.
--

House of Representatives
Committee on the Judiciary
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Due to the fact that there are currently legal remedies in place for those who believe that they have been wrongly convicted, there is no justification for this costly, unnecessary legislation.

Barbara Bentley

3000-F Danville Blvd, #203
Alamo, California 94507
p.s.
Each case needs to be determined on merit, not on an exact age date. How many psychopaths and sociopaths would be released under this law? These are people who are born offenders and who can never change. They are people without conscience.
--

House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security Chairman, Robert Bobby Scott & Ranking Member, Louie Gohmert
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Due to the fact that there are currently legal remedies in place for those who believe that they have been wrongly convicted, there is no justification for this costly, unnecessary legislation.

Melinda Daugherty
Parents of Murdered Children
4 Los Dedos
Orinda, California 94563
Phone: 925-254-5106
Fax: 925-253-1408
p.s.
In Orinda in 1985, a 15 yr. old, Bernadette Protti, murdered a classmate. She was imprisoned until age 25. The community has never fully recovered from this crime. Ms. Protti never showed any remorse and should have been in prison for life. Little did I know in 1985 that my son and father would be murdered in

Stockton in 2003 by a mentally ill adult. Only after that did I fully realize the agony of the victim's family when Ms. Protti was released.
--
Delivered by CitizenSpeak!
Report abuse to abuse@citizenspeak.org [1647]

Robert L. Holbrook #BL-5140
SCI-Greene
175 Progress Drive
Waynesburg, PA 15370

5.24.09

Ms. Karen Wilkinson - General Counsel
U.S. Congressional Judiciary Committee
B370 RHOB
Washington, DC 20515-6223

RE: HR 4300
Juvenile Justice Accountability Act of 2009
June 9th U.S. Congressional Hearing Written Testimony

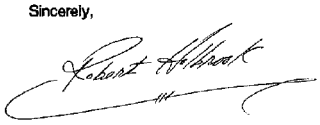
Dear Ms. Karen Wilkinson:

I was made aware that the U.S. Congressional Judiciary Committee was holding a hearing on June 9th, 2009, to discuss/debate bill HR 4300 which addresses the sentencing of juvenile offenders to life imprisonment without the possibility of parole. My sister, Anita D. Colon, has been scheduled to testify at the hearing as an advocate for offenders sentenced to life without parole for crimes they committed or participated in as juvenile offenders.

I was informed the Congressional Judiciary Committee would be accepting *written testimony* for the record until June 1st, 2009. As an offender sentenced to life without parole for being a 16 year old "lookout" for a drug related homicide that was committed by my adult co-defendants I have enclosed my written testimony for the June 9th, 2009, HR 4300 Congressional Judiciary hearing to be added to the hearing's record. Could you please process it for the record.

I would also like to add sincere thanks to you and the Congressional Judiciary Committee, in particular Congressman Scott, for having the courage to address the sentencing of juvenile offenders to life without parole. All too often debates on the appropriateness of the sentencing of juvenile offenders is drowned out by the rhetoric of vengeance and true justice is sacrificed. Thank you for working to re-impose justice in the sentencing of juvenile offenders.

Sincerely,



Written Testimony of
Robert L. Holbrook for the
U.S. Congressional Judiciary Committee, June 9th, 2009 Hearing
on HR 4300 Juvenile Justice Accountability and Improvement Act
of 2009 Addressing Juveniles Sentenced To Life Without Parole
in the United States

Robert L. Holbrook #BL-5140
SCI-Greene
175 Progress Drive
Waynesburg, PA 15370
5.25.09

On the night of January 21st, 1990, my 16th birthday, while celebrating with some friends my age smoking marijuana I was pulled to the side by a older guy I sold drugs for in the neighborhood and asked if I wanted to come along on a drug run to be a lookout while the deal went down. I agreed, I had done it before and thought I could use the money which depending on the amount of drugs exchanged could range anywhere from 500.00 to 2,500.00 dollars.

A couple minutes later myself and my co-defendants piled into a van. All my co-defendants were adults whose ages were 19, 4, 26 and 27. We drove to a house and got out and knocked on the door. The door was opened by a women. As we stepped to go into the house (2) of the men behind me pushed their way into the house, shoving me into the living room. One of the men grabbed the women while another ran out the house and slammed the door behind him. Another locked it. The women was escorted up the stairs. I was ordered to remain downstairs and to watch a child sleeping on a sofa. I did so, not because I wanted to participate in what was transpiring but rather because I was too frightened and confused to move or think rationally. I did what I was told by my co-defendants out of fear and because I wanted to make it out the house alive.

I remained downstairs with the child and could only make out vague noises upstairs. Much of it banging, whispers and some shouting. I cannot recall actually how long we were in the house. After a while my co-defendants returned downstairs and we exited the house. When we got back to the neighborhood, as we exited the van I noticed what appeared to be a red stain on one of my co-defendants jackets. I considered it might be blood. As I started to leave the group I was pulled to the side and was threatened that I would be killed along with my family if I didn't keep my mouth shut. I took this seriously and was terrified.

I found out the women had been killed the next day when reading a newspaper article. The article stated it was a robbery over the drug proceeds of her imprisoned husband, who was a drug dealer from my neighborhood.

In fear for my life I left my neighborhood and moved in with my mother. I re-enrolled in school. The thought of turning myself in

entered my mind but I was frightened of the consequences my co-defendant had threatened. I also wanted to put that tragic night behind me and move on with my life. I had started selling drugs to buy cloths and sneakers to impress girls, not to become involved in the taking of a human life. I never thought it would lead to murder.

Months later my co-defendants were arrested in quick succession. An arrest warrant was issued for my arrest and I turned myself in to the authorities with my family at my side. I went on trial in February 1991 and plead guilty to general murder to avoid being subjected to the death penalty. I did not want to plead guilty but my co-defendants had made up a version of the events that night that falsely portrayed me as a major participant in the murder. They did this to lesson their chances of being subjected to the death penalty. They claimed that I put a gun to the victims head, tied the victim up and knew a robbery/murder was going to occur prior to going to the house.

The judge at my degree of guilt hearing, after reviewing the evidence and listening to the testimony of one of my co-defendants stating under oath I placed a gun to the victim's head, tied her up and knew a robbery/murder was going to occur, found me guilty of 1st degree murder. one year later the co-defendant that testified against me recanted his testimony and admitted he lied under when he stated I had a gun, tied the victim up and knew a robbery/murder was going to occur.

Despite this the judge upheld his decision on the grounds that although he found my version of events more credible than my co-defendants and believed I was Less Culpable than all my co-defendants *"the law did not allow him to take into consideration my age or character"* and although I may not have known what was going to occur when I went to that house, once I observed what was going on I had to have known the victim was being murdered and should have exited the house. The fact that I remained downstairs watching the child at the command of my co-defendants rises to the level of aiding and abetting a 1st degree murder. Under Pennsylvania's mandatory sentencing laws he had no choice but to sentence me to life in prison without the possibility of parole.

I am now 35 years old. My adjustment to prison has been difficult and I believe I will never adjust to prison life. I regret that a women was murdered that night and her loss weights on me because I wish I had possessed the strength and courage to stop my co-defendants that night or run out of the house for help but I was a 16 year old skinny kid and they were adults I feared. I take responsibility for my actions that night and the many terrible decisions I made prior to that night that pulled me into the drug trade. I shouldn't have been selling drugs and I should have picked a better crowd of people to associate with.

I should not however be serving a life without parole sentence for my actions that terrible night. In any other country in the world I would have been given a second chance and my age and immaturity, as well as the fear my co-defendants imposed on me would have been taken into consideration. Not so in the United States of America. On that terrible night, which I and the victim's family will never forget, I was still a child, naive and reckless, but not a murderer. I am no longer a child and have matured into a responsible adult ready and prepared to take my place in society and contribute to my community. As a man I am only asking for a meaningful opportunity of parole to demonstrate I am worthy of release and should not have to spend the rest of my life in prison for a poor decision I made as a child.

Thank You.

NOTE: Ms. Karen Wilkinson, I have enclosed an Appendix to my Written Testimony for the Hearing's record in support of my testimony. I thought it important my written statement be supported by the facts from my 1992 Sentencing Hearing Transcripts. I have highlighted the relevant statements in the transcripts that demonstrate the injustice of my sentence. If there is a *page limitation* on the submitted written testimony please discard the Appendix.

Thank You.

President
John Wesley Hall
Little Rock, AR
President-Elect
Cynthia Hujar Orr
San Antonio, TX
First Vice President
Jim E. Lavine
Houston, TX
Second Vice President
Lisa M. Wayne
Denver, CO
Treasurer
Steven D. Benjamin
Richmond, VA
Secretary
Jerry J. Cox
Mount Vernon, KY
Parliamentarian
Jim E. Lavine
Houston, TX
Immediate Past President
Carmen D. Hernandez
Washington, DC

Directors
Chris Adams
Atlanta, GA
James A. H. Bell
Knoxville, TN
Blair G. Brown
Washington, DC
William H. Buckman
Moorestown, NJ
Jay Clark
Cincinnati, OH
Anthony Cotton
Waukesha, WI
Joshua L. Dratel
New York, NY
Steven J. Feldman
Pleasantville, NJ
Todd Foster
Tampa, FL
William R. Gallagher
Cincinnati, OH
Tracy Green
Los Angeles, CA
Michael J. Iacopino
Manchester, NH
Richard S. Jaffe
Birmingham, AL
Wm. O. "Bill" James, Jr.
Little Rock, AR
Evan A. Jenness
Santa Monica, CA
Rick Jones
New York, NY
Elizabeth Kelley
Cleveland, OH
Mark J. Mahoney
Buffalo, NY
E. G. Morris
Austin, TX
William R. Murphy, Jr.
Baltimore, MD
Ken Murray
Phoenix, AZ
Timothy F. O'Toole
Washington, DC
Barry J. Pollack
Washington, DC
Mark P. Rankin
Tampa, FL
Martin A. Sabelli
San Francisco, CA
Maria H. Sandoval
San Juan, PR
Mark Satawa
Southfield, MI
Gail Shifman
San Francisco, CA
Theodore Simon
Philadelphia, PA
David S. Smith
Alexandria, VA
Penelope S. Strong
Billings, MT
Jennifer Lynn Thompson
Nashville, TN
Geneva Vanderhoot
Washington, DC
Deja Vaney
Milwaukee, WI
James H. Voyles, Jr.
Indianapolis, IN
William T. Whitaker
Akron, OH
Christie N. Williams
Dallas, TX
C. Beach Wise
Greenwood, SC
Nicki Young
San Francisco, CA

Executive Director
Norman L. Reimer

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

June 9, 2009

The Honorable Bobby Scott
Chairman
Subcommittee on Crime, Terrorism, and Homeland Security
U.S. House of Representatives

The Honorable Louie Gohmert
Ranking Member
Subcommittee on Crime, Terrorism, and Homeland Security
U.S. House of Representatives

Re: H.R. 2289, the "Juvenile Justice Accountability and Improvement Act of 2009"

Dear Mr. Chairman and Mr. Gohmert:

On behalf of the National Association of Criminal Defense Lawyers (NACDL), I am writing to endorse the Juvenile Justice Accountability and Improvement Act of 2009 (H.R. 2289). The Act would better align the sentencing of youths convicted of serious offenses with the rehabilitative goals of our country's juvenile justice system by requiring periodic reviews of life sentences given to individuals under the age of 18.

At present, more than 2,500 juvenile offenders in the United States are serving sentences of life without parole for crimes they committed before their eighteenth birthdays. Nearly 60% of them are first-time offenders, and 16% were 15 years old or younger when they committed their crimes. Review of their sentences within 15 years of incarceration, and every 3 years thereafter, would give minors sentenced to life without parole a chance to reform and reenter society without endangering the public.

Juvenile life without parole sentencing is antithetical to our firm belief that child offenders are less culpable than their adult counterparts. Behavioral science research confirms the belief long held by federal and state lawmakers that young people lack adult judgment and are better candidates for rehabilitation. In *Roper v. Simmons*, the U.S. Supreme Court explained that it is morally "misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." Despite this consensus, many juveniles have received harsher sentences than adults convicted of the same crime. Systemic racial disparities and inadequate legal representation further undermine the implementation of juvenile life sentencing nationwide.

The imposition of life without parole sentences on young people is also inconsistent with our country's commitments under the International Covenant on

Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman and Degrading Punishment, and the International Convention on the Elimination of All Forms of Racial Discrimination. No other country in the world sentences its children to terms of life without parole. Indeed, such sentences are expressly prohibited by the United Nations Convention on the Rights of the Child, which only the United States and Somalia have not yet ratified.

Eleven states currently forbid juvenile live without parole sentencing or have no offenders serving that sentence. As a national bar association with approximately 12,000 members, NACDL is committed to furthering the cause of juvenile justice in all states as well as the federal criminal justice system. NACDL therefore strongly supports the Juvenile Justice Accountability and Improvement Act of 2009 and urges the House Judiciary Committee to move forward with H.R. 2289.

Sincerely,

John Wesley Hall
President, National Association of Criminal Defense Lawyers

①

5-13-09

This letter is a heartfelt plea to the House of Representatives Judiciary Committee.

Dear Sirs,

32 years ago I was a 12 year old girl. My big brother was 15 years old. This story begins with a confused kid who decides on a whim to run away from home. Horrifically, a tragic chain of events unfolded.

This 15 year old boy, (my brother... John C. Lohbauer), had never been in trouble of any kind. Him + his friend decided they would live off the land. To help them with their judgment, they were consuming alcohol. After several days they had made it three states South to Arkansas →

②

at which time they attempted to purchase beer. The clerk denied them due to their age. (all 15) Much later that night my brother and his friends broke into the closed liquor store to obtain booze.

The police arrived and a shoot-out ensued. At the end an officer of the law lay dead. His name was LT. Ed Worrell from Texarkana AR. The weapon which killed this officer was fired by my brother. He obtained the gun from one of his friends father.

John was tried as an adult. He was up for the death penalty. Ultimately he received a sentence of life. (an unrehearmable person who shall never be fit to obtain parole) all this for a 15 year old kid.

I am filled with sorrow and remorse for the un-imagenable pain John caused the Worrell family. This man's life deserves to have John be held accountable. This I do not deny. However, the shooting took place 32 years ago

(3)

Since that time, (1977), John has served his time at the Tucker Unit in Tucker Ar. This is a facility within the Arkansas Department of Corrections. He has been housed there for 32 years.

My brother is a decent, hardworking human being. He is forever remorseful over his actions and there horrible consequences. John has never in all his years at tucker, had a single disciplinary. He has taken every opportunity to educate himself. Once he was even recognized as Arkansas Student of the year. John is a certified Electrician, plumber, HVAC Engineer, dog trainer, and many other things. He has the loyal respect of the personnel employed at Tucker. John is quiet, unassuming, intelligent, funny well-read, humble, and very aware of how his actions caused all of this.

(4)

For Arkansas to say he can never be re-habilitated is simply wrong + unjust.

John C. Lohbauer can make a positive difference in the world. He is not the fifteen year old selfish, impulsive person he was in 1977. What happened that night was a tragedy for many, many individuals.

Please help us give John and others like him a second chance by signing into law HR 2289.

Thank You so much for hearing our story.

Sincerely,

Jane M. Carter

Carter JM1@MSN.COM
773-745-6774

Ralph Kyzer
#11 Shoreline Dr.
Mayflower, AR 72106
February 25, 2004

To Whom It May Concern:

I am a former Department of Correction Employee and I am writing this letter of recommendation on behalf of John Lohbaner.

I was the head supervisor of the maintenance program at the Tucker unit from approximately 1983 to 1985. It was during this time that John worked for me as a clerk, doing bidding and purchasing work. John also worked in the water treatment plant and Waste water plant taking chemical tests.

John was always taking college courses and took every opportunity to educate and improve himself in the various programs offered at the unit. He never, to my knowledge had a disciplinary or caused any problems. He showed many times that he could handle the responsibilities that I assigned to him.

Over the years I have kept in contact with him and I know that he has kept up his good record and continued his education. He has used his experience to get his heating and air conditioning license and is now a 1A class trusty working at the Dog Kennel.

I would not hesitate to recommend clemency and parole for John and I feel that he has served enough time to pay for his crime. I hope that soon John can be a productive member of our community.

Sincerely,

Ralph Kyzer

5/18/2002

To Whom It May Concern:
Ref. John Lohbauer –ADC#70497

John Lohbauer worked for me in my maintenance shop at the Tucker Unit for eight and one-half years. At that time Lt. Ashcraft requested John Lohbauer to work for him at the dog kennel. John was always an asset to my maintenance program in the capacity as a clerk. John called different venders to get prices on materials and parts. He typed up all requisitions for my signatures. Not once did I have any complaints from venders or any of the free world workers. Since that time John has been working at the dog kennel in the capacity of training dogs to track and run down any escapees. He has assisted the Arkansas State and local law enforcement officers numerous times with the dogs tracking lost individuals and escaped prisoners. He has been in the Arkansas Department of Correction for approximately 25 years. He has had a 1-B class for up to 7 years ago, where he obtained a class 1-A which is the highest class an inmate can obtain. John has been a model inmate all these years and has applied himself to learning and taking advantage of all schooling that he can obtain. He holds a boiler operators license, a heat & air conditioning license, and assisted me at the water treatment plant and the wastewater treatment plant at the Tucker Unit.

If John was to be released I would be proud to have him as my neighbor, and also would be welcome in my home at any time.

In closing, I would like to state that Inmate Lohbauer was led to the Lord while painting the state house that I was living in at that time and accepted Christ as his Lord and Savior, and I saw a wonderful change in him. To my knowledge, in the twenty-five years that John has been incarcerated, he has never had a disciplinary. Any consideration for clemency and John's release would be appreciated by me and my family. Any further information that I might be able to assist with I can be reached after 5:00 P.M. and week-ends at our phone # 870-766-4037, or at p.o.box132, Sherrill, AR. 72152.

Yours truly,

Charles E. Grauel

Charles E Grauel

March 1, 2004

To Whom It May Concern:

I am writing in regard to John Lohbauer. I have known him for about 4 years now. We have attended Chapel services with him when Chaplain Wilson was assigned to the Tucker unit and holding Deliverance Services. We were able to attend the monthly services for about a year. We all grew spiritually during that time.

Since the deliverance services have ended, John and I have continued to correspond and do Bible studies by mail. My husband and I plan to keep John In our prayers and we truly value his friendship.

John is no longer the mixed up 15 year old boy who was involved in the tragic event 27 years ago. He is now a 42 year old man who loves his Lord and Savior, Jesus Christ. John is an outstanding example of how the prison system can rehabilitate a person for the good. He has a perfect record, no disciplinaries. He is respected by the other prisoners and the staff from the officers up to the Warden. When asked to do a job, he does it willingly and he does a good job. He has continued his education from getting his G.E.D. to completing almost two years of college. He has received his Heating and Air conditioning License and is a volunteer fireman at the unit.

John is now working at the Dog Kennel and does a great job training dogs, laying tracks and riding horses, following the dogs. He has trained a scent specific tracking dog and has traveled all over the state searching for lost children and escaped convicts.

27 years ago John and his friends went joyriding and ended up in the tragic events of that awful night. John has told me that he has never and will never forgive himself for what occurred on that terrible night. I know that God has forgivep him and I believe that it is time that the State forgave him. He has done enough time to pay for his crime and did it constructively.

I am writing this letter to ask that John be granted clemency and paroled to his family in Illinois. John is not a threat to society. Drugs and alcohol would not exist for him because he is a dedicated Christian. I believe he will make a valuable contribution to society and I hope that you can find it in your heart to give him a second chance.

Sincerely,

Sue Medlock

Sue Medlock
4201 German Springs Rd.
Pine Bluff, AR 71602

June 22, 2001

Post Prison Transfer Board
105 West Capitol
Two Union National Plaza Building – Suite 501
Little Rock, AR 72201

Dear Sir or Madam:

I am writing this letter on behalf of Mr. John C. Lohbauer ADC # 070497. Mr. Lohbauer is currently incarcerated in the Arkansas Department of Corrections – Tucker Unit Dog Kennel.

During the last three years I have worked with this young man in my duties as the veterinarian of the unit horses. In all my contacts with him I have only seen loyalty and dedication for his job and fellow workers. I have always felt confidant that all instructions given to him for the follow-up care of the animals would be carried out fully. He was never disrespectful to me. In fact on numerous occasions he asked other individuals to be more respectful by watching their language and actions around me.

If Mr. Lohbauer were granted parole I would not hesitate to recommend him for a job. I feel he has much to offer society as a productive citizen.

Thank you for your valuable time and consideration of this letter on behalf of Mr. Lohbauer. Please feel free to contact me at any time for more information.

Sincerely,

Teresa L. Medlock, DVM

Teresa L. Medlock, DVM
Owner – Crystal Springs Vet Services

4203 GERMAN SPRINGS ROAD • PINE BLUFF, AR • 71602
PHONE: 870-247-4627

Crystal Springs Vet Services

4203 German Springs Road
Pine Bluff, AR 71602

December 8, 2002

2400 State Farm Road
Tucker, AR 72168

Dear Warden White:

I wish to inform you of some outstanding work done by three inmates assigned to the dog kennel at your facility. Michael Pratt (DC #109761), John Lohbauer (DC # 70497), and Larry Burnett (DC # 83244) have recently assisted me in saving the lives of two horses that were experiencing a severe bout of colic. These horses were critical for five days and I depended greatly on these men to carry out my treatments. The men monitored the horses' conditions, administered pain relievers as directed and also changed out numerous bags of intravenous fluids. They checked the horses every two to four hours around the clock. Any changes in the horses' conditions, both positive and negative, were noted and passed on to me. Due to the men's diligence, the two horses survived and are doing fine now.

Just this week, these same three men noted an attitude change in one of the young horses. I examined the mare numerous times and initially found no obvious abnormalities. Yet they were insistent that something was wrong with her. Saturday evening I examined her again and found the beginning stages of a very serious abdominal condition. The mare was not exhibiting any definite physical signs yet the men knew this horse well enough to detect a problem. If they had not insisted that I examine the mare again she would have died within a few days due to complications related to the abdominal condition. Although the mare is still undergoing rigorous treatment at this time, I am confident that these individuals will do their very best to help the mare survive this painful condition.

These three men need to be commended for their hard work and dedication. Although I have singled out these three individuals for their recent actions, I must express my appreciation to all the other inmates (former and current) assigned to the dog kennel and horse barn. Without them, I would not be able to do my job as your unit veterinarian.

Sincerely,

Dr. Teresa L. Medlock

Dr. Teresa L. Medlock

CC: Major E. Bell
Lt. R. Schwin
Lt. L. Keeth
Lt. J. Williams

1808 W. Tioga, Phila. PA 19140 / P.O. Box 7681, Phila. PA 19101
Ph. 215-223-8160 Fax.215-223-8160

TO: U.S. HOUSE JUDICIARY COMMITTEE
(Rayburn House Office Building)
ATTN: U.S. CONGRESSMAN, Robert Scott
RE: BILL HR 2289

This letter is being sent to you so that you will know that our organization (i.e. Fight for Lifers, Inc.), is in support of BILL HR 2289, sponsored & introduced by US Congressman Robert Scott. First, I believe that you deserve to know a little about our organization. The mission of Fight for Lifers (FFL) is to educate the public about: 1.) The realities of serving a life sentence in the commonwealth of PA.; 2.) The need for a fair parole-review process. Our mission is also to provide support throughout the commutation process for individual lifers who have proven their merit (see enclosed flyer).

We believe that "children" are just that, CHILDREN, and no matter what they may have done or what mistake they may have made in life, that their Lives are Precious and worth saving. The US Supreme Court has stopped all executions of minor offenders, mainly because the high court believed that children have not completely developed (mentally and emotionally) as adults have, and thus do not understand the entirety of their actions. If this is the LAW OF THE LAND, then how can we confined these same children to LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE, and then believe that we have administered JUSTICE?

We believe that these children can be rehabilitated, and can be saved and can contribute to the growth and development of our Communities, States and Nation, if only given a chance. Our organization works with some of the children that have been labelled "Children at risk", and have found out that these young minds can make positive and informed decisions-but, they need guidance and support. We collaborate with other organization that have also witnessed and believe the same thing (i.e. Education Not Incarceration-ENI; Youth Art & Self-Empowerment Project-YASP; etc.) to name a couple.

So, with this said, we want to go on the record stating that we are in favor of the passing of this Bill that is being sponsored by Congressman Scott. If you have any questions and/or comments that need to be addressed, please do not hesitate in contacting us at the address and/or phone number above. I thank you in advance for your understanding and cooperation in this matter.

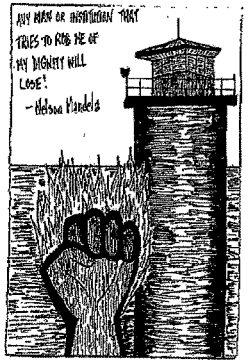
Sincerely,

Fight for Lifers, Inc.
Hakim 'Ali, for
FFL-Steering Committee

cc:
FFL-West
A. Colon-PA State Coordinator
Nat'l Campaign for Fair Sentencing of Youth
File...

re-instated . We must prevent the current status of "denying" a beneficial legal argument simply because the appeal was deemed to be "untimely filed" (after one year has expired). Such a ruling means that the courts do not even have to read the legal argument.

We demand that "Justice" be adhered to, and we need to protect the "Rights" of everyone, which included our family members who are confined. FFL is actively educating the community on this issue, and we want you to join us in this fight for Freedom, Justice, and Fair Play in the Courts of this State, and this Country.



Artwork by Ifer Robert "Saleem"
Holbrook #BL5140, 2009

FIGHT FOR LIFERS

FIGHT FOR LIFERS, INC.

1801 W. Tioga St
Philadelphia, PA 19140 /
P.O. Box 7691
Philadelphia, PA 19101

Phone: 215-223-8180
Fax: 215-223-8190

FIGHT FOR LIFERS

THE MISSION OF THE FIGHT FOR LIFERS IS TO EDUCATE THE PUBLIC ABOUT: 1.) THE REALITIES OF SERVING A LIFE SENTENCE IN THE COMMONWEALTH OF PENNSYLVANIA AND 2.) THE NEED FOR A FAIR PAROLE -REVIEW PROCESS. OUR MISSION IS ALSO TO PROVIDE SUPPORT THROUGHOUT THE COMMUTATION PROCESS FOR INDIVIDUAL LIFERS WHO HAVE PROVEN THEIR MERIT; TO PROVIDE INFORMATION, SUPPORT AND GUIDANCE FOR THEIR LOVED ONES; AND TO ADVOCATE FOR THE UNIQUE NEEDS OF LIFERS AND THEIR OUTSIDE COMMUNITIES.

Fight For Lifers, Inc.
1801 W. Tioga St.
Philadelphia, PA 19140 /
P.O. Box 7691
Philadelphia, PA 19101
Ph. 215-223-8180
Fax 215-223-8190

Fight For Lifers, Inc. Educational Initiatives

JLWOP

Fight For Lifers considers the issue of juveniles being sentenced to life in prison without the possibility of parole (JLWOP) to be a serious human rights issue. To sentence juvenile offenders to life in prison without parole is indeed sentencing children to die–in prison. We feel it is an issue that we all should be concerned about, as activists, parents, and citizens.

The U.S. is the only country in the world known to have children sentenced to and serving life without parole. Currently, there are 2,381 juveniles serving life sentences in the U.S. Pennsylvania has the distinction of having the highest number of juvenile lifers, with approx. 450 prisoners serving life sentences for crimes they committed or participated in as juveniles. The PA District Attorney's Office claims that only the worst child offenders are sentenced to life without parole, and only in exceptional cases, but that is simply not true.

Here in PA, 59 % of the prisoners serving life without parole for crimes committed as juveniles were first time offenders.26% were convicted of JLWOP because they participated in a crime that led to a murder but did not themselves kill anyone. In most cases in PA, these sentences resulted from mandatory sentencing currently in place for adults convicted of murder.

In addition, there is a disproportionate number of minorities serving JLWOP within PA and throughout the U.S. In both California and PA, an African American youth is 20 times more likely to receive JLWOP than a Caucasian youth even though African Americans make up less than 10% of the state's youth population.

Our laws do not allow juveniles to assume the same responsibilities as adults (i.e. driving, drinking, voting, military service) because we know that they are not mature or mentally developed enough to make these decisions or control these actions. Yet, we hold these same children as accountable as adults when it comes to crime. Fight For Lifers believes these prisoners should be given a second chance to prove that an extremely poor choice during adolescence does not have to define who they can become as an adult within society.

Commutation

In PA, a lifer will be released from prison only at the time of death until s/he is able to regain access to courts or be granted a commutation. The commutation process was designed to allow a prisoner to demonstrate her/his merits and evidence of rehabilitation to the Board of Pardons and the governor in order to be granted a release. However, the "tough on crime" climate of the past 20 years, combined with the 1998 changes to the PA constitution regarding the Board of Pardons have made it nearly impossible for Lifers to be granted a commutation. To illustrate, during the Shapp administration of the 1970s, 251 Lifers received commutation. In contrast, during the past three administrations only 2 Life-sentences have been commuted. In light of the failings of the commutation process, Fight For Lifers demands that prisoners be judged based on their growth and personal merits. In order for this to happen effectively we demand the following: 1) a repeal of the 1998 changes to the Board of Pardons and Commutation Process, 2) increased public accountability of the two elected and three appointed members of the Board of Pardons and 3) institutional instruction, encouragement and support for all Lifers who wish to apply for commutation. Through these demands we hope to increase public awareness of the harsh contradictions that Lifers face in this potential avenue out of prison.

Access to the Courts (i.e. PCRA)

Post Conviction Relief Act (PCRA): One of the most critical, important, and "Right" of every citizen is "To access Justice in the Court rooms of this Country and State." this access is necessary to address an injustice done to them. However, this "right" has been viciously interfered with by a 1995 ruling in PA that limits inmates to ONE YEAR following their appeals process to use the PCRA and gain access to the courts, to raise important legal arguments that could lead to their freedom. This act, that was done as a result of Governor Ridge's signing, is yet another act that prevents our incarcerated loved ones the opportunity of returning to their families, and contributing to the growth and development of our communities. It is very urgent that this ruling by the PA Legislature be rescinded and the original legal process be

170 Forbes Road, Suite 106
Braintree, MA 02184
(781) 843-2663; Fax: (781) 843-1888
E-Mail: info@cjca.net
www.cjca.net

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Tennessee

West
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Utah

Executive Director
Edward J. Loughran

June 2, 2009

U.S. State House of Representatives
Committee on the Judiciary
Honorable John Conyers, Jr.
Committee Chair
2138 Rayburn House Office Building
Washington, DC 20515

Dear Honorable John Conyers, Jr.,

We are writing on behalf of the Council of Juvenile Correctional Administrators to urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009. This bill, if made law, would require reviews of life sentences given to youth (individuals under the age of 18) after 15 years of incarceration, and every three years thereafter, which is an appropriate alternative to sentencing youth to life without the possibility of parole. In the United States, there are more than 2,500 people serving life sentences without the possibility of parole for crimes committed before their eighteenth birthday. There are no such cases in the rest of the world. We oppose sentences of juvenile life without parole (JLWOP) because they recklessly disregard the differences between youth and adults and declare that young people are beyond reform. We urge Congress to pass this law to hold youth accountable, prioritize public safety, *and* protect one's human right to the opportunity for rehabilitation.

Detailed research on the application of JLWOP sentences around the country documents evidence **of systemic racial disparities, gross failures in legal representation, and many examples of youths being sentenced more harshly than adults convicted of the same crimes**. Despite popular thinking, a large portion (60%) of people serving JLWOP sentences are first-time offenders. In addition, more than one quarter of people serving JLWOP were convicted of "felony murder," which means they were participants in an underlying crime which resulted in death. Others sentenced to life without parole were convicted of crimes on a theory of accountability, which means that they were not the actual perpetrators of the crime.

For a safer tomorrow invest in our youths today.

Our country's juvenile justice system was founded on the majority view that children, even those responsible for grave acts, are fundamentally different from adults. The imposition of life without parole sentences on young people is especially cruel and misguided because it ignores the fact that children are different from adults in critical ways. Behavioral research confirms what is recognized by U.S. and state laws: children do not have adult levels of judgment, impulse control, or the ability to assess risks and consequences. There is widespread agreement among child development researchers that young people who commit crimes are more likely to reform their behavior and have a better chance at rehabilitation than adults. The U.S. Supreme Court agrees—in *Roper v. Simmons* the Court explained, "from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Punishment of youths should be focused on rehabilitation and reintegration into society. Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released to the streets. Instead, it will allow for careful, periodic reviews to determine whether, 15 years later, people sentenced to life without parole as youths continue to pose a threat to the community. We urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009, which acknowledges the critical difference between youths and adults, and imposes an age-appropriate sentence that recognizes a young person's potential for growth and reform.

Sincerely,

Edward Loughran

Edward J. Loughran
Executive Director

Bernie Warner

Bernie Warner
CJCA President

Center for Law and Global Justice

School of Law
2130 Fulton Street
San Francisco, CA 94117-1080
TEL 415 422-3333
FAX 415 422-5440

June 4, 2009

To: Members of the House Subcommittee on Crime, Terrorism and Homeland Security, Congress of the United States, House of Representatives

B-370B Rayburn House
Washington D.C. 20515-6216
(202) 225-3951

Dear Mr. Chairman, Honorable Members,

On behalf of the Center for Law and Global Justice of the University of San Francisco School of Law, I would like to commend you for holding hearings related to HR 2289, a bill to end life without parole sentences for juveniles in the United States. We urge you to pass this bill as it would support the more humane and just treatment of our youth in America and help our country to comply with international human rights standards and treaty obligations.

We have confirmed through our investigation, as described in the attached law review article, that the United States is the only country in the world to sentence children to life in prison without the possibility of parole review. All other nations of the world have condemned this practice as against international law. Of the more than 2,500 children serving anywhere in the world, all are located in prisons in this country. Continuing to apply this sentence leaves the United States isolated in an area of human rights and criminal justice where we once served as a global leader.

The United States has been urged to abolish this practice by the United Nations General Assembly, the United Nations Human Rights Council, to which the U.S. was just elected a member, and by the three major human rights treaty bodies with oversight authority for the treaties to which the U.S. is a legal party. I attach a copy of our law review article describing this in greater detail, entitled, "Sentencing Children to Die in Prison: Global Law and Practice," 42 USF Law Review 983 (spring 2008, posted on our website at: http://www.usfca.edu/law/home/CenterforLawandGlobalJustice/Juvenile%20LWOP.html.

Last year, the U.N. Committee on Racial Discrimination raised serious questions about U.S. compliance with our obligations under the Convention on the Elimination of Racial Discrimination because of the serious racial disparity in the application of this sentence in many states across the country. Today, on behalf of numerous human rights organizations, we submitted a letter to the Committee clarifying our earlier reports to include new information about the federal government's application of this sentence

to youth of color now serving in U.S. federal prisons. The racial disparity, as our letter indicates, is of serious concern given that over 70% of those serving are African American or Hispanic youths. A copy of this submittal is attached for your review.

Other treaty bodies which have condemned the use of this sentence in reviewing U.S. compliance with its obligations, include the Committee against Torture and the U.N. Human Rights Committee (monitoring bodies for the Convention Against Torture and the International Covenant on Civil and Political Rights, respectively, of which the U.S. is also a party). The law review article referenced in this letter documents this issue further.

On behalf of the Center for Law and Global Justice, I thank the Committee for considering these issues in its hearing scheduled for June 9, 2009, and would request that this letter and its attachments be included in the official record of the hearing.

I would also be happy to provide any further information on this subject to the Committee at any time. I can be reached at (415) 422-3330 or via email at mleighton@usfca.edu.

Sincere regards,

Michelle Leighton
Director Human Rights Programs

Encl: Law review article; NGO CERD Committee Letter

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Judith Watts

May 8, 2009

Dana Kaplan
Executive Director
Juvenile Justice Project of Louisiana (JJPL)
1600 Aretha Castle Haley Boulevard
New Orleans, Louisiana 70113

Dear Dana:

Agenda for Children is pleased to be a partner with JJPL in the effort to pass HB715 which would end the practice of mandatory life sentences for juvenile offenders convicted in adult court. The United States is the only nation in the world that sentences children to life sentences without parole and Louisiana is sentencing children to life in prison at a higher rate than any other state in the nation.

HB 715 would allow young people who were 15 or 16 at the time of their offenses to apply for a parole hearing upon reaching the age of 31. This bill would not offer automatic or early release, only the opportunity to be reviewed by a parole board.

It has been proven that harsh sentences do not effectively deter crime, and it is time that our state should enact policies that actually do contribute to public safety instead of wasting public dollars on practices that have been proven to be neither fruitful nor humane.

Sincerely, Judy Watts

Judy Watts, Executive Director,
Agenda for Children

P.O. Box 51837, New Orleans, LA 70151 (504) 586-8509, (800) 486-1712, fax (504) 586-8522
www.agendaforchildren.org
A member of Voices for America's Children

5627 Superior Dr. Ste A-2 Baton Rouge, LA 70816
Phone: 225-293-3508
Fax: 225-293-3519
Parent Line: 800-226-4010

Dear Members of the Louisiana State Legislature,

I am writing to you today as the Executive Director of the Louisiana Federation of Families for Children's Mental Health (LAFFCMH) to offer information and a favorable recommendation for HB 715. The LFFCMH is the statewide network of friends and families that serves as a united voice in advocacy efforts on behalf of children with emotional, behavioral or mental challenges and their families.

As an organization we are concerned with addressing and treating mental health issues in children that can one day lead to greater issues in adulthood. We believe as an organization that if caught during childhood children with emotional or behavioral issues can be treated and can go on to lead healthy and productive lives. We believe in the potential of children to change and heal throughout their lives. Even children who commit violent crimes have the potential to change based on the continued development of their brains and their judgment skills.

During childhood, because the pre-frontal cortex (PFC)—the judgment center of the brain—is at its most underdeveloped state during times of stress children often rely on the amygdala. The amygdala is the portion of the brain associated with emotional, instinctive, "gut" reactions rather than logical planned responses.[1] We believe that with continued development of good judgment skills as well as community and familial support children possess an undeniable potential to re-enter society without being a threat to public safety.

As a community we cannot ignore the needs of our children—even of those who make the worst mistakes. We must continue to value and protect our children.

In closing, we ask for your support of HB 715.

Sincerely,

Verlyn O. Lewis-Boyd

Verlyn O. Lewis-Boyd
Executive Director
Louisiana Federation of Families for Children's Mental Health

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[1] Baird, A.A., et al. (1999). Functional magnetic resonance imaging of facial affect recognition in children and adolescents. Journal of the American Academy of Child and Adolescent Psychiatry 38(2): 195-199.

LOUISIANA HOUSE OF REPRESENTATIVES

600 Carondelet, 9th Floor
New Orleans, LA 70130
Email: legerw@legis.state.la.us
Phones 504.556.9970
or 504.556.9971
Fax: 504.556.9972

Appropriations
Education
Joint Legislative Committee
on the Budget
Judiciary

WALT LEGER, III
State Representative ~ District 91

Testimony of State Representative Walt Leger
HR 2289 Juvenile Justice Accountability and Improvement Act of 2009

Committee on the Judiciary
Subcommittee on Crime Terrorism and Homeland Security
June 9, 2009

Chairman Conyers, Ranking Member Smith, members of the committee on the Judiciary, thank you for the opportunity to provide this statement of support for the record of your hearing on the Juvenile Justice Accountability and Improvement Act of 2009. As a former prosecutor and current State Legislator I share this committees goal of promoting public safety while simultaneously ensuring justice and due process. HR 2289 relates to the review of sentences of 15 and 16 year olds who were sentenced to life without the possibility of parole in adult prisons. I know that you understand that to get these sentences you would have been convicted of a very serious or violent offense.

To victims that are in the audience today and victims that have contacted my and your legislative offices, my heart goes out to you. Please accept my heartfelt sympathy and sorrow for your and your family's loss. The heartbreak and grief felt by each of you is a suffering that can only be understood by those who have experienced the loss of a family member to a senseless act of violence. This year, in the Louisiana State Legislature we have been evaluating over 11 different bills that either put stricter punishment on offenders or provide additional protections for victims. Protecting my own family is what motivates my work at the legislature and I assure you that this bill is no compromise of that commitment.

As a prosecutor I was responsible for sending people to prison for life without the possibility of parole. Fortunately, I was never tasked to send a juvenile to prison for the rest of their lives. Had I been, I would have been forced to follow the mandatory sentencing requirements laid out by the Louisiana law, however, I would have seriously questioned the legitimacy of believing that children cannot be rehabilitated.

In Louisiana and in the United States at large, we have historically recognized that children are different from adults in regards to drinking, smoking, the right to vote, the right to enroll in the military and the right to join into contracts among numerous other protections. However, over the last 100 years, as the criminal and juvenile justice systems have continued to evolve for some reason we have believed that children should in some cases be treated as adults. Why?

I believe this has stemmed from a fear of a growing juvenile crime problem that never actually materialized[1] and a lack of knowledge about brain development. We are now aware that the portion of the brain, which understands consequences and allows us to make rational judgments, is the last portion of the brain to develop and continues to develop well into our twenties. [2 3 4]

Now I am not going to say that children do not know the difference between right and wrong or that the lack of a requisite mental capacity should in someway mean that a person shouldn't be punished—however, our new found knowledge regarding the efficacy of crime deterrence and brain development proves that in our *modern* criminal justice system we need to prioritize rehabilitation over absolute punishment.

We spend billions of dollars each year in this country and tens of millions of dollars in the states alone rehabilitating people in the criminal justice system.[5] Criminal justice continues to be a top priority when it comes to government spending and for good reason—we bank on rehabilitation because we know that failing to rehabilitate will cost us far more.

The administration of law enforcement and criminal procedure is a incredibly difficult—that is why we have chosen you all to be here, to make these tough decisions in light of your expertise and your experience. There has been a lot said about HR 2289, and efforts to reform juvenile sentencing practices used solely by the United States, that I would like to correct.

First, this bill will not release a single prisoner. Under this bill youth under the age of 18 will merely become parole eligible, they will simply be able to apply for parole.

Additionally, this bill does not deny the importance of punishment—punishment is certainly due. However, if our goal is public safety and crime prevention, studies have shown that extremely harsh sentences do nothing to deter crime, especially in children.[6]

This bill simply recognizes that the millions of dollars that we spend to promote a rehabilitative criminal justice and correctional system is worthwhile, that it works and is capable of changing people and that our parole board is capable of judging if whether or not a person has in fact been rehabilitated. I have had

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[1] P Allard, M Young, 2002. "Prosecuting Juveniles in Adult Court: Perspectives For Policy Makers and Practioners." The Sentencing Project, Washington D.C.
[2] Goldberg, E. (2001). The Executive Brain: Frontal Lobes and the Civilized Mind. Oxford: Oxford University Press.
[3] Arnsten, A.F., Shansky, R.M. (2004). Adolescence: Vulnerable period for stress-induced prefrontal cortical function. Annals of the New York Academy of Sciences 1021: 143-147.
[4] Spear, L.P. (2000). The adolescent brain and age-related behavioral manifestations. Neuroscience and Biobehavioral Reviews, 24: 417-463.
[5] During the 2008-2009 fiscal year the recommended Louisiana state budget for corrections services was $490,723,255, according to Executive Budget of 2009. Additionally, during the 2008-2009 Fiscal year the requested federal budget for the Department of Justice was $22.7 Billion, with $5.5 Billion being allocated to the Bureau of Prisons according to the Presidents Budget Request.
[6] Nagin, D.S., 1998. Criminal deterrence research at the outset of the twenty-first century. In M. Tonry (Ed), Crime and justice: A review of research Vol. 23 (pp. 1-42). Chicago, IL: University of Chicago Press

the privilege of working with both those who serve in and lead our correctional system and am entirely confident in their ability to rehabilitate and protect public safety.

In Louisiana, in an effort to reform our own sentencing laws concerning juveniles in the adult criminal justice system we have drafted House Bill 715: The Youth Rehabilitation Review Bill. [7] This piece of legislation would corect the mandatory and automatic sentencing laws that prohibit meaningful review of defendants as well as correct an unfortunate gap in the sentencing practices for juveniles bringing us closer to the provisions of HR 2289.

In Louisiana, the intersection of juvenile transfer laws and mandatory sentencing laws for adults have lead Louisiana to incarcerate youth under the age of 18 for the rest of their lives with no possibility for parole review at a higher rate than any other state in the country. Our markedly high rate of incarceration is due in large part to the fact that Louisiana judges have no discretion to evaluate the mental capacity, involvement in the commission of the crime, or capability to rehabilitate before a youth is transferred to adult court.[8]

Additionally, HR 2289 offers a potential resolution to an unfortunate gap in the sentencing practices for juveniles. In Louisiana courts, if a juvenile (between the ages of 14 - 16) is charged with certain serious offences (listed in Ch. C. Arts. 305A(1) and 857A) they face three possible fates. If they are 14 years old, pursuant to Children's Code Article 857A, judges are authorized to conduct transfer hearings to determine if they will stay in juvenile court or be transferred to adult court. If they remain in juvenile court they will face a mandatory sentence to be served in a juvenile facility and they will be released at the age of 21. If a judges determines the 14-year-old's case should be heard in adult court, they will be transferred to adult court where they will be subject to mandatory sentencing that will allow them automatic release at the age of 31 (pursuant to Children's Code Article 857B).

On the other hand, if a juvenile is 15 or 16 years of age and charged with these same offenses, the juvenile is *automatically* transferred to adult court pursuant to Children's Code Article 305A. Once in adult court, they are subject to the *mandatory* adult sentencing laws and if found guilty will be *automatically* sentenced to life without the possibility of parole. Their age, maturity, sophistication, vulnerability, and ability to be rehabilitated are never taken into consideration.

Attached to this letter, I have included letters from organizations and individuals here in Louisiana and nationally that have joined our Louisiana coalition in support of HB 715:.

From the Juvenile Justice Project of Louisiana that has worked closely with the 164 people that will be affected by this bill and have found very important statistics regarding mental capacity, involvement in offenses and even attainment of college credits and certification that speak to the achievement of rehabilitation of which they have discussed in their own written testimony.

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[7] *see attached*

[8] In accordance with La. Children's Code, Tit. III, Ch. 4, Art. 305 the case of a child who is charged with certain serious offences (listed in Ch. C. Arts. 305A(1) and 857A) and was at least 15 at the time of commission, is under the exclusive jurisdiction of the adult criminal court.

From numerous victims that overtime have come to not only believe in criminal rehabilitation but have fought and continue to fight against the incarceration of juveniles for life.

From correctional administrators that speak to the capability of rehabilitation in the criminal justice system and to potential good that allowing review of prisoners could provide within correctional facilities

From the chief of child psychiatry at LSU that speaks to adolescent brain development and the physical potential for rehabilitation that exists in children

From the right reverend Joe Morris Doss of the Episcopal church

From the action council of the children's defense fund

From the Louisiana federation of families for children's mental health

From agenda for children

From the sentencing project

From the prison fellowship

From the campaign for youth justice

From human rights watch

These organizations and individuals recognize that it is not only important to be tough on crime but to be smart. They also recognize that from a moral perspective incarceration of 15 or 16 year old children for life does not measure up to the Christian values on which this country was founded.

In closing, I want to note that often times in the legislature we are called to make difficult decisions—to many this maybe one of them. But to me, our failure to pass this Bill not only means the failure of a piece of legislation it means the failure of we as legislators—entrusted with the responsibility to make tough and important decisions for our states and our country—have failed to recognize an outdated and insufficient sentencing practice with no basis in reason but only in fear.

Robert W. Hoelscher
4714 Avenue G
Austin, TX 78751

May 6, 2009

RE: Support HB 715

To Whom It May Concern:

My father was murdered by a 17 year old teenager when I was seven years old. The teenager was caught, tried and sentenced to life in prison.

Despite the pain and suffering visited upon me, my mother, and my five sisters and brothers, I am strongly against life without parole for juveniles and ask for your **support of HB 715.**

My reasons are ruthlessly pragmatic and are completely separate from any personal feelings I have about my father's killer or others who have committed murder.

Punishment. My father's killer took a human life. He needed to be held accountable. He was.

Public Safety. My father's killer could have taken someone else's life. He needed to be put in a place where he was no longer a threat to anyone else. He was.

Redemption and Fiscal Responsibility. When a person makes a mistake, he deserves a chance to make up for that mistake. Even if he has killed. If a prisoner can demonstrate that he's ready to go home and play by the rules, then we should provide that opportunity. It makes no sense to keep someone in prison who could be contributing to society and paying tax dollars instead of spending tax dollars.

Juveniles are Different. We seem to sentence juveniles based on the idea that the more serious their crime, the more mature they are. By any reasonable measure, that's wrongheaded logic. And we should know that. If anyone imprisoned for life deserves a second chance at life, it is those individuals whose criminal acts were committed under the misguided influence of youth.

As you consider juvenile justice reform, know that victim attitudes have many dimensions. There are others who consider themselves "tough on crime" who also believe juvenile life with out parole offenders should have a path (hard earned to be sure) back to the community.

Respectfully Submitted,

Robert W. Hoelscher
4714 Avenue G
Austin, TX 78751
(former resident of Louisiana and Alabama)

HUMAN RIGHTS WATCH
1630 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20009
Tel: 202-612-4321
Fax: 202-612-4333
Email: hrwdc@hrw.org

US PROGRAM
David C. Fathi, *Director*
Alice Farmer, *Aryeh Neier Fellow*
Jamie Fellner, *Senior Counsel*
Abigail Marshak, *Associate*
Alison Parker, *Deputy Director*
Sarah Tofte, *Researcher*

ADVISORY COMMITTEE
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Wendy Patten
Bill Quigley
Bruce Rabb
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Dorothy Thomas
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HUMAN RIGHTS WATCH
Kenneth Roth, *Executive Director*
Michele Alexander, *Development & Outreach Director*
Carroll Bogert, *Associate Director*
Kevin Cahill, *Communications Director*
Rachel Denber, *Finance & Administration Director*
Peter Goldberg, *Office Manager*
Rob Lawson, *Program Director*
Andrew Mawson, *Deputy Program Director*
Suzanne Nossel, *Chief Operating Officer*
Dinah PoKempner, *General Counsel*
Jeanne Rizzo, *Legal & Policy Director*
Joe Saunders, *Deputy Program Director*
Jane Olson, *Chair, Board of Directors*

www.hrw.org

May 7, 2009

Members of the Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Representative:

I am writing on behalf of Human Rights Watch to urge your support for H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009. This legislation addresses fundamental problems in the sentencing of juveniles to life without parole in the United States, a practice that violates international law, is plagued by racial disparities, and is inappropriately applied to youthful offenders.

Human Rights Watch has investigated the use of life without parole for youth throughout the United States since 2004. We have found that while there are at least 2,574 people who were convicted of crimes committed as children sentenced to life without parole in the United States, there is not a single individual serving this sentence in the rest of the world.

Based on our research, we support the passage of H.R. 2289 for three main reasons: the sentencing of juveniles to life without parole is frequently disproportionate, it is racially discriminatory, and it violates international law.

First, the sentence of life without parole was created for the worst criminal offenders. But Human Rights Watch estimates that 59 percent of the youth serving life without parole in the United States received this sentence for their very first offense—they had no prior criminal convictions whatsoever, arising from either juvenile or adult courts. Our research has also found that approximately 26 percent of the youth sentenced to life without parole had not actually committed a murder and were convicted for their role in aiding and abetting or participating in a felony. In these cases, someone else was the primary actor in committing the crime.

Recent developments in neuroscience support the view that life without parole is not an appropriate sentence for juveniles. Research has found that teens do not have adults' developed abilities to think, to weigh consequences, to make sound decisions, to control their impulses, and to resist group pressures. Their brains are

anatomically different, still evolving into the brains of adults. While juveniles can commit the same acts as adults, by virtue of their immaturity they are not as blameworthy or culpable. At the same time, their age and level of development make them uniquely amenable to rehabilitation compared to adults. For these reasons, it is singularly inappropriate to sentence juveniles to die in prison without any opportunity for rehabilitation.

Second, we have serious concerns that racial discrimination and disparities plague the sentencing of youth to life without parole throughout the United States. On average across the country, black youth are serving life without parole at a per capita rate that is 10 times that of white youth. Many states have racial disparities that are far greater. Among the 26 states with five or more youth offenders serving life without parole for which we have race data, the highest black-to-white ratios are in Connecticut, Pennsylvania, and California, where black youth are between 18 and 48 times more likely to be serving a sentence of life without parole than white youth.

Finally, we support H.R. 2289 because the US practice of sentencing youth to life without parole violates international law. International law prohibits life without parole sentences for those who commit their crimes before the age of 18, a prohibition that is universally applied outside of the United States. Oversight and enforcement bodies for two treaties to which the United States is a party (the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination) have found the practice of sentencing juvenile offenders to life without parole to be a clear violation of US treaty obligations.

The Juvenile Justice Accountability and Improvement Act of 2009 provides a measured approach to juveniles sentenced to life without parole. It would end such sentencing for juveniles charged with federal crimes, and would give incentives to individual states to provide meaningful access to parole hearings or other review for youth offenders who have served at least 15 years of their sentence.

H.R. 2289 will still allow states and the federal government to ensure that young offenders receive serious punishments to hold them accountable for actions that have caused enormous suffering to victims and their families. However, the bill also reflects the reality that children are different from adults, and the punishment imposed for their offenses should reflect their age and level of development. By providing the opportunity for parole hearings or other review, the bill gives youth an incentive to work toward rehabilitation in prison. Such reviews would also provide a necessary opportunity for victims and their families to be heard.

H.R. 2289 would bring the United States closer to compliance with its treaty obligations and internationally recognized standards of justice. It would recognize that youth are different from adults and provide incentives for rehabilitation that

reflect their unique ability to change. Human Rights Watch urges you to support this bill.

Sincerely,

David C. Fathi
Director, US Program

May 18, 2009

The Honorable Robert "Bobby" Scott
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Scott:

On behalf of the 150,000 members and affiliates of the American Psychological Association (APA), I am writing in support of H.R. 2289, *the Juvenile Justice Accountability and Improvement Act of 2009*. This important legislation would end the practice of sentencing individuals to life in prison without chance of parole for acts they committed before reaching the age of 18.

APA is the largest scientific and professional organization representing psychology in the United States and is the world's largest association of psychologists. Comprising researchers, educators, clinicians, consultants, and students, APA works to advance psychology as a science, profession, and means of promoting health, education, and human welfare.

Through this mission, our membership strongly supports efforts to protect the dignity and rights of children and youth and to foster their positive development. In 1990, APA endorsed the principles and objectives of the United Nations Convention on the Rights of the Child and, in 2001, urged the United States Senate to ratify the Convention, which mandates that participant states abandon life sentences without chance of release for those who were under the age of 18 at the time of their offense. This critically important agreement represents the best of what an active, international collaboration can produce for the world's children and youth—from addressing the tragedies found more in developing nations, such as the plight of child soldiers, to the universal dangers faced by children in all societies, such as maltreatment and lack of needed health care. APA continues to advocate actively for the ratification of the Convention.

Furthermore, APA is committed to the use of psychological science in the development and implementation of sensible social policies. Critical research on the developmental and neurobiological nature of adolescence demonstrates the need to grant a meaningful chance for release to those sentenced to life in prison for crimes committed as a minor.

Enclosed for your review is a copy of APA's Amicus Curiae, submitted to the United States Supreme Court in the case of Roper v. Simmons. Based on its accounting of the relevant developmental and neuroscientific data, the brief argued for ending the practice of executing individuals for crimes they committed before reaching the age of 18. These principles bear similarly on the issue of juvenile life without parole. The hallmark

750 First Street, NE
Washington, DC 20002-4242
(202) 336-5500
(202) 336-6123 TDD
Web: www.apa.org

differences between adults and adolescents in terms of behavior and biology require that we end this practice.

In closing, we would like to thank you for your leadership in developing H.R. 2289 and to offer our association's assistance in furthering passage of this vital legislation. If you have any questions, please contact Micah Haskell-Hoehl in our Government Relations Office at mhaskell-hoehl@apa.org or 202.336.5935. We look forward to working with you to advance appropriate protections both for justice-involved youth and society at-large.

Sincerely,

Gwendolyn Puryear Keita, Ph.D.
Executive Director
Public Interest Directorate

Enclosure

CAMPAIGN FOR
YOUTH JUSTICE

May 1, 2009

Re: **Letter of Support for H.B. 715**

Dear Members of the Louisiana State Legislature:

The Campaign for Youth Justice offers its strong support of Louisiana House Bill No. 715, introduced on April 17, 2009 by Representative Walter Leger, III.

The Campaign for Youth Justice is a national campaign dedicated to ending the practice of trying, sentencing and incarcerating children under the age of 18 in the adult criminal justice system. Far too many of our youth, parents, families and communities have experienced the tragedy of losing youth for years in the criminal justice system due to crimes committed as a young person. We applaud efforts that recognize the differences between youth and adults, especially in their sentencing and treatment in the criminal justice system.

Parole consideration for young offenders is essential to address our nation's growing prison population. The Bureau of Justice Statistics (BJS), highlighted this urgency through its recent release of statistics showing that at the end of 2006, more than 2.25 million persons were incarcerated in US prisons and jails. This all-time incarceration high and its escalating trend must be addressed and one of the ways to do so is by allowing opportunities for parole consideration.

House Bill No. 715 recognizes the differences between youth and adult offenders. The bill will make young offenders, who were 15 or 16 years of age at the time of transfer into the adult criminal justice system, eligible for parole consideration upon reaching their 31st birthday.

Setting a date for parole consideration for young offenders is also vital to establishing a community that reaffirms the value and resilience of young people. Individuals who have been rehabilitated deserve a chance to return to their communities and families and move beyond a mistake they made as a young person.

The Campaign for Youth Justice strongly supports Louisiana House Bill No. 715, and urges the Louisiana House to pass this bill. Please feel free to contact me or Dana Kaplan at the Juvenile Justice Project of Louisiana (504-522-5437 or dkaplan@jjpl.org) with any questions. Thank you for your consideration.

Sincerely,

Liz Ryan
President and CEO

p 202.558.3580 • f 202.350.9307 • 1012 14th Street, NW, Suite 610, Washington DC 20005
www.campaignforyouthjustice.org

44180 Riverside Parkway
Lansdowne, VA 20176
(703) 478-0100 Fax (703) 554-8668
www.prisonfellowship.org

To the members of the Louisiana state legislature,

I am writing to voice support for HB 715: The Youth Rehabilitation Review Bill. This bill allows the criminal justice system to determine juveniles' risk levels by looking at factors such as the nature of the crime committed, prior criminal record, character demonstrated while incarcerated, social ties, and employment opportunities outside of prison. Our criminal justice system currently neglects juveniles' unique needs, but this bill acknowledges them.

Whether the offense is minor or serious, juvenile offenders warrant treatment different from adults due to their incomplete psychological development and their high potential to leave criminal behavior and become law-abiding citizens. This is why their sentencing should be different from that of adults.

To steer youth away from a life of crime, Justice Fellowship advocates for programs that apply restorative justice to delinquent offenders. Restorative justice holds greater promise for juvenile offenders than strictly punitive measures because it teaches them to confront their actions and enables restitution and rehabilitation. Justice Fellowship believes youth should not be sentenced to life without parole, in part, because of the delicate nature of their development and the great hope we have in their future rehabilitation.

Again, we urge your support of HB 715. By holding juveniles accountable while providing real opportunities for change in safe environments, we can make great strides to transform our youth into peaceful, productive citizens.

Sincerely,

William Atwell
Justice Reform Coordinator
Prison Fellowship

"A bruised reed he will not break...
In faithfulness he will bring forth justice."
Isaiah 42:3

May 1, 2009

Members of the Louisiana State Legislation

RE: The Sentencing Project's Support of House Bill 715, to Provide Parole Eligibility to Certain Juveniles

Dear Member,

As a national organization that supports effective criminal and juvenile justice strategies, The Sentencing Project would like to offer our strong support for Louisiana House Bill 715, which was introduced by Representative Walt Leger on April 17, 2009. This bill, if made law, would require reviews of life sentences for certain juveniles upon reaching their 31st birthday.

We view this is an appropriate alternative to sentencing youth to life without the possibility of parole. In the United States, there are more than 2,500 people serving life sentences without the possibility of parole for crimes committed when less than 18 years old. In Louisiana, there are 334 individuals serving JLWOP sentences, the second highest in the nation.

We oppose sentences of juvenile life without parole (JLWOP) because they declare that young people are beyond reform. We urge Louisiana to join the growing movement toward eliminating these overly harsh sentences while maintaining the ability to hold youth accountable, prioritize public safety, and protect one's human right to rehabilitation. At this time of fiscal crisis, states are looking to trim budgets where they can; housing offenders for the rest of their lives when they demonstrate no danger to the community will cost millions of dollars over the next several decades. This bill does not grant automatic parole for any juvenile serving a life sentence. Rather it allows a parole board to identify those individuals who warrant release because of their demonstrated rehabilitation as well as identifying those who need to remain in custody.

Research on the application of JLWOP sentences around the country documents evidence of systemic racial disparities, gross failures in legal representation, and many examples of youth being sentenced more harshly than adults convicted of the same crimes. Despite the popular misconception that these sentences are reserved for chronic, violent offenders, a large portion—60%—of the people serving JLWOP sentences across the nation are first-time offenders. In addition, more than one quarter of people serving JLWOP were convicted of "felony murder," which means they were participants in an underlying crime that resulted in a murder, but did not actually commit it, and *may not have even been present*.

Our country's juvenile justice system was founded on the majority view that children, even those responsible for grave acts, are fundamentally different from adults. The imposition of life without parole sentences on young people is especially cruel and misguided because it ignores that fact that

514 Tenth St. NW, Suite 1000, Washington, DC 20004
Ph: 202.628.0871 Fax: 202.628.1091
www.sentencingproject.org

children are different from adults in critical ways. Behavioral research confirms what is recognized by U.S. and state laws: children do not have adult levels of judgment, impulse control, or the ability to assess risks and consequences. There is widespread agreement among child development researchers that young people who commit crimes are more likely to reform their behavior and have a better chance at rehabilitation than adults. The U.S. Supreme Court agrees—In *Roper v. Simmons* the Court explained that minors are categorically less culpable than adults.

Every other country in the world has devised a way to hold young people accountable for actions without sentencing them to life without the opportunity for parole. Our young people in the United States deserve fair treatment like those in the rest of the world; they deserve the opportunity for a second chance. We urge you to support HR 715, which acknowledges the critical difference between youth and adults, and imposes an age-appropriate sentence that gives young people a second chance.

Sincerely

Marc Mauer
Executive Director

514 Tenth St. NW, Suite 1000, Washington, DC 20004
Ph: 202.628.0871 Fax: 202.628.1091
www.sentencingproject.org

HUMAN RIGHTS WATCH
1630 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20009
Tel: 202-612-4321
Fax: 202-612-4333
Email: hrwdc@hrw.org

US PROGRAM
David C. Fathi, *Director*
Alex Hinton, *Aryeh Neier Fellow*
Jamie Fellner, *Senior Counsel*
Abigail Marshall, *Associate*
Alison Parker, *Deputy Director*
Sarah Tofte, *Researcher*

ADVISORY COMMITTEE
Catherine Powell, *Chair*
Catherine Albiston
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Derek Cole
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Lulu Haddad
David Keller
Wendy Patten
Bill Quigley
Bruce Rabb
Steven Shapiro
Alexandra Stevenson
Dorothy Thomas
Ruby Roure

Human Rights Watch
Kenneth Roth, *Executive Director*
Michele Alexander, *Development & Outreach Director*
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Emma Daly, *Communications Director*
Barbara Guglielmo, *Finance & Administration Director*
Peggy Hicks, *Global Advocacy Director*
Iain Levine, *Program Director*
Andrew Mawson, *Deputy Program Director*
Steven Lichtenstein, *Chief Operating Officer*
Dinah PoKempner, *General Counsel*
James Ross, *Legal & Policy Director*
Joe Saunders, *Deputy Program Director*
Jane Olson, *Chair, Board of Directors*

May 7, 2009

Members of the Louisiana State Legislature
Louisiana State Capitol
900 North 3rd Street
Baton Rouge, LA 70802

HUMAN RIGHTS WATCH

www.hrw.org

Re: Human Rights Watch supports House Bill 715

Dear Members of the Louisiana State Legislature:

Human Rights Watch urges you to vote in favor of House Bill 715, which would provide persons who were 15 or 16 years old at the time of their crime an opportunity to apply for a parole hearing upon reaching their 31st birthday. The bill would affect, among others, children who have been sentenced to life in prison without possibility of parole. Human Rights Watch opposes life without parole for juveniles because it is cruel, inappropriately harsh, and a violation of US treaty obligations.[1]

Human Rights Watch has been analyzing life without parole sentences for children since 2004. Our research has culminated in four publications: *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* (a 2005 report on juveniles sentenced to life without parole throughout the United States); *Thrown Away* (a 2005 report on life without parole for juveniles in Colorado); *When I Die They'll Send Me Home* (a 2008 report on life without parole for juveniles in California); and *The Rest of Their Lives: Life Without Parole for Youth Offenders in the United States in 2008* (updated executive summary). Based on our research, we urge you to support House Bill 715 for three main reasons.

First, in *Roper v. Simmons*, the United States Supreme Court recognized that the significant differences between juveniles and adults "render suspect any conclusion that a juvenile falls among the worst offenders."[2] Given their lack of maturity, susceptibility to peer pressure, and incomplete character development, the Court said, even a heinous crime committed by a juvenile is not "evidence of irretrievably depraved character."[3]

[1] In this letter the terms "juveniles," "youth," and "children" refer to persons under age 18.
[2] 543 U.S. 551, 570 (2005).
[3] Ibid.

The sentence of life without parole was created for the worst criminal offenders, who are deemed to have no possibility of reform. While the crimes they commit can cause undeniable suffering, juvenile offenders are not the "worst of the worst."

Moreover, Human Rights Watch estimates that 59% of the youth serving life without parole in the United States received this sentence for their very first offense—they had no juvenile or adult criminal record whatsoever prior to the offense that resulted in their life sentence. We also estimate that 26% of the youth serving life without parole in the United States received it for aiding and abetting or for felony murder—that is, they did not personally cause the death of the victim.

Second, the United States is the only country in the world that sentences youthful offenders to life without parole. There are currently more than 2,500 persons in the United States serving life without parole for crimes they committed before age 18; to our knowledge, not a single youth is serving this sentence anywhere else in the world. Louisiana currently has 335 youth serving this harsh sentence; only Pennsylvania and Michigan—both much larger states—have more.

International human rights law prohibits life without parole sentences for those who commit their crimes before the age of 18, a prohibition that is universally applied outside of the United States. Indeed, this practice violates US treaty obligations. The Human Rights Committee (the oversight and enforcement body for the International Covenant on Civil and Political Rights, ratified by the United States in 1992) has said that "[t]he Committee is of the view that sentencing children to life sentences without parole is of itself not in compliance with article 24(1) of the Covenant." Moreover, the Committee Against Torture (the oversight and enforcement body for the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the United States in 1994) has stated that life without parole sentences for youth "could constitute cruel, inhuman or degrading treatment or punishment" in violation of the treaty.

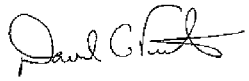
Third, we are deeply concerned that racial discrimination enters into the determination of which youth serve life without possibility of parole sentences, and which youth enjoy the possibility of release. In Louisiana, at least 79% of juveniles serving life without parole are black, although African Americans consitute only 30% of Louisiana's population. Last year the Committee on the Elimination of Racial Discrimination (the oversight and enforcement body for the International Convention on the Elimination of All Forms of Racial Discrimination, a treaty ratified by the United States in 1994) concluded that, in light of the racial disparities in the sentencing of youth to life without parole, "the persistence of such sentencing is incompatible with article 5(a) of the Convention. The Committee therefore recommends that the [United States] discontinue the use of life sentence without parole against [youth offenders], and review the situation of persons already serving such sentences."

Children can and do commit terrible crimes. When they do, they should be held accountable and face appropriate consequences. But children are different from adults, and the punishment imposed for their offenses should reflect their age and level of development. At a minimum, laws should preserve the opportunity for parole for juvenile offenders, and the ability to review whether someone sentenced to life in prison as a child has been rehabilitated.

For the foregoing reasons, Human Rights Watch urges Louisiana to eliminate the sentence of life without parole for children by enacting House Bill 715.

Please do not hesitate to contact me if I can provide any further information.

Very truly yours,



David C. Fathi
Director, US Program

CDF Action Council

Monday, May 11, 2009

To Whom It May Concern:

We write today in support of HB 715 which would amend the extreme penalty of life without parole for juveniles—not by sidestepping punishment, but by opening the door to the possibility of redemption.

CDF's National *Cradle to Prison Pipeline®* campaign began to reduce detention and incarceration by increasing preventive supports and services children need, such as access to quality early childhood development and education services and accessible, comprehensive health and mental health coverage. We believe that emphasis must be shifted for the sake of our children and our nation's future; and we must support policies that prevent incarceration and strive to bring positive change to the lives of all children, even those who make bad decisions.

More and more studies have found that adolescents' brains are still developing, even past their 18th birthday. Many of our state laws – regarding drinking alcohol, voting, joining the military, getting married or serving on a jury – acknowledge this fact.

Many of the youth currently serving life without parole had never been in trouble with the law before. Others were often with older people or groups. A national study found that 59% of youth serving life sentences on their first conviction. 26% were convicted for crimes in which they weren't the primary actor.

The cost of incarcerating these children is extremely high. At current rates taxpayers will spend $76.82 per day, 10 million dollars a year, and upwards of 500 million dollars over the next few decades to keep them behind bars.

The US is the only country in the world where this harsh sentence is possible, and Louisiana has more than twice the rate of child lifers than any other State with this policy. This bill does not automatically release anyone into society but instead provides the option for a tough but reasonable parole process that invites victim participation and grants release only if the child has shown significant rehabilitation.

Life without parole assumes redemption is impossible. If we believe anyone in society might be able to change, it is children. We urge you to support HB 715 and give our most troubled youth at least a chance to change their ways—the possibility give back to society some of what they've taken.

Thanks for your time and careful consideration,

Mary Joseph
Director, Louisiana Office

1452 N. Broad Street, New Orleans, LA 70119 ⁂ P.O. Box 792497, New Orleans, LA 70179-2497
Telephone 504.309.2376 ⁂ Fax 504. 309.2379 ⁂ www.childrensdefense.org

May 4, 2009

To Whom It May Concern:

I am the father of a murdered daughter. As such, in order to honor her memory as a loved and loving child, I have worked for 11 years to abolish capital punishment in the U.S. I am presently employed as Executive Director of Murder Victims' Families for Reconciliation (MVFR), a national organization of murder victims' family members who both act in support of each other and also strive to end the use of the death penalty. In this effort, I have promoted the penalty of life without the possibility of parole as an alternative and APPROPRIATE punishment for ADULT murderers.

However, a harsh and unforgiving penalty of this sort is totally INAPPROPRIATE for one who commits homicide as a JUVENILE. The reasons for this should be obvious. Science has informed us that the minds and consciences of those of less than adult age are much less developed or able to appreciate the consequences of their actions than those of us who have reached adulthood. Furthermore, commission of a violent act as a juvenile gives one so much more time to be rehabilitated, a worthy goal for one who commits an act of violence at a young age. I believe there certainly should be a minimum time served in prison by a juvenile killer in order to help that person in his/her rehabilitation process and to assure us that the rehabilitation has taken place, but that minimum period should not be the rest of their lives. Society can still be protected, which is our major goal, by virtue of continuing the prison sentence via rejection of parole, should that course of action be warranted.

I request that this appeal to sound and humane reasoning be considered and acted upon by any states that now have laws that call for life without possibility of parole for juveniles.

Respectfully submitted,

Larry W.Post

M.A.M.A.

Mothers Against Murderers Association, Inc.
2100 45th Street, Unit B5
West Palm Beach, Florida 33407
Phone: (561) 842-8230 Fax: (561) 842-8670
Email Address: mothersagain@aol.com

May 29, 2009

Dear Members of the House Judiciary Committee,

I am writing on behalf of Mothers Against Murderers Association (MAMA) to express our strong support for House Bill 2289, Juvenile Justice Accountability and Improvement Act of 2009.

I started the grassroots non-profit organization called MAMA in 2003 after I had experienced the murders of seven of my nieces and nephews in Palm Beach County, Florida. MAMA's mission is to assist parents or guardians of murder victims. MAMA currently has over 80 mothers who participate in the organization. MAMA provides a support group, as well as support for murder victim's families at hospitals, funerals, and crime scenes.

The other part of MAMA's work is prevention, intervention, and treatment to stop children from turning to violence. We visit schools, juvenile detention centers, and many other places in the community to tell our stories. We also provide after school programs and summer programs for children.

Far too many children are being sentenced as adults and being thrown away for the rest of their lives. While we are the family members of murder victims, we know that children are different. We believe children can be rehabilitated. We see it happen. We want to re-establish the opportunity for parole for our children. Our children are our future. We must provide those who have made mistakes with a chance to redeem themselves.

Mothers Against Murderers Association unanimously supports House Bill 2289 and the end of life without parole sentences for juveniles.

Sincerely,

Angela Williams
President and Founder

Mary Ellen Johnson
39 Dartmouth Place,
Woodland Park, CO 80863
Maryellen@pendulumfoundation.com
720-314-1402

June 1, 2009

Honored Representatives:

I am writing to ask you to support passage of HR-2289. There are many reasons to oppose long prison sentences for juveniles. I will focus on one of the less common: the use of Supermax prisons to house so many of these children.

More than half of the youngsters here in Colorado serving JLWOP (juvenile life without parole) spend years – even decades – in our Supermax prisons. My friend Jacob Ind entered Colorado State Penitentiary, our state's control unit, the first time at 18; he emerged at 25. Despite what you'll hear, a lot of people are thrown into control units for minor infractions. It's easier for the system to just not "have to deal." And when you're 15-16-or 17-years-old, you're fresh meat for prison predators. Just lock 'em down 23 hours out of the day for years on end where they'll never see sunlight or breathe fresh air or have any real way to work their way out and that's perfectly okay.

It must be okay because Supermax prisons are increasing as inexorably as our national debt.

As you ponder the issue of youth in adult prisons I urge you to include the findings of Atul Gawande, author of HELLHOLE: (*The New Yorker* magazine), in your deliberations.

In a long article that is as appalling as it is powerful, Atul Gawande lays out the case against prolonged isolation – whether for prisoners of war or prisoners of our courts.

Gawande cites a study out of California's notorious Pelican Bay where Professor. Craig Haney noted that after time in isolation, many prisoners began "to lose the ability to initiate behavior of any kind—to organize their own lives around activity and purpose… Chronic apathy, lethargy, depression, and despair often result. . . . In extreme cases, prisoners may literally stop behaving," becoming essentially catatonic."

We humans need social interaction. We need the presence and companionship of our fellow humans. When we don't receive it, we go insane.

Yet…Isolation/Supermax/ Living Death is public policy in America.

This is what we are doing to my friend [redacted], who spent 15 years in his own hellhole before officially entering the state's version. [redacted] crime: parricide. An official way of saying [redacted] was physically, emotionally and sexually abused by both his parents,

and finally killed them. (Why didn't he reach out for help? He did. Why didn't he go to Social Services? He did. Why didn't he ask teachers for help? He did. For all you think that our "safety nets" actually work, spend some time in America's prisons and you'll see the results of our social failures.)

John McCain was a P.O.W for 5 ½ years. His symptoms and experiences were very similar to those we deplored when delivered by the Vietnamese, and proudly initiated in America's prisons.

From Hellhole: "When P.O.Ws are isolated, they "begin to see themselves primarily as combatants in the world, people whose identity is rooted in thwarting prison control."

We call that anger, that determination to foil the enemy "heroic" when practiced by prisoners of war. We produce movies about their bravery. We snap up their memoirs. We applaud their courage and grit on Fox News

"According to the Navy P.O.W. researchers, the instinct to fight back against the enemy constituted the most important coping mechanism for the prisoners they studied. Resistance was often their sole means of maintaining a sense of purpose, and so their sanity. Yet resistance is precisely what we wish to destroy in our Supermax prisoners. As Haney observed in a review of research findings, prisoners in solitary confinement must be able to withstand the experience in order to be allowed to return to the highly social world of mainline prison or free society. Perversely, then, the prisoners who can't handle profound isolation are the ones who are forced to remain in it. "And those who have adapted," Haney writes, "are prime candidates for release to a social world to which they may be incapable of ever fully readjusting."

John McCain has spoken against conditions at Guantanomo. Has he EVER spoken out against conditions in the Supermax prisons in his home state? Have any of our politicians?

What have We the People become?

Prison officials maintain that long-term isolation cuts down on violence inside and is reserved for "the worst of the worst." However, since the wholesale implementation of control units – and America is the only nation that uses control units so extensively – institutional violence has not decreased.

"Perhaps the most careful inquiry into whether Supermax prisons decrease violence and disorder was a 2003 analysis examining the experience in three states—Arizona, Illinois, and Minnesota—following the opening of their Supermax prisons. The study found that levels of inmate-on-inmate violence were unchanged, and that levels of inmate-on-staff violence changed unpredictably, rising in Arizona, falling in Illinois, and holding steady in Minnesota."

States with fewer control units do NOT have higher rates of crime and violence. So why, despite all evidence to the contrary, do we continue to think it's perfectly okay to lock people away in rooms the size of a parking space for years on end?

And why do we think that it's okay – no, not okay, DESIRABLE -- to lock kids like Jacob Ind away in these living tombs?

America wasn't always so barbaric. Only in the last two decades have Supermax prisons become *de rigueur*. One hundred years ago our social conscience was more evolved.

Atul Gawande writes:

"In 1890, the United States Supreme Court came close to declaring the punishment to be unconstitutional. Writing for the majority in the case of a Colorado murderer who had been held in isolation for a month, Justice Samuel Miller noted that experience had revealed "serious objections" to solitary confinement:

> "A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community."

Yet, we in the 21st century declare that it's perfectly okay to treat human beings worse than beasts.

Even when it doesn't work.

Other nations, after determining that isolation will never garner the desired results, have deep-sixed control units. Great Britain, which was infamous for its treatment of members of the Irish Republican Army, once used solitary confinement as a means to control the rebels.

What happened? The violence inside prisons remained unchanged while related costs skyrocketed.

So what did the British do?

"(They) gradually adopted a strategy that focussed on preventing prison violence rather than on delivering an ever more brutal series of punishments for it. .. (They) decided to give their most dangerous prisoners more control, rather than less. They reduced isolation and offered them opportunities for work, education, and special programming to increase social ties and skills. The prisoners were housed in small, stable units of fewer than ten people in individual cells, to avoid conditions of social chaos and unpredictability. In these reformed "Close Supervision Centres," prisoners could receive mental-health treatment and earn rights for more exercise, more phone calls, "contact

visits," and even access to cooking facilities. They were allowed to air grievances. And the government set up an independent body of inspectors to track the results and enable adjustments based on the data.

"The results have been impressive. The use of long-term isolation in England is now negligible. In all of England, there are now fewer prisoners in "extreme custody" than there are in the state of Maine. And the other countries of Europe have, with a similar focus on small units and violence prevention, achieved a similar outcome."

I ask: why do we Americans happily continue spending money we don't have on policies we know doesn't work?

As you ponder providing an opportunity for parole for juveniles, I urge you to consider the conditions in which these young men and women are forced to serve out their death sentences.

I urge you to choose redemption over mindless retribution.

I urge you to provide at least the OPPORTUNITY for a second chance for the many thousands of young men and women who are locked away in America's prisons – and in their own individual Hellholes.

Please support HR-2289,

Mary Ellen Johnson

Charles E. Winship
444 Sagewood Drive • Ignacio, CO 81137

May 18, 2009

To: The House of Representatives Judiciary Committee

RE: June 9, 2009 hearing for HR 2289

Dear committee members,

I am writing on behalf of NAMI (National Alliance on Mental Illness) to urge you to support the Juvenile Justice Accountability and Improvement Act of 2009. This bill, if made law, would require reviews of life sentences given to youth (individuals under the age of 18) after 15 years of incarceration, and every three years thereafter, which I strongly believe is an appropriate alternative to sentencing youth to life without the possibility of parole.

In the United States, there are more than 2,500 people serving life sentences without the possibility of parole for crimes committed before their eighteenth birthday. There are no such cases in the rest of the world. We oppose sentences of juvenile life without parole (JLWOP) because they recklessly disregard the differences between youth and adults and declare that young people are beyond reform. We urge Congress to pass this law to hold youth accountable, prioritize public safety, *and* protect one's human right to the opportunity for rehabilitation.

Detailed research on the application of JLWOP sentences around the country documents evidence of **systemic racial disparities, gross failures in legal representation, and many examples of youth being sentenced more harshly than adults convicted of the same crimes.** Despite popular thinking, a large portion (60%) of people serving JLWOP sentences are first-time offenders. In addition, more than one quarter of people serving JLWOP were convicted of "felony murder," which means they were participants in an underlying crime that resulted in a murder, but did not actually commit it, and *may not have even been present*. I personally know of one such person, Jimmy Shane Click, 178051, Alabama DOC, who was convicted and sentenced in this manner. Shane suffers from schizophrenia, which contributed to his involvement in a crime. In the years since his imprisonment, he has benefited tremendously from the huge advancements in drug therapy for mental illnesses, and he deserves at least a chance at rehabilitation and release.

Our country's juvenile justice system was founded on the majority view that children, even those responsible for grave acts, are fundamentally different from adults. The imposition of life without parole sentences on young people is especially cruel and misguided because it ignores the fact that children are different from adults in critical ways. Behavioral research

confirms what is recognized by U.S. and state laws: children do not have adult levels of judgment, impulse control, or the ability to assess risks and consequences. There is widespread agreement among child development researchers that young people who commit crimes are more likely to reform their behavior and have a better chance at rehabilitation than adults. The U.S. Supreme Court agrees---in *Roper v. Simmons* the Court explained, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Punishment of youth should be focused on rehabilitation and reintegration into society. Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released to the streets. Instead, it will allow for careful, periodic reviews to determine whether, 15 years later, people sentenced to life without parole as youth continue to pose a threat to the community.

I urge you to support the Juvenile Justice Accountability and Improvement Act of 2009, which acknowledges the critical difference between youth and adults, and imposes an age-appropriate sentence that recognizes a young person's potential for growth and reform.

Sincerely,

Charles E. Winship

444 Sagewood Drive

Ignacio, CO 81137

May 27, 2009

To: The Honorable John Conyers, Chairman of the House of Representative Judiciary Committee
Fax 202-225-0072, 1201 Longworth HOB, Washington, DC 20515, Phone 1-202-225-5126

RE: Letter to the Judiciary regarding HR 2289, the Juvenile Justice Accountability and Improvement Act of 2009

Dear Honorable Members of the Judiciary Committee,

There seems to be a stubborn contradiction in our society when it comes to children and the law. It seems children are only treated as adults when they are accused of a crime. When a child of 11 is accused of a crime he suddenly over night becomes an adult, even though the day before he couldn't be trusted or be responsible enough to get on a school bus without parental consent.

Presumably there is a reason an 11 year old, or a 12 year old, or even a 15 year old child cannot ride a school bus without adult parental consent. Presumably there are reasons society requires adult parental consent and supervision on many activities through the age of 18, including attending post prom activities on school grounds or even going on a school sponsored field trip.

Why does a middle school or high school student have to list a contact in case of an emergency? A full grown adult does not. Why is a parent's signature required on everything, including a detention slip, if the student is really an adult in "different" clothing? Why does an adult parent have to call in when a child is sick, or signs up for sports, or give permission to roller skate or swim in gym class? Why can't a student be responsible enough to take a Tylenol or Midol pill or even a cough drop during school? For that matter, why require school at all if a child is an adult and already knows everything there is to know?

The same 11 year old child society accepts as too irresponsible for any of the above, CAN go to prison for life, with no chance for parole or redemption, and many times in an adult penitentiary with hardened and violent adult criminals (even Charles Manson comes up for parole every 4 years, but our CHILDREN do not). Why has society made certain distinctions between children and full-grown adults if that distinction can be conveniently ignored when it suits certain groups, situations or political agendas, seemingly passing random laws that are contradictory? Is it a violation of a child's constitutional rights to be treated as an adult and a child at the same time in the same society? Is it constitutionally just to lock that mini adult out of the constitutionally guaranteed representative process of voting when it so harshly and permanently affects their rights as human beings? An adult's constitutionally protected right to freedom?

If society is going to treat an 11 year old as an adult when accused of a crime, it should be applied consistently and fairly. If it is age appropriate for an 11 year old to be sentenced to life without the possibility of parole or even natural life (a sentence to die in prison), then 11 should be the appropriate age to vote and sit on a jury. If an 11 year old can be given the harshest sentence under the law and to be considered mature enough to understand it, then an 11 year old should be included in the voting process of the laws that affect him/her. We live in a representative government and if an 11 year old is subjected as an adult to our harshest laws, it is only fair under the Constitution that they should be part of the representative process.

A child of 11 (or 12, 13, 14, 15 or even 16) is not considered by society to be responsible enough or possess the maturity or proper judgment to manage even the simplest decisions as required of adults, but LWOP is considered fair punishment for a child. What sort of schizophrenic, irrational thinking is being used by our lawmakers?

-A chi d of 11 needs a permission slip signed by a parent to go on a school sponsored field trip

-A child of 11 cannot vote

-A child of 11 cannot sit on a jury

-A child of 11 cannot buy alcohol or cigarettes

-A child of 11 cannot buy porn

-A child of 11 cannot sign a contract

-A child of 11 cannot drive a car

-A child of 11 cannot leave home, get married or drop out of school

-A child of 11 cannot get a job

-A child of 11 cannot see a movie containing bad language or sex, yet can be sent to a prison where he is at a 5x higher risk of being raped and will be exposed to foul language daily

-a child of 11 is not responsible enough to baby-sit other people's children according to Parent Magazine recommendations

-A child of 11 has a brain that is half developed

-A child of 11 still has baby teeth

-A child of 11 probably can't spell Miranda Rights

-A child of 11 hasn't reached puberty

-A child of 11 needs parental guidance to see a movie

-A child as young as 8 years old CAN go to prison for life, no parole.

America, once the beacon of justice and compassion around the world has dimmed to barely a flicker. Please pass HR2209 and bring the light back to our soil. Let's save our kids, not throw them in the rubbish bin and leave them for dead.

Thanks.
Pamela Kulig
1525 Williams Ave
St. Charles, Illinois 60174
630-885-1057
[redacted]

May 18, 2009

Dear members of the House Judiciary Committee,

I am writing on behalf of Pax Christi Palm Beach <http://paxchristipalmbeach.wordpress.com> to urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009. This bill, if made law, would require reviews of life sentences given to youth (individuals under the age of 18) after 15 years of incarceration, and every three years thereafter, which is an appropriate alternative to sentencing youth to life without thepossibility of parole.

In the United States, there are more than 2,500 people serving life sentences without the possibility of parole for crimes committed before their eighteenth birthday. There are no such cases in the rest of the world. We oppose sentences of juvenile life without parole (JLWOP) because they recklessly disregard the differences between youth and adults and declare that young people are beyond reform.

We urge Congress to pass this law to hold youth accountable, prioritize public safety, and protect one's human right to the opportunity for rehabilitation.

Detailed research on the application of JLWOP sentences around the country documents evidence of systemic racial disparities, gross failures in legal representation, and many examples of youth being sentenced more harshly than adults convicted of the same crimes. Despite popular thinking, a large portion (60%) of people serving JLWOP sentences are first-time offenders.

In addition, more than one quarter of people serving JLWOP were convicted of "felony murder," which means they were participants in an underlying crime that resulted in a murder, but did not actually commit it, and may not have even been present.

Our country's juvenile justice system was founded on the majority view that children, even those responsible for grave acts, are fundamentally different from adults. The imposition of life without parole sentences on young people is especially cruel and misguided because it ignores the fact that children are different from adults in critical ways. Behavioral research confirms what is recognized by U.S. and state laws: children do not have adult levels of judgment, impulse control, or the ability to assess risks and consequences. There is widespread agreement among child development researchers that young people who commit crimes are more likely to reform their behavior and have a better chance at rehabilitation than adults. The U.S. Supreme Court agrees—in Roper v. Simmons the Court explained, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Punishment of youth should be focused on rehabilitation and reintegration into society.

Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released to the streets. Instead, it will allow for careful, periodic reviews to determine whether, 15 years later, people sentenced to life without parole as youth continue to pose a threat to the community.

We urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009, which acknowledges the critical difference between youth and adults, and imposes an age-appropriate sentence that recognizes a young person's potential for growth and reform.

Sincerely,

Beth Cioffoletti, Pax Christi Palm Beach
website: http://paxchristipalmbeach.wordpress.com)

4275 Hazel Avenue, Palm Beach Gardens FL 33410 561-626-6520
Email: shoofoolatte@gmail.com<mailto:shoofoolatte@gmail.com>

Monday, May 18, 2009

The Honorable John Conyers,
Chairman of the House Judiciary Committee for the Judiciary Committee
1201 Longworth HOB
Washington, DC 20515
FAX: 202-225-0071
Phone: 202-225-5126 (call for email address)

RE: June 9, 2009 Hearing for HR 2289

Dear Honorable Members of the Judiciary Committee:

The fundamental principle the Supreme Court applied to a 2005 ruling that declared the death penalty unconstitutional for juveniles should apply to life imprisonment sentences meted out to juveniles convicted of non-lethal crimes. Children who commit crimes should be punished in a fashion that will teach them, not kill them. They should be held to lesser standards than adult lawbreakers because their poor judgment and misbehavior reflect their age and their still-developing maturity. The Supreme Court used that immaturity as a yardstick when outlawing capital punishment for juvenile offenders. Now it should do the same for life without parole for individuals who are, despite the seriousness of their crimes, still children. These children should not be deemed worthless by society and stripped of the opportunity to rehabilitate due to acts committed in their youth. They deserve a second chance.

It is my express desire for this important legislation to go forward in earnest, recognizing that this Bill requires states to enact laws and adopt policies to grant child offenders who are under a life sentence a meaningful opportunity for parole at least once after serving their first 15 years of incarceration and at least once every three years thereafter. This law defines a "child offender who is under a life sentence" as an individual who is convicted of a criminal offense committed before attaining the age of 18 and sentenced to a term of natural life or its functional equivalent in years. This Bill seeks a just alternative that will hold juveniles accountable for their crimes while offering them the opportunity to earn their release before they die.

Honorable Members, in the U.S. children are prohibited from buying cigarettes, consuming alcohol, seeing certain movies unless in the presence of an adult. They cannot serve on juries, vote, marry without parental consent, are not allowed to leave home and live alone, leave school, cannot make certain decisions relating to their medical treatment or education, cannot sign contracts, purchase firearms or be drafted in to military service. These limitations are set by society because children do not have the sophistication to know how to handle adult situations. Physiologically, their brains have not developed sufficiently for them to take on such responsibilities. They are often incapable of resisting peer pressure from adults, or weathering internal emotions and bursts of irrational spontaneity without proper guidance. They have no sense of "tomorrow" or "consequences" and they are this way precisely because they are

children. Were you not "invincible" and of the opinion that you "knew all things" when you were children?

These same children can, however, be sentenced to prison for the rest of their life. Are these children beyond redemption? Are they the worst thing they have ever done? Is that all they are? Has society grown so complacent that it believes that abandoning these children is the answer to crime? In this society are there no second chances in life? Has society become so perfect that it can actually make such a determination? Who among us is so flawless that we can throw the first stone and never forgive any more transgressions? Zero tolerance is demanded. Yet deep in our hearts, we must collectively understand that zero tolerance shall never be achieved no matter how many citizens we imprison. We as a society need to fess up to this terrible wound we have inflicted upon ourselves and our children. In that way our society may begin to heal. Are we going to remain a society of retribution and revenge or become one of restitution, nurturing, rehabilitation and forgiveness? The former will create more crime; the latter will eventually eliminate crime.

Psychoanalytical studies have shown that children lack the capacity to both understand and control their actions, which reduces culpability. The human brain does not reach its full capacity in the frontal cortex, the area of reasoning, until age 25, *Roper v Simmons* (03-633) 543 U.S. 551 (2005) 112 S. W. 3d 397.

I honor Representatives Scott and Conyers for their courage in introducing HR 2289. I encourage you, Honorable Members, to begin the hard work of discerning where justice truly lies concerning the youth of America. Please help HR 2289 on its way to the full House.

Respectfully submitted,

Sherry Swiney
Director, People Aligned To Replace Injustice & Cruelty with Knowledge
An international human rights organization

--People Aligned To Replace Injustice & Cruelty with Knowledge--
It is the inability to experience the suffering of another human being as one's own, that allows gross suffering to continue on planet earth. What is done to one, is done to all.

Copy to:
Jody Kent
National Coordinator for the Fair Sentencing of Children
1630 Connecticut Ave, NW, Suite 500
Washington, DC 20009
jkent@endjlwop.org

May 6, 2009

To Whom It May Concern:

My father was murdered by a 17 year old teenager when I was seven years old. The teenager was caught, tried and sentenced to life in prison.

Despite the pain and suffering visited upon me, my mother, and my five sisters and brothers, I am strongly against life without parole for juveniles.

My reasons are ruthlessly pragmatic and are completely separate from any personal feelings I have about my father's killer or others who have committed murder.

Punishment. My father's killer took a human life. He needed to be held accountable. He was.

Public Safety. My father's killer could have taken someone else's life. He needed to be put in a place where he was no longer a threat to anyone else. He was.

Redemption and Fiscal Responsibility. When a person makes a mistake, he deserves a chance to make up for that mistake. Even if he has killed. If a prisoner can demonstrate that he's ready to go home and play by the rules, then we should provide that opportunity. It makes no sense to keep someone in prison who could be contributing to society and paying tax dollars instead of spending tax dollars.

Juveniles are Different. We seem to sentence juveniles based on the idea that the more serious their crime, the more mature they are. By any reasonable measure, that's wrongheaded logic. And we should know that. If anyone imprisoned for life deserves a second chance at life, it is those individuals whose criminal acts were committed under the misguided influence of youth.

As you consider juvenile justice reform, know that victim attitudes have many dimensions. There are others who consider themselves "tough on crime" who also believe juvenile life with out parole offenders should have a path (hard earned to be sure) back to the community.

Respectfully Submitted

Robert W. Hoelscher
Austin, TX
(former resident of Louisiana and Alabama)

Statement in support of elimination of juvenile life without parole sentencing

We, the undersigned current and former prosecutors and judges, write in support of changing state and federal laws to ensure that any life sentence imposed in a case where the defendant was under the age of eighteen at the time of the offense, receives meaningful periodic reviews. As those who have served as prosecutors and judges, we are well aware of the need to protect our community and ensure that individuals who commit serious offenses are sentenced appropriately. We question, however, whether it makes sense to send a youth to prison for the rest of his/her life (known as a life without parole or "LWOP" sentence) with no opportunity for review and no ability to assess whether the individual has been reformed and is safe to return to the community at some point before he or she dies. We thus support a carefully tailored review at an appropriate time to determine whether these individuals should remain incarcerated.

Scientific evidence proves that youth are fundamentally different from adults because of their immature brain development, and their weaker impulse control and reasoning abilities. Indeed, these exact factors led the U.S. Supreme Court a few years ago to conclude that youth should be treated differently by the criminal justice system because of their developmental differences. In the decision, Justice Kennedy, who wrote for the majority, noted the fact that youth have more potential to reform their behavior and be rehabilitated than adults. As such, the Supreme Court ruled that it is unconstitutional to execute those under the age of 18 at the time they committed a crime.[1]

Juvenile LWOP is not only an unduly harsh and inappropriate penalty for youth, it is also extremely costly to taxpayers. In the United States, we spend approximately $90 million per year to incarcerate people serving juvenile LWOP sentences. Assuming they are incarcerated at age 17 (many are younger) and live to the average life expectancy of 78, we are spending a total of about $5.5 billion to incarcerate people who may at some point in their lives pose no threat to society and could be productive members of our community.

We know there are some people who have committed heinous crimes and are unfit to be released into the community regardless of their age when they committed the crime. Elimination of juvenile LWOP will not allow these people to be released to the streets. Instead, it will allow for careful reviews to determine whether, years later, individuals sentenced to life without parole as youth continue to pose a threat to the community.

For all of these reasons, we believe that it is both inappropriate and unjust to sentence juveniles to life without the possibility of parole.

Anthony S. Barkow, *Assistant United States Attorney for the Southern District of New York, 2002-2008; Assistant United States Attorney for the District of Columbia, 1998-2002; Trial Attorney, Attorney General's Honors Program in the Office of Consumer Litigation, United States Department of Justice, 1996-1998*

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[1] *See Roper v. Simmons, 543 U.S. 551, 569–73 (2005).*

Shay Bilchik, *Assistant State Attorney, Administrator Miami-Dade State Attorney's Office of Florida, 1977-1999; Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, 1993-2000*

Robert J. Del Tufo, *Attorney General, State of New Jersey, 1990-1993; United States Attorney, District of New Jersey, 1977-1980; First Assistant State Attorney General and Director of New Jersey's Division of Criminal Justice*

Bennett Gershman, *Prosecutor, Manhattan District Attorney's Office, 1967-1972*

Isabel Gomez, *Former Judge, Hennepin County Circuit Court, Minnesota*

James R. Grodin, *Former Associate Justice, California Supreme Court*

Shirley M. Hufstedler, *Judge, United States Court of Appeals for the Ninth Circuit, 1968-1979; Associate Justice, California Court of Appeal, 1966-1968; Judge, Los Angeles County Superior Court, 1961-1966; United States Secretary of Education, 1979-1981*

Bruce Jacob, *Former Assistant Attorney General for the State of Florida*

William A. Kimbrough, Jr., *United States Attorney, Southern District of Alabama, 1977-1981; Assistant United States Attorney, Southern District of Alabama, 1961-1965*

Gerald Kogan, *Former Chief Justice, Supreme Court of the State of Florida; former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida*

Miriam Krinsky, *Former Assistant United States Attorney, Central District of California*

Mark Osler, *Assistant United States Attorney, 1995-2000 (Eastern District of Michigan). Professor of Law, Baylor University, 2000-present*

A. John Pappalardo, *United States Attorney, District of Massachusetts, 1992-1993*

H. James Pickerstein, *Chief Assistant United States Attorney for the District of Connecticut, 1974-1996; Court Appointed United States Attorney for the District of Connecticut, 1974-75*

Richard A. Rossman, *Chief of Staff, Criminal Division, United States Department of Justice, 1998-99; United States Attorney, Eastern District of Michigan, 1980-1981; Chief Assistant United States Attorney, Eastern District of Michigan 1977-80; Chief Deputy Federal Defender, Eastern District of Michigan, 1972-75*

Patricia Wald, *Judge, United States Court of Appeals for D.C. Circuit, 1979-1999, Chief Judge, 1986-1991; United States Judge to the International Criminal Tribunal for the Former Yugoslavia, 1999-2001*

James J. West, *United States Attorney, Middle District of Pennsylvania, 1985-1993*

LARRY H. IKERD
(Retired Assistant Warden – Louisiana Department of Corrections)
815 North Border Drive
Bogalusa, LA 70427

May 5, 2009

Re: **House Bill 715**

Dear Members of the Louisiana State Legislature:

The purpose of this correspondence is to request your support and vote in favor of **House Bill 715**, which would provide parole eligibility to individuals serving life sentences without the possibility of parole for crimes committed when they were 15 or 16 years old.

I am a former corrections officer and Assistant Warden, who worked for the Louisiana Department of Corrections beginning in 1982 until my retirement in 2005. I last served as an Assistant Warden at Dixon Correctional Institute. Obviously, I came into contact and interacted with inmates every day and had the opportunity to distinguish those who were rehabilitative and would likely be law-abiding and productive if released into society, and those who were less likely to be successful if released.

As I understand HB 715, it would provide for parole eligibility for youth transferred to adult court under Children's Code Art. 857 or youth subject to the jurisdiction of criminal court under Children's Code Art. 305. It would not mean that these individuals would be released automatically, but that inmates affected would receive a case by case review by the Parole Board of their particular situation which would include the nature of their crimes, education and skills, behavior during incarceration, and many other elements and the Parole Board would decide whether or not it is in the best interest of the State and its citizens to grant a parole request.

I believe that corrections officers have a unique perspective regarding the character of individuals that are incarcerated because they are in constant contact and they get to know the individuals on a one-on-one basis. I personally know two inmates who are serving life without parole sentences, one for a crime committed when he was 15 years old and the other for a crime committed when he was 16 years old. One of these individuals worked as a clerk in my office for several years and I look upon him as a son. In either of these two cases, I would not hesitate to recommend their immediate release because I believe that they are rehabilitated; that they are not the same youth who committed their crimes; and they would not pose a threat to society.

HB 715 would merely give these two individuals, along with others, a right to request a hearing before a Parole Board, and maybe receive a case-by-case review of their particular case, and just a glimmer of hope.

Sincerely,

Larry H. Ikerd
Retired Assistant Warden
La. Dept. of Corrections

Dr. Martin J. Drell, MD
Chief of Infant, Child and Adolescent Psychiatry
Louisiana State University School of Medicine
210 State St.
New Orleans, LA 70118

Members of the Louisiana State Legislature
Louisiana State Capitol
Baton Rouge, LA 70802

RE: Information and Support for HB 715

May 12, 2009

Dear Members of the Louisiana State Legislature,

My name is Dr. Martin J. Drell, MD and I am the Chief of Infant, Child and Adolescent Psychiatry at Louisiana State University's School of Medicine in New Orleans. As a mental health professional with 30 years of experience, I am writing to you today to offer information concerning The Youth Rehabilitation Review Bill (HB 715).

As you are aware, HB 715 would offer those people that were 15 or 16 at the time of their offenses an opportunity to apply for a parole hearing after reaching their 31st birthday. This legislation particularly impacts those children that were sentenced to life without the possibility of parole in adult prisons.

The importance of this legislation is demonstrated by scientific research concluding that the pre-frontal cortex (PFC)—the "judgment center"—is the last portion to develop in the human brain, and normally does not finalize it's develop until an individual's early twenties. The "judgment center" is the portion of the brain that controls higher-order cognitive processes such as logical decision-making, inhibition, anticipation of long-term consequences and emotional regulation.[1,2] This research suggests that the teenage brain has more difficulty controlling impulses and weighing risks, and that the efficiency and accuracy of brain function are potentially compromised by brain immaturity.

The lack of maturity of the pre-frontal cortex makes the juvenile more vulnerable to stress, environmental influences and powerful feeling states.[3] Research has shown a very clear relationship between high stress and low reasoning ability, indicating that teens are less able to use their logical reasoning capabilities during times of stress.[4]

Although this research does not conclude that *all* children are prone to committing violent crime, it does suggest that in conjunction with environmental or other factors, children are more susceptible to being involved in dangerous or harmful behavior. This research also suggests that adolescents that commit violent crime should overall not be viewed as inherently or irreparably violent. Because the brain of a 15 or 16 year old will continue to develop after the commission of their crime and during their incarceration, adolescents also possess the potential—with the aid of treatment—to habilitate and to one day potentially re-enter society without being a threat to public safety.

I will close by offering my favorable support for HB 715. Please do not hesitate to contact me for further information.

Sincerely,

Martin J. Drell, MD
Chief of Infant, Child and Adolescent Psychiatry
Louisiana State University School of Medicine

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[1] Goldberg, E. (2001) The Executive Brain: Frontal Lobes and the Civilized Mind. Oxford: Oxford University Press.
[2] Baird, A.A., et al. (1999). Functional magnetic resonance imaging of facial affect recognition in children and adolescents. Journal of the American Academy of Child and Adolescent Psychiatry 38(2): 195-199
[3] Arnsten, A.F., Shansky, R.M. (2004). Adolescence: Vulnerable period for stress-induced prefrontal cortical function. Annals of the New York Academy of Sciences 1021: 143-147.
[4] Spear, L.P. (2000). The adolescent brain and age-related behavioral manifestations. Neuroscience and Biobehavioral Reviews, 24: 417-463.

Stacey Perritt
5200 Burgamy Swamp Rd.
Highland Home, AL. 36041

Dear Members of the committee on the Judiciary,

I am writing today as a family member of someone serving JLWOP, to urge you to co sponsor the Juvenile Justice Accountability and Improvement Act of 2009 (HR2289). My brother in law is serving a life sentence with no possibility for parole for a crime committed when he was only 17 years old. Please give him the chance to go before the parole board and let the parole board decide whether my brother in law has been rehabilitated and could lead a productive law abiding life if released. Otherwise he will die in prison without ever having had a chance to prove that he has changed and is deserving of a second chance.

Victor Bruce Perritt lost both parents in a horrible car accident when he was 16 years old, he was lost and didn't feel he had anyone in this world that wanted or loved him so he looked up to a friend that had a lot of problems with drugs and alcohol. That person lead him down the wrong road in life. That road ended with Victor being sentenced as an accomplice to a crime he is serving the rest of his life for. He was too scared to stand up to the perpetrator and for that he has no chance of a future. He has served 28 years in Angola. He was sentenced to life without as a child and didn't understand that his sentence meant he'd die in prison as a old man. He has been in prison almost twice as long as he was free. He has a heart wrenching story that needs to be heard. I've know Victor for 11 years now. He is a very kindhearted person that only wants a chance to prove that he has grown up and learned his lesson. He has a lot of hobbies and builds crafts in prison but he deserves to have a second chance at life in the free world. He has gotten accustomed to life in prison but there is still a glimpse of hope in the back of his mind that one day someone will give him a second chance to prove himself. He hasn't gotten in much trouble in prison and that's a great accomplishment considering in the 80's when he was sentenced Angola was one of the worst prisons in the world. He was beaten and taken advantage of as a child behind bars. He has been rehabilitated and deserves a chance at a life as an adult. My husband is Victor's younger brother. We visit Victor twice a year, take calls once a week and send him a monthly $50 money order.

This bill, if made law would require reviews of life sentences give to youth after 15 years of incarceration, and then every three years thereafter, which is an appropriate alternative to sentencing youths to life without the possibility of parole. In the United States there are more that 2,500 people serving life without the possibility of parole for crimes committed before their 18th birthday. There are no such cases in the rest of the world.

Punishment of youths should be focused on rehabilitation and reintegration into society.
Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released into the streets. Instead , it will allow for careful periodic reviews to determine whether, 15 years later people sentenced to life without parole as a youth continue to a threat to the community. I urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009, which acknowledges the critical difference between youths and adults , and imposes an age appropriate sentence that recognizes a young persons potential for growth and reform. I urge Congress to pass this law to hold youth accountable, prioritize public safety, and protect one's human right to the opportunity for rehabilitation.

Sincerely,
Stacey L. Perritt

The Right Reverend Joe Morris Doss
Bishop of the Episcopal Church, Attorney at Law
President, *At the Threshold*
15 Front Street
Mandeville, Louisiana 70448

Members of the Louisiana State Legislature
Louisiana State Capitol
Baton Rouge, LA 70802

RE: Letter of Support for HB 715

May 12, 2009

Dear Members of the Louisiana State Legislature,
I am writing to you today as both an Episcopal Bishop and a legal professional to offer information and to encourage the passage of HB 715.

The issue of crime and punishment has been a topic heavily debated throughout time. Indeed, its evolution can be traced through the history of man as well as the teachings of Jesus Christ. And even today, the same rationale behind Jesus' decision to oppose certain harsh practices of punishment is today substantiated by research as well as the lessons of our faith.

As a father and a husband with limitless love for my family there is no question that responsibility and legitimate punishment are vital to the demands of justice. Those who cause harm unto others must be held accountable for the pain they have caused. I have the deepest sympathy and sorrow for the pain of victims and survivors of violent crime, and my support of legislation intended to offer an opportunity to prove redemption is in no way intended to undermine or disrespect the reality of a tragic loss.

As a dedicated Christian I base my faith in a belief in the dignity and value of all human life. Even in our worst moments, our life is still of value and purpose. Because of our dual responsibility and calling to provide justice for both those who have their safety and in some cases their lives stolen from them, as well as those who commit such damaging and terrible acts I believe that justice requires two components: a protection of public safety and the rehabilitation of those who violate the law.

By sentencing juveniles to life without the possibility of parole we are weakening the moral character of the law by eliminating all meaningful opportunity for redemption, rehabilitation, reform and reintegration for children who lacked adult development, rationality and judgment when they committed their crimes that led them to be punished as adults, and for whom, by virtue of their youth and immaturity, have an extraordinary capacity for change.

No one can claim to possess the same judgment or discretion that they possessed when they were 15 or 16 years of age. In fact, studies of brain development prove that ability to way consequence continues to develop into our early twenties. Equally, no tragic loss of life can ever be replaced—justice can only attempt to find some peace between wrongdoing and redemption. While I pray for peace, I practice to maintain the dignity of all life. A life was lost—rather stolen—to violence and this can never be amended, however, we can ensure that this incident does not continue to drain us of our hope or our belief in life.
The punishment for taking a life is not removed by HB 715, it is recognized by both a requirement to serve *at least* 15 or 16 years in prison and to *earn* an opportunity for parole supervised release—a privilege only earned after rigorous review and complete rehabilitation.

Parole eligibility of juvenile offenders offers the opportunity to not only express our Christian values but to recognize the protections that are guaranteed in our pursuit of justice within our communities. In closing, I ask for your support of HB 715.

Thank you for your attention and consideration.

Sincerely,

Bishop Joe Morris Doss

Phone: (985) 626-3208 Fax: (985) 626-6010 email: bishop.doss@gmail.com

Lorry W.Post
205a Pertwood Ct.
Mount Laurel, NJ 08054

Elected Members of the Louisiana State Legislature
Louisiana State Capitol
Baton Rouge, LA 70802

RE: Support HB 715, Youth Rehabilitation Review Bill

May 8, 2009

Dear Elected Members of the Louisiana State Legislature,

I am the father of a murdered daughter. As such, in order to honor her memory as a loved and loving child, I have worked for 11 years to abolish capital punishment in the U.S. I am presently employed as Executive Director of Murder Victims' Families for Reconciliation (MVFR), a national organization of murder victims' family members who both act in support of each other and also strive to end the use of the death penalty. In this effort, I have promoted the penalty of life without the possibility of parole as an alternative and APPROPRIATE punishment for ADULT murderers.

However, a harsh and unforgiving penalty of this sort is totally INAPPROPRIATE for one who commits homicide as a JUVENILE. The reasons for this should be obvious. Science has informed us that the minds and consciences of those of less than adult age are much less developed or able to appreciate the consequences of their actions than those of us who have reached adulthood. Furthermore, commission of a violent act as a juvenile gives one so much more time to be rehabilitated, a worthy goal for one who commits an act of violence at a young age. I believe there certainly should be a minimum time served in prison by a juvenile killer in order to help that person in his/her rehabilitation process and to assure us that the rehabilitation has taken place, but that minimum period should not be the rest of their lives. Society can still be protected, which is our major goal, by virtue of continuing the prison sentence via rejection of parole, should that course of action be warranted.

As one example of a sensible law that both serves the interests of punishment and rehabilitation, and more importantly the interest of protection of society, I cite Louisiana House Bill 715, that calls for consideration of parole for a juvenile once he/she has reached the age of 31, but also makes it clear that this consideration does not make parole mandatory, but only asks the Parole Board to consider all the factors it ordinarily would have under any parole application.

I request that this appeal to sound and humane reasoning be considered and acted upon by any states that now have laws that call for life without possibility of parole for juveniles. **Please support HB 715.**

Respectfully submitted,

Lorry W. Post

Statement of Laurence Steinberg, Ph.D.
on HR 2289, The Juvenile Justice Accountability and Improvement Act of 2009
June 9, 2009

I am a psychologist on the faculty of Temple University, as well as the former director of the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice. I am also the co-author, with Columbia University law professor Elizabeth Scott, of a new book called *Rethinking Juvenile Justice*.

For the past 30 years, I have been conducting research on various aspects of adolescent development, most recently, on the implications of research on brain development during this age period for understanding adolescents' behavior, including behavior that is harmful to themselves and others. What have scientists learned? Two important lessons stand out.

First, we now are certain that brain maturation continues long after childhood, well into the early adult years. Second, the specific nature of this change has important implications for how we view adolescent behavior under the law. So let me begin by describing how the brain changes in adolescence, and then say a few words about why it matters for today's hearing.

Three sets of brain changes take place in adolescence that are especially important. First, early in adolescence, around the time of puberty, there is a dramatic change in brain systems that govern our experience of pleasure, or reward. Receptors in the decision-making regions of the brain for dopamine, a neurotransmitter that is responsible for the sensation of reward, are more active in early adolescence than at any other time in development. This helps explain why adolescents are especially inclined toward sensation-seeking and experimentation with alcohol, tobacco, and other drugs, and why teenagers pay so much attention to the immediate and rewarding aspects of risky behavior that they often ignore its potential costs. During this same period, there are also major changes in the brain systems that process social information, which tells us why adolescents become so sensitive to the opinions of others and so susceptible to their influence.

The second major brain change is that, over the course of adolescence, there is a gradual maturation of brain regions and systems that are responsible for self-control. These systems put the brakes on impulsive behavior. They permit us to think ahead and allow us to more judiciously weigh the rewards and costs of risky decisions before acting. However, unlike the changes in reward sensitivity or social information processing, which take place early in adolescence, the maturation of the self-control system is more gradual, and not complete until the early 20s. As a consequence, middle adolescence – the period from 13 to 17 – is a period of heightened vulnerability to risky and reckless behavior, including crime and delinquency. The engines are running at full throttle, so to speak, but there is not yet a skilled driver behind the wheel.

Finally, throughout adolescence and into young adulthood, the connections between different brain regions are still maturing, allowing for the more efficient use of brain power and the better coordination of emotions and reason. The brain systems that govern complicated decision-making are easily taxed during adolescence. You've probably seen this in your own children. When 16-year-olds are in controlled environments where they have time to think before acting,

and when they can turn to adults for guidance, they often demonstrate adult-like maturity. But their capacity for mature judgment is still fragile at this age, and it is easily disrupted by situations that are emotionally arousing or stressful. The very same teenager who can compose a mature and thoughtful answer to a philosophical question posed in social studies class might behave irrationally and impulsively when with his friends or in the heat of the moment. And because a large proportion of juvenile offenders have substance abuse and other mental health problems, and this may make them all the more vulnerable to lapses in self-control. There are several important implications of this brain research for juvenile justice policy and practice.

A bedrock principle of our criminal law is that offenders are punished in proportion to their level of responsibility for their behavior. Under the law, for example, people are punished less harshly when their behavior is impulsive or coerced by others, or when their actions had potential consequences that they could not have anticipated. But brain science tells us that adolescents are inherently less able than adults to control themselves, to resist peer pressure, or to think ahead – and anyone in this room who has been the parent of a teenager has seen this first hand. In a legal system like ours, which punishes in proportion to an offender's responsibility for his actions, juvenile offenders should not be punished as harshly as we punish mature adults, even when they have committed comparable crimes. The U.S. Supreme Court followed this logic a few years ago when it abolished the juvenile death penalty. Our harshest penalties, the Court ruled, should be reserved for the "worst of the worst." Individuals who are not fully responsible for what they do surely are not in this category.

Second, because we know that brain maturation continues well into the 20s, teenagers are still works in progress, and many of them do things out of youthful impetuousness that they would not do just a few years later, when their brains are more fully developed. It is therefore important that we treat adolescents who have broken the law in ways consistent with the idea that most of them will outgrow this behavior as they mature into adulthood. Studies show that more than 90 percent of adolescents who commit crimes – even very serious crimes – cease their criminal behavior by time adolescence has ended. This finding has been reported by many researchers, and it is one that has once again emerged in our ongoing study of serious offenders here in Pennsylvania. We have not yet followed our research subjects through their 20s, but other studies show that virtually all offenders, even those whose criminal behavior persists into early adulthood, desist from crime by the time they are 30. So holding a juvenile in prison beyond his 30th birthday, at a cost of between $50,000 and $100,000 per year, doesn't make a lot of fiscal sense.

We have always known that adolescents behave differently than adults. Young people are more impulsive, more short-sighted, more willing to take risks, and more susceptible to the influence of their peers. Anyone who has raised a teenager, taught a teenager, counseled a teenager, or been a teenager knows this. Scientific discoveries about brain development have helped us understand *why* this is true, but they haven't changed the basic story line. Those who founded a separate system of juvenile justice in America some 100 years ago had it right, even without the benefit of brain scans, when they made a commitment to treating young people who have violated the law differently than how we treat adults. Recent research on brain development should strengthen our commitment to this basic principle.

Juveniles are not as mature as adults, and we recognize this in many ways under the law. Individuals can not vote until they are 18 because we do not believe they are mature enough to exercise this responsibility wisely. They can not enter into legal contracts. They can not purchase alcohol or tobacco. About the only adult privilege we confer to individuals under 18 is the right to drive an automobile, and given what we are learning about brain development, many states are even questioning the wisdom of that. Our willingness to treat juveniles like adults when they commit crimes, and expose them to the same punishments as adults when they are convicted, is inconsistent with virtually every other decision we make about teenagers under federal and state law.

There are some who contend that having life without parole as a potential punishment for juveniles who commit serious offenses will serve the purpose of deterring other would-be offenders from committing crimes. If only our teenagers listened to us enough to plan ahead so well! The fact is that very same limitations that make juveniles less responsible for their acts – their impulsivity, short-sightedness, and susceptibility to peer pressure – also make them less likely to be deterred by the law or by the example of others. And in fact, scientific studies of whether the prospect of a harsh sentence deters young people from committing crimes clearly show that the answer is no.

In the final analysis, there are only two only possible rationales for sentencing juveniles to life without the possibility of parole: they deserve the most severe punishment our system has the capacity to apply or that they are so likely to be dangerous for so long that we need to incarcerate them for life to protect the community. As to the first of these rationales, I believe, as the Supreme Court ruled in the juvenile death penalty case, that by virtue of their inherent immaturity, adolescents should not be exposed to punishments we reserve for the worst of the worst. And as to issue of public safety, the data show very clearly that even the worst juvenile offenders are unlikely to pose much of a threat once they have reached the age of 30.

Juveniles who commit crimes should be held responsible for their behavior, punished for their offenses, and treated in a way that protects the community. But we have the capacity to do this without locking them up for life and wasting taxpayers' dollars unnecessarily.

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Sentencing Our Children to Die in Prison: Global Law and Practice

By CONNIE DE LA VEGA & MICHELLE LEIGHTON*

Introduction and Overview

THIS ARTICLE FOCUSES ON THE SENTENCING of child offenders to a term of life imprisonment without the possibility of release or parole ("LWOP"). These are children convicted of crimes when younger than eighteen years of age, as defined by the international standards contained in the U.N. Convention on the Rights of the Child.[1]

The LWOP sentence condemns a child to die in prison. Short of the death penalty, LWOP is the harshest of sentences that may be imposed on an adult. Imposing such a punishment on a child contradicts our modern understanding that children have enormous potential for growth and maturity as they move from youth to adulthood, and the widely held belief in the possibility of a child's rehabilitation and redemption. It has been noted that:

> This growth potential counters the instinct to sentence youthful offenders to long terms of incarceration in order to ensure public safety. Whatever the appropriateness of parole eligibility for [forty]-year-old career criminals serving several life sentences, quite different issues are raised for [fourteen]-year-olds, certainly as compared to [forty]-year-olds, [who] are almost certain to undergo dramatic personality changes as they mature from adolescence to middle age.[2]

* Connie de la Vega is Professor of Law and Director of the Frank C. Newman International Human Rights Clinic, University of San Francisco School of Law. Michelle Leighton is Director of Human Rights Programs, Center for Law and Global Justice, University of San Francisco School of Law. This Article and previous reports were developed from the work of the authors and students in the Clinic at the United Nations. An acknowledgement of all those who have contributed to this ongoing project follows at the end of the Article.

1. U.N. Convention on Rights of the Child, GA Res. 44/25, Annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (Nov. 20, 1989) [hereinafter CRC].

2. Victor Streib & Bernadette Schrempp, *Life Without Parole for Children*, CRIM. JUST., Winter 2007, at 4, *available at* http://www.abanet.org/crimjust/cjmag/21-4/LifeWithou Parole.pdf.

Experts have documented that children cannot be expected to have achieved the same level of psychological and neurological development as an adult, even when they become teenagers.[3] They lack the same capacity as an adult to use reasoned judgment, to prevent inappropriate or harmful action generated as a result of high emotion and fear, and to understand the long-term consequences of rash actions.[4]

For many of the children who are sentenced to LWOP, it is effectively a death sentence carried out by the state over a long period of time. Children endure emotional hardship, hopelessness, and neglect while serving time in prison. They may also be threatened with physical abuse. The young age of those serving time in prison in the United States, for example, makes them more susceptible than adults to severe physical abuse by older inmates:

> Many adolescents suffer horrific abuse for years when sentenced to die in prison. Young inmates are at particular risk of rape in prison. Children sentenced to adult prisons typically are victimized because they have "no prison experience, friends, companions or social support." Children are five times more likely to be sexually assaulted in adult prisons than in juvenile facilities.[5]

This experience can produce additional trauma for children who are likely to have suffered physical abuse before entering prison. One recent study of seventy-three children serving LWOP sentences in the United States for crimes committed at age thirteen and fourteen concluded: "They have been physically and sexually abused, neglected, and abandoned; their parents are prostitutes, drug addicts, alcoholics, and crack dealers; they grew up in lethally violent, extremely poor areas where health and safety were luxuries their families could not

3. MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV. & JUVENILE JUSTICE, ISSUE BRIEF 3, LESS GUILTY BY REASON OF ADOLESCENCE [hereinafter ISSUE BRIEF 3], *available at* http://www.adjj.org/downloads/6093issue_brief_3.pdf (discussing the decision-making capacity of adolescents); MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV. & JUVENILE JUSTICE, ISSUE BRIEF 4, ASSESSING JUVENILE PSYCHOPATHY: DEVELOPMENTAL AND LEGAL IMPLICATIONS, *available at* http://www.adjj.org/downloads/4536issue_brief_4.pdf (discussing the applicability of adult psychopathy assessments to adolescent individuals, particularly when used to determine long-term probability of rehabilitation or recidivism).

4. ISSUE BRIEF 3, *supra* note 3; *see also* Roper v. Simmons, 543 U.S. 551, 569–73 (2005).

5. EQUAL JUSTICE INITIATIVE, CRUEL AND UNUSUAL: SENTENCING 13- AND 14-YEAR OLD CHILDREN TO DIE IN PRISON 14 (2007), *available at* http://www.eji.org/eji/files/20071017cruelandunusual.pdf (providing November 2007 commentary from the Equal Justice Initiative in Montgomery, Alabama, and citing 2006 reports of the National Institute of Justice and findings of the United States Congress under 42 U.S.C.A. 15601 (2003) regarding prison rape in the United States).

afford."[6] Some child offenders believe death to be more humane than life with the knowledge that their death will come only after many decades spent living in these circumstances.[7] With no hope of release, they feel no motivation to improve their development toward maturity. This is reinforced by the fact that youths placed in the adult system "receive little or no rehabilitative programming."[8]

In this context, the sentence is indeed cruel. These issues have become so well-understood at the international level that a state's execution of this sentence raises the possibility that it not only violates juvenile justice standards but also contravenes international norms established by the United Nations Convention Against Torture.[9] Globally, the consensus against imposing LWOP sentences on children is virtually universal. Based on the authors' research, there is only one country in the world today that continues to sentence child offenders to LWOP terms: the United States.[10] The United States has at least 2484 children serving life without parole or possibility of release sentences.[11] In the United States

6. *Id.* at 15.

7. *See* EQUAL JUSTICE INITIATIVE, *supra* note 5, at 12, 15, 18, 28 (telling the stories of child inmates who have repeatedly attempted suicide).

8. CHRISTOPHER HARTNEY, NAT'L COUNCIL ON CRIME & DELINQUENCY ("NCCD"), NCCD FACT SHEET: YOUTH UNDER AGE 18 IN THE ADULT CRIMINAL JUSTICE SYSTEM 1 (2006), *available at* http://www.nccd-crc.org/nccd/pubs/2006may_factsheet_youthadult.pdf.

9. U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, GA Res. 39/46, Annex, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (Dec. 10, 1984). The authors made this observation in reviewing the United States' practice of sentencing children to life without parole in 2006. *See infra* Part II.

10. Tanzania has one child offender serving a life sentence who was reported to be ineligible for parole, but the government has submitted written documentation to the authors confirming that it allows parole for all children and is in the process of undertaking reforms in the sentencing code so that the child in question, or any other child, cannot be sentenced to a term that prohibits parole review. See *infra* Part I.C.1 for a discussion on Tanzania.

11. In 2002, Human Rights Advocates reported that 2225 persons were serving this sentence. HUMAN RIGHTS ADVOCATES, WRITTEN STATEMENT SUBMITTED BY HUMAN RIGHTS ADVOCATES (RIGHTS OF THE CHILD), U.N. Doc. E/CN.4/2002/NGO/44 (2002). Human Rights Watch ("HRW") clarified the numbers in its 2005 report and the authors recently begun clarifying these numbers in 2007: in Pennsylvania the number of child offenders receiving LWOP is now 433, up 101 since 2005. HRW's most recent count of state cases suggests that there are at least 444 child offenders serving LWOP in Pennsylvania now and a total of 2484 child offenders serving LWOP sentences nationwide. HUMAN RIGHTS WATCH, EXECUTIVE SUMMARY: THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR YOUTH OFFENDERS IN THE UNITED STATES IN 2008, at 3 (2008) [hereinafter HRW EXECUTIVE SUMMARY], *available at* http://www.hrw.org/backgrounder/2008/us1005/us1005execsum.pdf (updating the Human Rights Watch and Amnesty International report from 2005, *infra* note 18).

from 2005 to 2007, courts sentenced 259 children to serve LWOP terms.[12]

A positive development is that Israel, Tanzania, and South Africa, countries reported to have had child offenders serving LWOP sentences, have now officially clarified their law to allow, or have stated publicly that they will allow, parole for juveniles in all cases.[13] This is a laudable departure from earlier positions and one that the authors and other human rights groups look forward to monitoring.[14] These countries could, however, further clarify the legal prohibition of juvenile LWOP sentences expressly in their criminal justice codes. For Israel, there remains the concern that parole review is difficult to pursue and rarely granted for child offenders convicted of violating security regulations in Israel and in the Occupied Territories. There is also concern about the Israeli Defense Forces Chief of Staff, who has the discretion and authority to determine whether parole is actually granted, conducting such review, rather than having the independent judiciary do so, though as discussed below, the government has indicated that the High Court does review all denials.

The community of nations, within which all nations are included simply by virtue of their existence, now condemns the practice of sentencing children to LWOP by any state as against modern society's shared responsibility for child protection and, more concretely, as a human right violation prohibited by treaties and expressed in customary international law. The authors wrote this Article in part to expose this human rights abuse to the global public, other governments, and the United Nations ("U.N."), and to share this information more clearly with the American public and officials.

This problem is of particular concern today for Americans because there is no evidence that the severity of this sentence provides any deterrent effect on youth, just as was the case with the juvenile death penalty.[15] The United States Supreme Court has found that "the absence of evidence of deterrent effect is of special concern be-

12. HRW EXECUTIVE SUMMARY, *supra* note 11, at 2–3.

13. *See infra* Part I.C (discussing countries which have officially clarified their laws to allow, or have stated publicly that they will allow, parole for juveniles serving LWOP sentences).

14. Israel had been reported to have up to seven child offenders serving LWOP but the government has clarified its law with the authors and provided assurance that even child offenders convicted for political and security crimes are entitled to parole review. *See infra* Part I.C.4 (discussing law and practices of Israel). The last documented case in Israel of a life sentence for a juvenile occurred in 2004. *See infra* Part I.C.4.

15. Roper v. Simmons, 543 U.S. 551, 571–72 (2005).

cause the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence."[16] Americans may well ask why so many United States states continue to violate international human rights law as it is practiced by virtually every other country in the world where children also commit terrible crimes on occasion. Why does the United States continue to impose a sentence that is not humane, appropriate, or a deterrent to crime, and that fails America's children and adults? Surveys demonstrate that Americans believe in the redemption and rehabilitation of children and do not believe that incarcerating youth in adult facilities teaches them a lesson or deters crime.[17] The country's juvenile justice laws and policies should better reflect this understanding.

Part I examines the global condemnation of this practice, which has led to international law standards, as well as the actual practices of sentencing children to LWOP in the United States. This Part also highlights the countries which have abrogated the law recently and discusses those countries where the law may remain ambiguous. The discussion of the current practices in the United States demonstrates that it is the world's only remaining practitioner of LWOP sentencing and that racial discrimination has become prevalent in these and other juvenile sentences across the country. The analysis presented in Part I is based on available information from research, review of country reports to the United Nations, meetings with officials and official statements, and reports of non-governmental organizations and other experts in the field.

Part II analyzes international human rights standards and the violation of international law by countries imposing sentences of LWOP for child offenders. Part III identifies several juvenile justice and rehabilitation models of other countries and United States states that can serve as alternatives to harsh and inappropriate sentencing for children.

Part IV presents the conclusions and recommendations of the authors to governments and policy-makers in remedying these violations, and for improving the opportunities for juvenile rehabilitation.

16. *Id.* at 571. The United States Supreme Court stated, "As for deterrence, it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles . . . ." *Id.* If the death penalty has no deterrent value, it is difficult to imagine that a lesser penalty of LWOP would have more of a deterrent value.

17. BARRY KRISBERG & SUSAN MARCHIONNA, NCCD, FOCUS: ATTITUDES OF U.S. VOTERS TOWARD YOUTH CRIME AND THE JUSTICE SYSTEM 3–5 (2007), *available at* http://www.nccd-crc.org/nccd/pubs/zogby_feb07.pdf (summarizing a national poll undertaken by NCCD on the issue of juvenile crime and punishment).

The Article commends the efforts of governments, international organizations, and non-governmental organizations ("NGOs") for their efforts in the past few years to more urgently bring non-complying governments into compliance with international law and juvenile justice standards. The authors conclude by recommending that:

- Countries should continue to denounce the practice of sentencing juveniles to LWOP as against international law, to condemn the practice among the remaining governments which allow such sentencing, and to call upon those where the law may be ambiguous to institute legal reforms confirming the prohibition of such sentencing. Countries should also work to remove barriers to the enforcement of international standards and expand their juvenile justice models to focus more extensively on rehabilitation programs, including education, counseling, employment and job training, and social or community service programs and to evaluate these models to ensure protection of the rights of juveniles.

- The United States should abolish the juvenile LWOP sentence under federal law and undertake efforts to bring the United States into compliance with its international obligations to prohibit this sentencing. This includes efforts to rectify the sentences of those juvenile offenders now serving LWOP, to evaluate the disproportionate sentencing of minorities in the country, and to work more expeditiously to eradicate the widespread discrimination in the country's juvenile justice system. The United States government should consider more equitable and just rehabilitation models as described in this Article, as well as monitor and publish data on child offenders serving LWOP sentences in each state. The United States should also ratify the U.N. Convention on the Rights of the Child.

- Israel should expressly clarify its regulations related to political and security crimes for which LWOP sentences for juveniles are prohibited. Israel should also address concerns that parole review is difficult to pursue and rarely granted for child offenders convicted of violating security regulations in Israel and in the Occupied Territories, and ensure review by the independent judiciary rather than the Israeli Defense Forces Chief of Staff.

- Tanzania should follow through expeditiously in clarifying by law that any child currently serving or who may be given a life sentence for any crime will be subject to parole review.

- South Africa should pass, without haste, the Child Justice Bill to clarify abolition of juvenile LWOP sentencing under all circumstances.

- Antigua and Barbuda, Argentina, Australia, Belize, Brunei, Cuba, Dominica, Saint Vincent and the Grenadines, the Solomon Islands, and Sri Lanka should clarify the legal prohibition of LWOP sentences for juveniles and ensure that their provinces bring their laws into compliance with their obligations under the U.N. Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and other international law related to juvenile justice.

I. Countries' Practices in Imposing LWOP Sentences

Very few countries have historically used life sentences for juvenile offenders. Indeed, as this Article illustrates, a single country is now responsible for 100% of all child offenders serving this sentence: the United States. Most governments have either never allowed, expressly prohibited, or will not practice such sentencing on child offenders because it violates the principles of child development and protection established through national standards and international human rights law. There are now at least 135 countries that have expressly rejected the sentence via their domestic legal commitments,[18] and 185 countries that have done so in the U.N. General Assembly.[19]

18. Only ten countries besides the United States could be said to have laws with the potential to permit the sentence today, leaving 135 countries that have rejected the potential practice expressly by law or by official pronouncements. The authors tabulate this from their own investigation and from figures reported by HRW and Amnesty International ("AI"). *See* AI & HRW, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES 106 (2005) [hereinafter HRW/AI REPORT], *available at* http://www.hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf. The HRW/AI Report identifies fourteen countries out of 145 surveyed in CRC reports as having laws potentially allowing LWOP for juveniles, leaving 131 countries besides the United States having expressly rejected LWOP for juveniles. *Id.* Since that time, the authors have clarified that Argentina and Belize may also have laws allowing juvenile LWOP, but that five others do not allow juvenile LWOP: Burkina Faso, Israel, Kenya, South Africa, and Tanzania. The authors also note that the HRW/AI Report survey included 154 countries aside from the United States, but for nine, the information was inconclusive in HRW's investigation. Of the remaining 145 countries, the report found fourteen countries had laws possibly allowing LWOP sentences for children, but the authors have now clarified that five of those listed are ones that now prohibit juvenile LWOP, and two not originally listed possibly do have such laws as noted above. This would leave 135 countries expressly prohibiting the sentence and ten besides the United States that might allow the sentence.

19. In 2006, 185 countries voted for a resolution on rights of the child at the United Nations General Assembly which included the call for any government with juvenile LWOP sentences to abolish the practice. Rights of the Child, G.A. Res. 61/146, ¶ 31(a), U.N. Doc. A/Res/61/146 (Dec. 19, 2006) [hereinafter Rights of the Child 2006], *available at* http://daccessdds.un.org/doc/UNDOC/GEN/N06/503/19/PDF/N0650319.pdf?OpenElement. A nearly identical resolution was passed by the General Assembly in 2007 by a vote of 183 to one with the United States being the only country to vote against it. Rights of the Child,

Of the remaining countries besides the United States, ten may have laws that could permit the sentencing of child offenders to life without possibility of release, but there are no known cases where this has occurred. The ten countries are Antigua and Barbuda, Argentina, Australia, Belize, Brunei, Cuba, Dominica, Saint Vincent and the Grenadines, the Solomon Islands, and Sri Lanka.[20]

The United States has at least 2484 children convicted of crimes committed before the age of eighteen who are now serving the LWOP sentence in United States prisons (including 259 sentenced since 2005).[21]

A. Globally, the United States is the Only Violator of the Prohibition Against LWOP Sentences for Children

The United States is the only violator of the international human rights standard prohibiting juvenile LWOP sentences. With thousands of juveniles serving LWOP sentences, and none serving such sentences in the rest of the world, the United States is the only country now violating this standard.[22]

Forty-four states and the federal government allow LWOP to be imposed on juvenile offenders.[23] Among these states, thirteen allow

G.A. Res. 62/141, ¶ 36(a), U.N. Doc. A/Res/62/141 (Dec. 18, 2007) [hereinafter Rights of the Child 2007].

20. HRW/AI REPORT, *supra* note 18, at 106–07 (citing their investigation of country reports to the Committee on the Rights of the Child and in-country investigations). The authors have also added Belize to this list, but deleted others as the authors' investigation has revealed clarification in law and practice since 2005 when the HRW/AI Report was issued. The authors have also now confirmed that Burkina Faso, Israel, Kenya, South Africa, and Tanzania now prohibit this practice. See *infra* Part I.C for a discussion of these countries. Kenya clarified to the Committee on the Rights of the Child ("Committee") in 2007 that those sentences were now prohibited. Burkina Faso has confirmed it applies directly the CRC prohibitions in domestic law, including sentencing. South Africa has indicated it no longer allows these sentences and has no child offenders serving. As discussed below, however, it is somewhat unclear what the law provides for in South Africa, as a Child Justice Bill, which would expressly outlaw the sentencing for youths, has been pending for five years. The authors have clarified with the Director of the President's Office of Child Rights, who herself clarified with officials in the Department of Corrections in the country, that there are no juvenile offenders serving this sentence in South Africa and this sentence will not be imposed in the future. In 1999, South Africa had reported to the Committee that four juvenile offenders were serving the sentence. HRW/AI REPORT, *supra* note 18, at 106 n.320. For Cuba, it has been suggested that it is technically possible under the law to sentence a child sixteen years of age to LWOP, but there are no known cases. *Id.* at 107. Cuban officials with whom the authors of this Article met also deny there are any child offenders serving such a sentence.

21. *Supra* notes 11–12.

22. *See supra* note 11.

23. For state-by-state LWOP information and statutory references, see *infra* Appendix.

sentencing a child of any age to LWOP, and one sets the bar at eight years or older.[24] There are eighteen states which could apply the sentence to a child as young as ten years,[25] and twenty states that could do this at age twelve.[26] Thirteen states set the minimum age at fourteen years.[27] These figures are startling considering that as of 2004, 59% of children in the United States who were convicted and sentenced to LWOP received the sentence for their first-ever criminal conviction, 16% were between the ages of thirteen and fifteen when they committed their crimes, and 26% were sentenced under a felony murder charge where they did not pull the trigger or carry the weapon.[28] The Appendix contains an updated summary of state practice and law.[29]

As noted above, the LWOP sentence was rarely imposed until the 1990s, when most states passed initiatives increasing the severity of juvenile punishments.[30] Such initiatives also created prosecutorial and statutory procedures to waive juveniles into the adult criminal system, where they can be prosecuted and sentenced as adults.[31]

The rate of judicial waiver (allowing children to be tried as adults) increased 68% from 1988 to 1992.[32] Since 1994, forty-three states implemented legislation facilitating transfer of juveniles to adult court.[33] Twenty-eight or more states limited or completely eliminated juvenile court hearings for certain crimes, and at least fourteen states

24. *See infra* Appendix (showing thirteen states where a court can sentence a child of any age to LWOP and one state setting a minimum age of eight years). Those states are: Delaware, Florida, Idaho, Maine, Maryland, Michigan, Nebraska, New York, Pennsylvania, Rhode Island, South Carolina, Tennessee, and West Virginia. *Id.*

25. *See infra* Appendix (describing ten states with minimum LWOP age of ten years).

26. *See infra* Appendix (describing twenty states with minimum LWOP age of twelve years).

27. *See infra* Appendix (showing thirteen states where minimum LWOP age is fourteen years).

28. HRW/AI REPORT, *supra* note 18, at 30 & n.60, 31 & n.61. Since that report, Colorado passed a law abolishing the sentencing practice in 2006. *See infra* Appendix.

29. This analysis has updated earlier statements by NGOs and advocates. See *infra* Appendix in this Article for more detail. The authors note that no national data is officially collected on juvenile LWOP sentences specifically by the United States government.

30. *See* PATRICK GRIFFIN ET AL., NAT'L CENTER FOR JUVENILE JUSTICE, TRYING JUVENILES AS ADULTS IN CRIMINAL COURT: AN ANALYSIS OF STATE TRANSFER PROVISIONS III 3–4 (1998), *available at* http://www.ncjrs.org/pdffiles/172836.pdf.

31. *Id.* at 1–11.

32. Jonathan E. Cruz, *Juvenile Waivers and the Effects of Proposition 21*, 1 LAW & SOC'Y REV. 29, 38 (2002) (Univ. of Cal., Santa Barbara), *available at* http://www.lawso.ucsb.edu/projects/review/issues/2001-2002/r01-03cruz.pdf.

33. MIKE MALES & DAN MACALLAIR, THE COLOR OF JUSTICE: AN ANALYSIS OF JUVENILE ADULT TRANSFERS IN CALIFORNIA 3 (2000), *available at* http://www.buildingblocksforyouth.org/colorofjustice/coj.pdf (noting in 2000 report how many states enacted laws for transfer from juvenile to adult court in the past six years).

gave prosecutors individual discretion to try children as adults, bypassing the traditional safeguard of judicial review.[34]

In violation of international law, some children are still incarcerated in adult prisons, despite undisputed research documenting that children are then subject to greater physical violence and rape, commit or attempt to commit suicide at greater rates, and suffer life-long emotional trauma.[35] The National Council on Crime and Delinquency found that "[o]ne in [ten] juveniles incarcerated on any given day in the U[nited] S[tates] will be sent to an adult jail or prison" to serve their time.[36] The number of children serving time in adult jails increased 208% between 1990 and 2004.[37] By transferring juveniles to the adult court system, many states neglect to honor the status of these minors as juveniles, a violation of the United States' obligations under Article 24 of the International Covenant on Civil and Political Rights.[38]

Although crime rates have been steadily declining since 1994,[39] it is estimated that the rate at which states sentence minors to LWOP remains at least three times higher than it was fifteen years ago,[40] suggesting a tendency for states to punish these youths with increasing severity. For example, in 1990, there were 2234 youths convicted of murder in the United States, 2.9% of whom were sentenced to LWOP.[41] Ten years later, in 2000, the number of youth murderers had dropped to 1006, but 9.1% still received the LWOP sentence.[42]

34. John Hubner, *Discarded Lives, Children Sentenced to Life Without Parole*, AMNESTY INT'L MAG., Spring 2006, http://www.amnestyusa.org/Spring_2006/Discarded_Lives_Children_Sentenced_to_Life_Without_Parole/page.do?id=1105357&n1=2&n2=19&n3=392.

35. *See, e.g.*, EQUAL JUSTICE INITIATIVE, *supra* note 5, at 13–14.

36. HARTNEY, *supra* note 8, at 4.

37. *Id.* at 3.

38. Human Rights Comm., Comments on United States of America, ¶ 34.s, U.N. Doc. CCPR/C/SR.2395 (2006) [hereinafter Comments on United States]; *see* discussion *infra* Part II.

39. Note that crime levels reached their peak in 1994 and have declined since. *See* Jeffrey Fraser, *Facts vs. Perceptions: "Superpredator" Theory Belies Crime Data*, 32 CHILD., YOUTH & FAM. BACKGROUND (Univ. of Pittsburgh Office of Child Dev., Pittsburgh, Pa.), June 2000, *available at* http://www.education.pitt.edu/ocd/publications/backgrounds/32.pdf.

40. HRW/AI REPORT, *supra* note 18, at 2.

41. *Id.*

42. *Id.*

1. United States Children of Color Are Sentenced Disproportionately to LWOP when Compared to White Children

Also alarming is the disproportionate number of children of color sentenced to LWOP in the United States. Although significant racial disparities exist in the overall juvenile justice system, African American children are reportedly serving LWOP sentences at a rate that is ten times higher than white children.[43] In California, which has the greatest system-wide racial disparity in this regard, 190 of the 227 persons serving the LWOP sentence for crimes committed before the age of eighteen are persons of color. African American children in California are likely to receive a life without parole sentence at a rate that is eighteen times that of white children, while Hispanic children are five times more likely to receive the sentence than whites.[44] Racial disparities track in jurisdictions across the United States. Other examples are:

ALABAMA

African American, Indian, Asian, and Hispanic children were 36% of the child population as of 2002;[45] African Americans are 73% of children serving LWOP sentences;[46] and 100% of children serving LWOP for non-homicide offenses.[47]

COLORADO

African Americans are 4.4% of the child population and 26% of those serving LWOP sentences.[48]

43. HRW, VOL. 20, NO. 2 (G), SUBMISSION TO THE COMMITTEE ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 21 (Feb. 2008) [hereinafter HRW, VOL. 20, NO. 2 (G)], *available at* http://www.hrw.org/reports/2008/us0208/us0208web.pdf.

44. *See* HRW, VOL. 20, NO. 1 (G), "WHEN I DIE, THEY'LL SEND ME HOME": YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN CALIFORNIA 4 (2008) [hereinafter HRW, WHEN I DIE, THEY'LL SEND ME HOME], *available at* http://www.hrw.org/reports/2008/us0108/us0108web.pdf.

45. HOWARD N. SNYDER & MELISSA SICKMUND, NAT'L CENTER FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 3 (2006), *available at* http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf (providing data from 2002).

46. HRW, VOL. 20, NO. 2 (G), *supra* note 43, at app. 3.

47. EQUAL JUSTICE INITIATIVE, *supra* note 5, at 24 (referencing data on thirteen- and fourteen-year old child offenders).

48. HRW, THROWN AWAY 15–24 (2005) (calling attention to children sentenced to LWOP in the state of Colorado), *available at* http://hrw.org/reports/2005/us0205/us0205.pdf.

MICHIGAN

Children of color are 27% of the child population[49] and 71% of children serving LWOP sentences.[50] African American children in Michigan comprise 69% of the total.[51] On a county-by-county basis, the disparities are even more significant.

Children of color in Wayne County, Michigan, are 94% of the children given LWOP sentences, though they are only half of the child population; in Oakland County, they are 73% of children serving LWOP sentences but 11% of the child population; and in Kent County, children of color are 50% of children serving LWOP sentences but only 13% of the child population.[52]

MISSISSIPPI

African Americans are 45% of the population[53] and 75% of children serving LWOP sentences (compared to 20% of white children).[54]

Racial disparity permeates the United States juvenile justice system. Though African Americans comprise 16% of the child population in the United States, they comprise 38% of those confined in state correctional facilities.[55] In analyzing the "relative rate index," a standardized index that compares rates of racial and ethnic groups compared to whites,[56] the latest data identifies minority overrepresentation in detention for nearly every state in the country. For example, in South Dakota, the relative rate index for African American children compared to whites in detention is 47:1; in North Dakota it is 21:1;

49. For zero to seventeen years of age, see SNYDER & SICKMUND, *supra* note 45, at 3.

50. CHILDREN IN CONFLICT WITH THE LAW: JUVENILE JUSTICE & THE U.S. FAILURE TO COMPLY WITH OBLIGATIONS UNDER THE CONVENTION FOR THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 25 (2008) [hereinafter CHILDREN IN CONFLICT WITH THE LAW] (printed by the Children & Family Justice Center, Northwestern University School of Law) (on file with authors).

51. HRW, VOL. 20, NO. 2 (G), *supra* note 43, at app. 3.

52. CHILDREN IN CONFLICT WITH THE LAW, *supra* note 50, at 25.

53. *Id.*; *see* SNYDER & SICKMUND, *supra* note 45, at 3.

54. E-mail from Holly Thomas, Assistant Counsel, NAACP Legal Defense & Educ. Fund, Inc., to Michelle Leighton, Dir. of Human Rights Programs, Ctr. for Law & Global Justice, Univ. of San Francisco School of Law (Aug. 8, 2007) (on file with authors) (discussing Mississippi Department of Corrections and data released via Freedom of Information Act request that was later updated by the Office of Capital Defense Counsel in Mississippi).

55. NCCD, AND JUSTICE FOR SOME 25 (2007), *available at* http://www.nccd-crc.org/nccd/pubs/2007jan_justice_for_some.pdf.

56. The custody rate in the index is the number of juvenile offenders in detention in 2003 per 100,000 juveniles aged ten and over to age eighteen generally. *Id.* at 8.

Wisconsin 18:1; New Jersey 15:1; Wyoming 12:1; Nebraska 11:1; and New Hampshire 10:1.[57]

Children of color are also held in custody and prosecuted "as adults" in criminal courts and given adult sentences more often than white children.[58] African American children are six times more likely to be brought into custody than white children,[59] even though they make up just 16% of the total United States child population, as compared to white children, who make up 78% of the child population.[60]

Children of color are also much more likely than white youth to do their time in adult prison. Twenty-six out of every 100,000 African American children were sentenced to and are serving time in adult prison whereas the rate for white children is only 2.2 per 100,000.[61] On a state-by-state basis, these disparities are magnified, as discussed above.

The United States government is aware of this disparity, as are most Americans. A recent survey indicated that 60% of Americans believe that non-white youth are more likely to be prosecuted in adult court.[62] This is clearly not "equal treatment before the tribunals . . . administering justice" as required by Article 5(a) of the U.N. Convention on the Elimination of Racial Discrimination ("CERD"), to which the United States is a party.[63]

Finally, of serious concern is the cumulative disadvantage to minorities entering the justice system via arrest through the period of incarceration. As a result, racial disparity actually increases as the youth is arrested, processed, adjudicated, sentenced, and incarcerated.[64]

Within the juvenile system, the trends for juvenile placements out of the home (the most severe disposition for youth adjudicated as delinquent) demonstrate that white youth are underrepresented in this category of penalty and youth of color suffer discrimination. From 1987 to 2003, the total placements increased from approximately

57. *Id.* at 24 (citing Census of Juveniles in Residential Placement 1997, 1999, 2001, and 2003).

58. *Id.* at 34.

59. HRW, VOL. 20, NO. 2 (G), *supra* note 43, at 19.

60. *Id.* at 10.

61. NCCD, *supra* note 55, at 35 fig.19 (providing graphic representation of statistics as to racial disparities and youth in adult prisons).

62. *See* KRISBERG & MARCHIONNA, *supra* note 17, at 1.

63. International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, S. TREATY DOC. NO. 95-18 (1994), 660 U.N.T.S. 195, *available at* http://www2.ohchr.org/english/law/ccrd.htm.

64. NCCD, *supra* note 55, at 4.

92,000 to 97,000, yet the percentage of whites given out of home placement decreased in the same period from approximately 52% to 39%.[65]

While institutions in the country have documented racial disparities in growing numbers over the past decade, the United States government has done little to address the most serious discriminatory practices leading to this disparity. Even after passing the Juvenile Justice and Delinquency Prevention Act of 2002,[66] a law designed to address discrimination suffered by children, the government has not ensured that states take effective action to address the offending discrimination in their jurisdictions. Moreover, data on racial disparity among juveniles receiving LWOP is neither collected nor analyzed by the federal government or by states in any systemic manner. Thus, the government does not inform the public of this disparity. Without a systematic effort, the United States cannot effectively ensure the eradication of discrimination as required by CERD.

C. Countries that Clarified or Recently Changed Their Law and Practice to Prohibit LWOP Sentences for Juveniles

The authors had reported that Tanzania and South Africa had juvenile offenders serving LWOP sentences, and that Burkina Faso and Kenya, while having no children serving LWOP sentences, had laws that appeared to allow for the punishment.[67] In the past year, all of these countries have clarified their practice, law, or both to prohibit LWOP sentences for juveniles, as discussed below.

1. Tanzania

In Tanzania, the government asserts that no child under the age of eighteen is sentenced to LWOP.[68] Several children recently sen-

65. *Id.* at 19–20, 20 fig.9, 22 fig.10. Trends in residential placement evaluated from 1987–2003 were mapped by the NCCD separately and are on file with the authors.

66. Pub. L. No. 107-273, 116 Stat. 12201 (amending 42 U.S.C. § 5601 et seq. (2000), *originally enacted in 1974).*

67. *See, e.g.*, HUMAN RIGHTS ADVOCATES, SPECIAL REPORT ON HUMAN RIGHTS VIOLATIONS IN SENTENCING: IMPRISONING CHILDREN FOR LIFE WITHOUT POSSIBILITY OF RELEASE (2007). This report was submitted to the 4th Session, Human Rights Council in March 2007, as part of the work completed by University of San Francisco law students Nicole Skibola, Patricia Fullinwider, and Angela Fitzsimons. HUMAN RIGHTS ADVOCATES, WRITTEN STATEMENT SUBMITTED BY HUMAN RIGHTS ADVOCATES, INC. (JUVENILE SENTENCING), U.N. Doc. A/HRC/4/NGO/3 (2007), *available at* http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/4/NGO/3.

68. E-mail from Joyce Kafanabo, Minister Plenipotentiary, Permanent Mission of the United Republic of Tanzania to the U.N., to Michelle Leighton, Dir. of Human Rights

tenced to life terms have now been given parole.[69] Tanzania has confirmed that one child offender who was seventeen at the time of the crime is serving a life sentence in the country. There was concern that the Sexual Offences Special Provisions Act[70] ("SOSPA"), under which he was sentenced, does not provide for parole.[71] In meetings with the authors and written follow-up, the government has confirmed that all children, including the child in this case, are to be eligible for parole.[72] It committed to make the necessary changes in law to expressly prohibit such sentencing in the future, to allow for parole review of the one child offender identified above, and otherwise to come into full compliance with the Convention on the Rights of the Child. In a statement to the Center for Law and Global Justice from the Permanent Mission of the United Republic of Tanzania to the United Nations, officials stated:

> The juvenile justice system in Tanzania has always been in favour of a child. No life sentence has ever been imposed on children prior to 1998. . . .
>
> Currently there is a process to review the juvenile justice system in line with CRC. A cabinet paper has already been prepared by the Ministry of Justice and Constitutional Affairs on a comprehensive legislation on children, the same is expected to be submitted to cabinet secretariat soon.
>
> At the same time a bill on miscellaneous amendments is expected to be tabled by Parliament before the end of 2007 . . . that gives to the High Court reversionary and discretionary powers, in this regard the court can in sua motu call a file of any case concerning a child offender and redress the harsh punishment that has been imposed on a child. It should be noted in addition to the court the social welfare officers can also move the court to make a review. Thus based on the above information on the current practice and the progress on the juvenile justice system in Tanzania, I can confidently say that the sentence of the one child serving life imprisonment will be reviewed and that his sentence has the possibility of parole . . . . It is our expectation that this information [sic] is sufficient to inform you that there are mechanisms that allow a

Programs, Ctr. for Law & Global Justice, Univ. of San Francisco School of Law (Oct. 13, 2007) (on file with authors) [hereinafter Kafanabo E-mail, Oct. 13, 2007] (indicating that in all cases where a child is sentenced to life imprisonment, the child welfare department appeals to higher courts immediately "which in all circumstances either reduces the sentence or releases the child"); *see also* Facsimile from Joyce Kafanabo to Michelle Leighton (Oct. 15, 2007) (on file with authors) [hereinafter Kafanabo Letter, Oct. 15, 2007].

69. Two children were released recently and one is receiving a parole hearing at the time of writing. E-mail from Michelle Leighton to Joyce Kafanabo (Nov. 2, 2007) (on file with authors); Kafanabo Letter, Oct. 15, 2007, *supra* note 68.

70. Sexual Offences Special Provisions Act ("SOSPA"), Nos. 4, 7 (1998) (Tanz.).

71. Minimum Sentence Act of 1972 (Tanz.).

72. Kafanabo E-mail, Oct. 13, 2007, *supra* note 68.

> review of sentence of any child who is sentenced to life, and that life imprisonment for the juvenile offenders does not mean it is without parole.[73]

In Tanzania, the Department of Social Welfare and a parole review board monitor children in custody and "upon being satisfied that the child has been rehabilitated will then start process for releasing the child."[74] The life sentence where a child offender may not receive this review is an unusual case because the sentence has only become possible under a law enacted in 1998 to punish cases of sexual abuse, particularly in young children.[75]

The one law that poses an issue for sentencing of juveniles as adults is the SOSPA,[76] a Parliamentary Act adopted in 1998 after the country began experiencing record levels of rape, incest, and sodomy of young children, some as young as five years old.[77] The law sought to reduce violence against children by increasing education and punishment for such crimes.[78] The offender's age is not considered in prosecuting cases under SOSPA, and children are prosecuted as adults.[79] The law imposes stricter sentences for second- or third-time offenders, and offenders can be sentenced to between thirty years and life.[80] For rape of a child under the age of ten, SOSPA mandates the automatic sentence of life imprisonment.[81] Under any other criminal

73. Kafanabo Letter, Oct. 15, 2007, *supra* note 68; *see also* Interview with Augustine Mahiga, Permanent Representative, United Republic of Tanzania, Ministers Plenepotentiare Joyce Kafanabo and Modest Mero, Second Secretary Tully Mwaipopo, and other Tanzanian officials, in New York, N.Y. (Sept. 28, 2007) (on file with authors) [hereinafter Mahiga, Sept. 28, 2007] (resulting from discussions initiated by Nick Imparato of the University of San Francisco School of Business and Management, who also had meetings with the Permanent Representative on the subject). The one child serving LWOP was first identified by HRW and AI in 2005. *See* HRW/AI REPORT, *supra* note 18, at 106 (citing e-mail correspondence to HRW from Erasmina Masawe, Attorney, Legal and Human Rights Centre, Dar es Salaam, Tanzania, in July 2004, regarding the high profile case of a seventeen-year-old convicted of rape).

74. Kafanabo E-mail, Oct. 13, 2007, *supra* note 68.

75. *See* Kafanabo Letter, Oct. 15, 2007, *supra* note 68.

76. SOSPA, Nos. 4; 7 (1998) (Tanz.).

77. Mahiga, Sept. 28, 2007, *supra* note 73; Kafanabo Letter, Oct. 15, 2007, *supra* note 68.

78. For example, a child convicted of murder in Tanzania is subject to ten years of imprisonment before a request for probation can be made; however, under the SOSPA, courts apply less discretionary and harsher sentences. Kafanabo Letter, Oct. 15, 2007, *supra* note 68.

79. Mahiga, Sept. 28, 2007, *supra* note 73.

80. *Id.*

81. SOSPA, § 6(3). The authors note that the source is ambiguous as to whether SOSPA applies to rape of both boys and girls, or just girls. Interpretation of the Act was provided by Tanzanian officials and lawyers. Mahiga, Sept. 28, 2007, *supra* note 73.

convictions, the President of the country personally confirms every sentence given to a child offender in Tanzania, but under SOSPA the court issues the sentence without review by the President.[82]

As noted above, the Tanzanian Minister of Justice is introducing a reform bill in Parliament to bring sentencing under SOSPA into compliance with the Convention on the Rights of the Child[83] ("CRC"). It would prohibit cruel and unusual punishments for children, including LWOP sentences for child offenders. The reform bill will provide the courts with discretion in determining all sentences under SOSPA with respect to juveniles, in compliance with the CRC.[84] An interim act was recently passed that allows for the offender or his family to petition the court for immediate review. In its review, the court is to ensure compliance with the CRC prohibition on LWOP sentences.[85] The authors will continue to monitor these developments.

2. South Africa

South Africa no longer allows LWOP sentences for child offenders and has no children serving this sentence. South Africa reported to the CRC in 1999 that it had four child offenders serving LWOP sentences.[86] The government's second report to the Committee on the Rights of the Child, the oversight body for the CRC, does not discuss or further clarify this figure.[87] However, the head of the President's Office on Rights of the Child has confirmed to the authors in its consultation with the Department of Corrections that there are no juvenile offenders serving an LWOP sentence in South African prisons, i.e., no persons who committed crimes before age eighteen, and that all sentenced persons qualify now to apply for parole after a de-

82. Mahiga, Sept. 28, 2007, *supra* note 73.

83. CRC, *supra* note 1.

84. A copy of the proposed bill is on file with the authors.

85. *Id.* The Minister of Justice introduced an interim act which passed the Parliament at the time of writing this Article. E-mail correspondence between Michelle Leighton, Dir. of Human Rights Programs, Ctr. for Law & Global Justice, Univ. of San Francisco School of Law, and Joyce Kafanabo, Minister Plenipotentiary, Permanent Mission of the United Republic of Tanzania (Nov. 22–26, 2007) (on file with authors).

86. *South Africa State Party Report to the Committee on the Rights of the Child*, ¶ 514, U.N. Doc. CRC/C/51/Add.2 (May 22, 1999) (reporting four child offenders serving the sentence).

87. Telephone Interviews with Official Representatives of the Office on the Rights of the Child, Government of South Africa (May–June 2007) (notes on file with the authors); *see* The Presidency of Republic of South Africa, 2nd Children's Rights Country Report submitted to the United Nations Committee on the Rights of the Child (Aug. 2006) (on file with authors).

terminate period.[88] Thus, child offenders cannot be sentenced to an LWOP term.

South Africa has also been considering a Child Justice Bill since 2002 that would expressly clarify the illegality of life imprisonment for child offenders.[89] In 2004, the South Africa Supreme Court of Appeals issued a critical decision, *Brandt v. S.*,[90] which gave judges sentencing discretion with regard to juveniles.[91] The decision emphasized the importance of children's rights and reaffirmed that CRC 37(b) principles require juvenile imprisonment to be a last resort and for the shortest time possible.[92]

Although the *Brandt* decision marks greater strides toward the expansion of children's rights, it appears that there is still concern by some legal groups, such as the Centre for Child Law at the University of Pretoria, that the South African government has made minimal efforts to ensure that its incarcerated youth receive special programs over its older prison population.[93] Section 73(b)(iv) of the Correctional Services Act 111 of 1998 specifies that a person serving life imprisonment may not be placed on parole until he or she has served at least twenty-five years or has reached sixty-five years if at that time he or she has served fifteen years.[94] There is no parallel clause benefiting young offenders, and it appears that the Act aids only people who were fifty years or older at the time of the commission of the offense.[95] The reform bill under consideration may address these deficiencies. More recently, the government announced that in an attempt to curb prison overcrowding, it would release 300 adults serving life

88. E-mail correspondence between Mabel Rantlha, Head of South African President's Office on Rights of the Child, and Michelle Leighton (Aug. 1–2, 2007); Telephone Conferences with Officials in Dep't of Justice and Foreign Ministry (May 29, 2007–June 19, 2007) (on file with the authors).

89. *See* Draft Child Justice Bill, Republic of South Africa, para. 72 (2002), *available at* http://www.pmg.org.za/bills/020808childjusticebill.htm ("No sentences of life imprisonment may be imposed on a child.").

90. *S v B* 2006 (1) SACR 311 (SCA) (S. Afr.); *Brandt v State* 2005 (2) All SA 1 (SCA) (S. Afr.).

91. *Id.*

92. *Do Minimum Sentences Apply to Juveniles?*, ARTICLE 40 (Cmty. Law Centre, Univ. of the Western Cape, S. Afr.), May 2005, at 1, *available at* http://www.communitylawcentre.org.za/Childrens-Rights/01Article-40/article-40-archives/article_40_2005_05_vol7_1.pdf.

93. CHILD LAW MATTERS (Ctr. for Child Law, Univ. of Pretoria, Pretoria), Dec. 2006, *available at* http://www.childlawsa.com/docs/Newsletter_Dec2006.pdf.

94. Correctional Services Act 111 of 1998 s. 73(b)(iv) (S. Afr.).

95. *Id.*

sentences, some of whom were former death row inmates.[96] The opposition Inkatha Freedom Party, among other critics, stated that "it is petty criminals, especially juveniles, who should be considered for release, not people who are in prison serving life sentences for serious crimes."[97]

3. Burkina Faso and Kenya

Both Burkina Faso and Kenya had been listed in earlier reports as countries where there was a possibility that a child offender could receive an LWOP sentence. However, in March 2007, during and after the U.N. Human Rights Council session, both countries clarified that they do not allow for such sentences and provided written explanation to the authors.[98] Both countries assert that they now apply international standards prohibiting this sentencing, particularly as now recognized by the Committee on the Rights of the Child in its General Comment on Juvenile Justice, published in February 2007.[99]

In Burkina Faso, there is no law providing for child offenders younger than sixteen to be given life sentences. After age sixteen, the laws could possibly be read to try the child as an adult for certain crimes, making the child potentially eligible for a life sentence.[100] However, this interpretation has never been confirmed by a judge in the country, and officials have stated that doing so now would contravene Burkina Faso's treaty obligations under the CRC, which apply directly in domestic law.[101]

Kenya has specifically clarified its compliance with the CRC in a report submitted to the Committee on the Rights of the Child in

96. South African Press Ass'n ("SAPA"), *IFP Slams Release of Former Death-Row Inmates*, MAIL & GUARDIAN ONLINE, Jan. 4, 2007, http://www.mg.co.za/articlePage.aspx?articleid=294936&area=/Breaking_news/breaking_news__national.

97. *Id.*

98. Meetings and correspondence between Philip Owade, Ambassador, Deputy Permanent Representative, Permanent Mission of Kenya to the U.N., Geneva, Switzerland, other Kenyan delegates, and official delegates of Burkina Faso, and Michelle Leighton, Dir. of Human Rights Programs, Ctr. for Law & Global Justice, Univ. of San Francisco School of Law (Mar. 2007) [hereinafter Meetings and Correspondence]; also in follow-up correspondence with Michelle Leighton (Mar. 23–28, 2007).

99. *See* Comm. on Rights of the Child, *Children's Rights in Juvenile Justice, General Comment No. 10*, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007) [hereinafter *General Comment No. 10*].

100. Meetings and Correspondence, *supra* note 98.

101. Correspondence between Michelle Leighton and Myriam Poussi, Official Representative in the Mission of Burkina Faso, Geneva, Switz. (Mar. 23–28, 2007) (on file with authors) (original in French) (confirming statements of officials in meetings at the U.N. Human Rights Council session, March 2007).

2006.[102] It ratified a bill which outlaws LWOP sentences for all children under age eighteen.[103]

4. Israel

Prior to 2008, Israel had been reported by human rights groups to have anywhere between one and seven child offenders serving LWOP sentences.[104] The authors have received official clarification and commitment from the Israeli government that its laws allow for parole review of juvenile offenders serving life terms,[105] even those sentenced for political or security crimes in the Occupied Territories, those children for which the authors were most concerned.[106] Concerns remain, however, among legal practitioners in Palestine and Israel that parole review is difficult to pursue and rarely granted.[107] An additional concern is that the parole review for child offenders convicted of violating security regulations in Israel and in the Occupied

102. Meeting between Michelle Leighton, other HRA delegates, and Ambassador Philip Owade during March 2007 Human Rights Council meeting (meeting notes on file with authors) (identifying its official statements to the Committee on the Rights of the Child).

103. This is found in Kenya's section 18(2) of the Children's Act. The Children's Act, (2001) Cap. 586 § 18(2) (Kenya); *see also* Gov't of Kenya, *Second Periodic Report of State Parties Under the Convention on the Rights of the Child*, ¶ 146, *delivered to the Committee*, U.N. Doc. CRC/C/KEN/2 (July 4, 2006), *available at* http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/189bbd47582246fdc12572590029f5a5/$FILE/G0545052.pdf.

104. The authors also met with officials on the subject during the March 2007 session of the U.N. Human Rights Council. The report of four juvenile offenders serving life sentences was reported in *Israel State Party Report to the Committee on the Rights of the Child*, ¶ 1372, *delivered to the Committee*, U.N. Doc. CRC/C/8/Add.44 (Feb. 27, 2002), *available at* http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/f0bbf252c0b1ca20c1256bed004c56c4/$FILE/G0240564.pdf. But HRW identified three others: Shadi Ghawadreh, Youssef Qandil, and Anas Mussallmeh. *See* HRW/AI REPORT, *supra* note 18, at 106. E-mail correspondence between Connie de la Vega, Professor of Law, Univ. of San Francisco School of Law, and Hilary Stauffer, Legal Adviser, Human Rights & Humanitarian Affairs, Permanent Mission of Israel to the U.N., Geneva, Switz. (May 30–31, 2007) (on file with authors) [hereinafter Stauffer E-mails, May 30–31, 2007] (reporting on discussion with the Israeli Ministry of Justice and confirming the authors' prior assertions about Israel's laws and practices).

105. E-mail from Gil Limon, Legal Adviser, Permanent Mission of Israel to the U.N., to Michelle Leighton (Feb. 1, 2008) [hereinafter Limon E-mail, Feb. 1, 2008]; Letter from Daniel Carmon, Ambassador, Deputy Permanent Representative, Permanent Mission of Israel to the U.N., New York (Jan. 22, 2008) (on file with authors).

106. Letter from Daniel Carmon, Ambassador, Deputy Permanent Representative, Permanent Mission of Israel to the U.N., New York (Mar. 6, 2008) (on file with authors) (discussing concern regarding children sentenced for political or security crimes in the Occupied Territories).

107. E-mails from Khaled Quzmar, Coordinator of Legal Unit, Defence for Children International, Palestine Section, to Michelle Leighton (Jan. 10, 2008, Jan. 12, 2008, Feb. 7, 2008) (on file with authors).

Territories is not conducted by the independent judiciary but by the Israeli Defense Forces Chief of Staff, who has the discretion and authority to determine whether parole is actually granted. Officials have indicated that this determination can be subject to review by the Israeli High Court of Justice and have sent correspondence showing that two petitions for parole submitted by prisoners serving life sentences in Judea and Samaria are currently being reviewed by the High Court in Israel.[108]

By way of background, in its report to the Committee on the Rights of the Child in February 2002, the government identified four child offenders serving life sentences, but did not indicate whether parole was available, stating:

> The Supreme Court has held, in a majority decision, that the court has the discretion to review each case on its merits; should it reach the conclusion that the appropriate punishment is life imprisonment, and should it consider that this punishment is just and necessary, it may sentence a minor to life imprisonment (Miscellaneous Criminal Applications 530/90 John Doe v. State of Israel, P.D. 46(3) 648). One Supreme Court justice, basing herself, inter alia, on the Convention, expressed the view that life imprisonment should only be imposed on a minor in exceptional cases; however, her opinion was deemed as "needing further study" by the justices who sat with her (Miscellaneous Criminal applications 3112/94 Abu Hassan v. State of Israel (11.2.99 not yet published)). In practice, life imprisonment is imposed on minors very rarely; to date, it has been imposed on three seventeen-year-olds who stabbed a bus passenger to death as part of the "initiation rite" of a terrorist organization; and on a youth aged seventeen and ten months who strangled his employer to death after she commented on his work and delayed payment of his salary for two days.[109]

Human Rights Watch identified three other juveniles sentenced to life terms in 2004.[110]

Israeli law provides for review of life sentences and commutation to a sentence of thirty years, unless the youth offenders are sentenced by military courts under the 1945 Emergency Regulations for political or security crimes where the commutation is not applicable—as such,

108. Limon E-mail, Feb. 1, 2008, *supra* note 105; Letter from Daniel Carmon, Ambassador, *supra* note 106.

109. *Israel's State Party Report to the Committee on the Rights of the Child*, ¶ 1372, U.N. Doc. CRC/E/8/Add.44 (Feb. 27, 2002), *available at* http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/f0bbf252c0b1ca20c1256bed004c56c4/$FILE/G0240564.pdf.

110. The cases in question are reported as Shadi Ghawadreh, Youssef Qandil, and Anas Mussallmeh. HRW/AI REPORT, *supra* note 18, at 106; *see also supra* note 104 and accompanying text.

there was concern that for those cases a juvenile would in effect be serving the equivalent of an LWOP sentence.[111] The seven juveniles that could possibly qualify, discussed above, were presumably sentenced for political or security crimes.[112]

While the government has clarified its law, as noted above, it appears that no reform in the Emergency Regulations Act or sentencing procedure is underway to prohibit this sentence. Further express clarification of law to prohibit effective LWOP sentences is warranted, as are reforms ensuring that juvenile offenders sentenced to life terms in the Occupied Territories are not subject to harsher parole review standards than children serving the same life terms from crimes committed in Israel.

D. Countries With Laws that Conceivably Allow LWOP Sentences for Juveniles but Where No Practice Exists

The other countries with LWOP sentences available for child offenders reportedly do not have any child offenders serving this sentence. For the countries listed here, the laws provide for a life sentence to be imposed on child offenders, but it is not clear whether a life sentence means there is no possibility of parole.[113] Besides the United States, there remain ten countries where it is unclear but reportedly possible for a child offender to serve an LWOP sentence. These countries are: Antigua and Barbuda, Argentina, Australia, Be-

111. HRW/AI REPORT, *supra* note 18, at 106 n.322 (citation omitted) (discussing lack of parole available to those who are sentences under the Israel 1945 Emergency Regulations Act).

112. In a 2005 report, HRW was not able to verify whether or how many of the seven youths would not be provided parole consideration because they were sentenced for political or security crimes. In the authors' meetings and correspondence with Israeli officials during 2007, officials confirmed that at that point there was no change in the general number of life and/or LWOP cases as noted in this Article. Stauffer E-mails, May 30–31, 2007, *supra* note 104. The authors have not found any additional reported cases since 2004.

113. The authors have met with officials from most countries listed in this report, including in 2007 during the U.N. Human Rights Council session and in follow-up correspondence, and have clarified state practice as presented in this Article, and added Belize to this list. Australia's circumstance is discussed in Part I.D of this Article. In addition, Argentina may become a country of concern, if it were to allow or have any children serving life sentences where it is unclear that there is the possibility of parole. The authors became aware of this suggestion only at the time of writing this Article. For an earlier list of countries which reported laws on LWOP for juveniles, see HRW/AI REPORT, *supra* note 18, at 106 n.319. For nine out of the 154 countries researched, the authors were unable to obtain the necessary sources to determine whether or not the sentence exists in law, and if it does, whether or not it is imposed.

lize, Brunei, Cuba,[114] Dominica, Saint Vincent and the Grenadines, the Solomon Islands, and Sri Lanka (which has new legislation pending that would bring it in line with the CRC prohibition on LWOP). Two countries of particular concern, Australia and Argentina, are discussed below.

According to Australia's report to the Committee on the Rights of the Child at the end of 2004, state, territory, and federal laws are now standardized as to the age of criminal responsibility, which is ten years of age.[115] However, there is a rebuttable presumption that "children aged between 10 and 14 are incapable, or will not be held accountable, for committing a crime, either because of the absence of criminal intent, or because they did not know that they should not have done certain acts or omissions."[116] There are no child offenders convicted under federal law serving LWOP sentences: Australian officials have indicated that there are currently about twenty-six federal prisoners with life sentences. Only two of those prisoners do not have a non-parole period set, but neither of these persons were sentenced when they were juveniles.[117]

114. With respect to Cuba, a reform bill is pending that would create a juvenile justice system, but the present law is still unclear as to whether juvenile offenders could possibly, at some point in the future, be sentenced to LWOP.

115. Gov't of Austl., *Combined Second & Third Reports of the Government of Australia Under the Convention on the Rights of the Child, delivered to the Committee*, ¶ 72, U.N. Doc. CRC/C/129/Add. 4 (Sept. 30, 2003) [hereinafter *Australia CRC Reports*], *available at* http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/9118c7351dc21240c1257007004a6026/$FILE/G0445319.pdf.

116. *Id.*

117. E-mail correspondence between Michelle Leighton, Dir. of Human Rights Programs, Ctr. for Law & Global Justice, Univ. of San Francisco School of Law, and Judy Putt, Research Manager, Australian Gov't Inst. of Criminology ("AIC"), Canberra, Austl. (Sept. 18–30, 2007) (on file with authors). According to correspondence with the AIC:

> [U]nder section 20C(1) of the *Crimes Act 1914* a child or young person who is charged with or convicted of a Commonwealth offense may be tried, punished or otherwise dealt with as if the offence were an offence against the law of the State or Territory in which the person is tried. This enables young federal offenders to be dealt with in accordance with the juvenile justice systems established in each State or Territory. Most State and Territory juvenile justice legislation contains maximum terms of detention that may be imposed on juveniles, i.e., the NT *Juvenile Justice Act 2005* provides that a term of detention imposed on a juvenile must not exceed 2 years (if the juvenile is over fifteen years of age) or one year (if the juvenile is less than fifteen). The NT legislation also says a non-parole period must be set if the sentence is over twelve months. In Victoria, the *Children, Youth and Families Act 2005* provides that a maximum term of one years detention can be imposed on a juvenile between the age of ten and fifteen, and a maximum of two years for juveniles over fifteen years of age. Therefore, if a juvenile federal offender is dealt with under section 20C(1) of the Crimes Act in accordance with the juvenile justice system of the State or Territory in which the offender is

State practice in Australia is more difficult to evaluate in this regard. In Queensland, children aged seventeen who are in conflict with the law may be tried as adults in particular cases, though the authors are not aware of any children serving LWOP sentences.[118] This was noted of concern to the Committee on the Rights of the Child in evaluating Australia's compliance with its treaty obligations.[119]

In New South Wales, two juveniles who were sentenced to life imprisonment challenged a law enacted after their sentencing which they argued would give legal weight to a judge's recommendation that they not be given parole and in effect cause them to be serving an LWOP sentence. Those cases are *Elliot v. the Queen*[120] and *Blessington v. the Queen*,[121] and both are before Australia's High Court.[122] The High Court rejected the arguments that the recommendation in question had acquired the character of a legal order and interpreted the relevant criminal sentencing acts to allow the petitioners to apply for the determination of a minimum term and additional term after they served twenty years of their sentence.[123]

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charged, it is unlikely that it would be possible for the juvenile to receive a sentence of life imprisonment without parole.

Id. However, section 20C of the Crimes Act does not preclude a juvenile who receives a sentence of life imprisonment from receiving an LWOP sentence. *Id.* Paragraph 19AB(1)(b) of the Crimes Act provides that where a court imposes a federal life sentence, or any federal sentence exceeding three years, the court must fix either a single non-parole period for that sentence or make a recognizance release order (release on a good behavior bond). *Id.* However, under subsection 19AB(3), the court may decide to not fix a non-parole period or make a recognizance release order if the court considers it inappropriate to do so under the circumstances. Under subsection 19AB(4), if the court decides not to fix a non-parole period or make a recognizance release order, then the court must give its reasons for doing so and cause these reasons to enter into the court's records. *Id.*

118. *Committee on the Rights of the Child Concluding Observations to 2d & 3rd Reports submitted by Australia to the Committee*, ¶ 73, U.N. Doc. CRC/C/15/Add. 268 (Oct. 20, 2005) [hereinafter *Concluding Remarks to 2d & 3rd Reports, Australia*]. It urged Australia to make reforms to this law before its next report due January 15, 2007. *Id.* ¶ 74.

119. *Id.* ¶¶ 9, 10; *see id.* ¶ 73.

120. Elliot v. The Queen, (2007) H.C.A. 51. These cases concern the New South Wales Crimes (*Sentencing Procedure*) Act of 1999. *CRC Remarks to 3rd Report, Australia, supra* note 118. The High Court heard oral argument in September 2007, but it is uncertain when the cases will be decided. The transcript of the High Court hearing is accessible at http://www.austlii.edu.au/au/other/HCATrans/2007/538.html.

121. Blessington v. The Queen (S218/2007).

122. *Id.* The High Court heard oral arguments in September 2007 and has now reserved the cases for decision. *See* High Court of Australia Bulletin 2007, No. 10, 31, Oct. 2007 (on file with authors).

123. *See supra* notes 108–09; Order of final decision H.C.A. 51 (Nov. 8, 2007). The Court found that the legislative acts did not change the authority or discretion of the province's supreme court review of applications seeking determinate sentencing, only the "determinate" time period upon which petitioners could apply (which went from eight to

No other juvenile LWOP cases are known. However, should Australian provinces allow the LWOP sentences, Australia would be in violation of its treaty obligations under the CRC. The Committee on the Rights of the Child was concerned with Australia's juvenile justice system in 2005 and with the courts' ability to implement the treaty provisions in the face of contrary domestic law. The Committee indicated that it "remains concerned that, while the Convention may be considered and taken into account in order to assist courts to resolve uncertainties or ambiguities in the law, it cannot be used by the judiciary to override inconsistent provisions of domestic law."[124] In response, the Committee further recommended that Australia "strengthen its efforts to bring its domestic laws and practice into conformity with the principles and provisions of the Convention, and to ensure that effective remedies will always be available in case of violation of rights of the child."[125]

Argentina is now a country of concern. It passed a law in 2004 that may provide for life sentences without parole for sixteen- and seventeen-year-olds for certain crimes.[126] There are no known cases of persons sentenced under the 2004 law for LWOP, although there are five cases where life sentences have been given.[127]

The laws and practice of the majority of the countries in the world are reflective of the requirements of international treaties which prohibit LWOP for offenders under the age of eighteen at the time of the commission of the crime. The next section discusses the status of this prohibition under international law.

III. International Law Prohibits Life Without Possibility of Release or Parole for Juveniles

Customary international law has recognized that the special characteristics of children preclude them from being treated the same as

twenty years) and the criteria for further consideration, including recommendations of the original sentencing judge, in issuing a determinate sentence. *Id.* paras. 18–23.

124. *Concluding Remarks to 2d & 3rd Reports, Australia, supra* note 118, ¶ 9 (regarding Australia's compliance with the treaty); *see also id.* ¶ 73.

125. *Id.* ¶ 10.

126. Cód. Pen. [PENAL CODE] art. 13 (Arg.).

127. "La mano dura y la Corte menemista podrían costarle una condena internacional al país," BUENOS AIRES ECONÓMICO, Jan. 23, 2008, at 8; *see also* E-mail from Facundo Hernández, Legal and Social Studies of Uruguay, to Connie de la Vega, Professor of Law, Univ. of San Francisco School of Law (Feb. 25, 2008) (on file with authors). Translated from Spanish, the article title reads, "The hoary hand of the Menemist Court could result in an international condemnation of the country."

adults in the criminal justice system.[128] To sentence a child in such a severe manner contravenes society's notion of fairness and the shared legal responsibility to protect and promote child development.

Trying children in adult courts so that they can receive "adult" punishment squarely contradicts that most basic premise behind the establishment of juvenile justice systems: ensuring the well-being of youth offenders. The harsh sentences dispensed in adult courts do not take into account the lessened culpability of juvenile offenders, their ineptness at navigating the criminal justice system, or their potential for rehabilitation and reintegration into society.

Moreover, indeterminate sentences lack the element of proportionality which many believe is essential in a humane punishment.[129] Indeed, the LWOP sentence penalizes child offenders more than adults, because the child, by virtue of his or her young age, will likely serve a longer sentence than an adult given LWOP for the same crime.

The common law heritage of the United States and of some of the states that allow for LWOP in their laws[130] evolved a century ago to impose a separate punishment structure on children and to prohibit LWOP sentences.[131] The Children Act of 1908 in England required differentiated treatment of children and adults and "leniency in view of the age of the offender at the time of the offense."[132] The practice of imposing LWOP sentences on children has been a more recent phenomenon at the end of the last century, largely in the 1990s, by a

128. *General Comment No. 10*, *supra* note 99, ¶¶ 10–11.

129. Also problematic is that many states integrate youthful violent offenders with adult state prison populations beginning at age sixteen. *See generally* KEVIN J. STROM, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: PROFILE OF STATE PRISONERS UNDER AGE 18, 1985–1997 (2000), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/pspa1897.pdf. These youths are at increased risk for sexual assault and violent assault. *See* HRW/AI REPORT, *supra* note 18, at 73–80.

130. The United States, a number of Caribbean Islands, and Tanzania (which formerly had the possibility of the LWOP sentence), which are all referred to in this Article as having the possibility of LWOP, were all colonies inheriting the English common law tradition. It is noted in this Article that the sentence of LWOP is *not* a common law tradition, but a recent phenomenon adopted in the past decade and a half in addressing juvenile crime rates.

131. *See* Brief for the Human Rights Committee of the Bar of England and Wales, Human Rights Advocates, Human Rights Watch, and the World Organization for Human Rights USA as Amici Curiae Supporting Respondent, at 9–11, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633) (providing commentary by lead attorney Connie de la Vega). The Court cited the amicus brief twice in its decision.

132. *Id.* at 10 (citation omitted) (referring to Lord Steyn and Lord Hope of Craighead in a 1998 case).

small minority of countries seeking harsher sentences against juvenile offenders.[133]

A. Treaties Prohibit LWOP Sentences Because of the Special Characteristics of Children

The CRC, a treaty ratified by every country in the world except the United States and Somalia,[134] codifies an international customary norm of human rights that forbids the sentencing of child offenders to LWOP.[135] In early 2007, the Committee on the Rights of the Child, the implementation authority for the CRC, clarified this prohibition in a General Comment: "The death penalty and a life sentence without the possibility of parole are explicitly prohibited in article 37(a) of CRC."[136] The General Comment's additional paragraph 77, titled "No life imprisonment without parole," further recommends that "parties abolish all forms of life imprisonment for offences committed by persons under the age of eighteen."[137] Providing greater clarity to this norm is the Committee's interpretation of treaty obligations around procedure for trial of juveniles, requiring nations to treat juveniles strictly under the rules of juvenile justice.[138] This would effectively prohibit courts from trying juveniles as adults—the primary mechanism in United States courts and elsewhere for applying the LWOP sentence.[139]

Other recent developments in international law have highlighted the urgent need for countries to reconsider their juvenile sentencing policies and prohibit by law LWOP sentences for child offenders. The prohibition is recognized as an obligation of the International Covenant on Civil and Political Rights[140] ("ICCPR"). Article 7 prohibits

133. *See supra* notes 30–34 and accompanying text (discussing the rapid evolution of LWOP sentences for children in the United States as laws emerged to allow children to be tried in courts as adults in the 1990s); *supra* notes 76–82 (noting the potential for LWOP sentences in Tanzania due to sentencing requirements for particular crimes).

134. *See* OHCHR, STATUS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES (June 9, 2004), *available at* http://www.unhchr.ch/pdf/report.pdf (reporting the ratification status of nations for major treaties and indicating that the United States has only provided a signature for the CRC but has not ratified it).

135. CRC, *supra* note 1.

136. *General Comment No. 10, supra* note 99, ¶ 4(c).

137. *Id.* ¶ 77.

138. *See Id.* ¶ 77, 88.

139. *See infra* Appendix (providing information about the United States practice of allowing juveniles to be tried as adults).

140. International Covenant on Civil and Political Rights, Dec. 16, 1966, S. TREATY DOC. NO. 95-20 (1992), 999 U.N.T.S. 171 [hereinafter ICCPR].

cruel, unusual, and degrading treatment or punishment,[141] and LWOP sentences are cruel when applied to children. Juvenile LWOP sentences also violate Article 10(3), which provides, "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."[142] In the sentencing of juvenile persons, governments should "take account of their age and the desirability of promoting their rehabilitation" as prescribed by Article 14(4) of the treaty.[143] This is reinforced by Article 24(1), which states that every child shall have "the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."[144]

B. The United States is in Direct Violation of its Treaty Obligations

The United States ratified the ICCPR in 1992.[145] The Committee on Human Rights, the oversight authority for the treaty, determined in 2006 that the United States is not in compliance with the treaty because it allows LWOP sentences for juveniles. The Committee made this determination even considering that the United States had taken a reservation to the treaty to allow the trying of juveniles in adult court in "exceptional circumstances."[146] The extraordinary breadth and rapid development in the United States of sentencing child offenders to LWOP since the United States' ratification of the ICCPR contradicts the assertion that the United States has applied this sentence only in exceptional circumstances. In fact, the total number of chil-

141. *Id.* art. 7.

142. *Id.* art. 10(3).

143. *Id.* art. 14(4).

144. Comments on United States, *supra* note 38.

145. The United States ratified the ICCPR in June 8, 1992. ICCPR, *supra* note 140; Office of the United Nations High Comm'r for Human Rights, ICCPR, http://www2.ohchr.org/english/bodies/ratification/4.htm (last visited Apr. 23, 2008) (providing list of countries ratifying the ICCPR by country name and date). In its ratification of the ICCPR, the United States declared, "The United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 and paragraph 4 of article 14." Office of the United Nations High Comm'r for Human Rights, ICCPR Declarations and Reservations, http://www2.ohchr.org/english/bodies/ratification/4_1.htm (last visited Apr. 23, 2008).

146. Comments on United States, *supra* note 38.

dren tried as adults and sentenced to LWOP now exceeds 2484, many of whom were first-time offenders.[147]

In evaluating the United States' compliance with the treaty in 2006, the Committee on Human Rights found the United States to be out of compliance with its obligations. The Committee concluded that the United States' practice of sentencing child offenders to LWOP violates article 24(1), which states, "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor."[148]

The Committee expressed its grave concern "that the treatment of children as adults is not applied in exceptional circumstances only . . . . The Committee is of the view that sentencing children to life sentence without parole is of itself not in compliance with article 24(1) of the Covenant."[149]

The Committee Against Torture, the official oversight body for the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment, to which the United States is a legal party, evaluated United States' compliance in 2006. The committee commented that the life imprisonment of children "could constitute cruel, inhuman or degrading treatment or punishment,"[150] in violation of the treaty.

Moreover, the United States has done nothing to reduce the pervasive discrimination evident in many United States states' applications of the LWOP sentence to children of color. As discussed in Part II, the rate of African American youth compared to white youth per 100,000 youths incarcerated in adult prisons is twenty-six to two. Furthermore, youth of color in some jurisdictions receive more than 90% of the LWOP sentences given and national rates for African Americans are ten times those of white youth.[151]

147. *See supra* notes 11–12.

148. Comments on United States, *supra* note 38.

149. *Id.*

150. International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. TREATY DOC. NO. 100-20 (1988), 1465 U.N.T.S. 113; Office of the High Comm'r on Human Rights, 9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, http://www2.ohchr.org/english/bodies/ratification/9.htm (last visited June 15, 2008); *see* Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: United States of America*, ¶ 35, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006).

151. *See supra* notes 22–42 and accompanying text (discussing United States practices); *see also* HRW/AI REPORT, *supra* note 18, at 2.

The Committee on the Elimination of Racial Discrimination, the official monitoring body for the Convention on the Elimination of Racial Discrimination, to which the United States is a party, determined in its Concluding Observations that juvenile LWOP sentences are incompatible with the United States' obligations under the treaty. Specifically:

> The Committee notes with concern that according to information received, young offenders belonging to racial, ethnic and national minorities, including children, constitute a disproportionate number of those sentenced to life imprisonment without parole. (Article 5 (a))
>
> The Committee recalls the concerns expressed by the Human Rights Committee (CCPR/C/USA/CO/3/Rev.1, para. 34) and the Committee against Torture (CAT/C/USA/CO/2, para. 34) with regard to federal and state legislation allowing the use of life imprisonment without parole against young offenders, including children. In light of the disproportionate imposition of life imprisonment without parole on young offenders – including children – belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.[152]

The United Nations General Assembly ("G.A.") has also acted on the issue of LWOP sentences for juveniles. By a vote of 185 to one (the United States was the only country voting against it) the G.A. passed a resolution on December 19, 2006[153] calling upon nations to "abolish by law, as soon as possible, the death penalty and life imprisonment without possibility of release for those under the age of 18 years at the time of the commission of the offense."[154] A similar resolution was adopted by a vote of 183 countries to one (once again, the United States was the only country voting against it) in December of 2007.[155]

International law, as expressed through international treaties and other agreements, is the supreme "law of the land" in the United States and should be applied in the context of juvenile sentencing. The Supremacy Clause is the common name given to Article VI, Clause 2 of the United States Constitution, which states:

152. Committee on Elimination of Racial Discrimination, Concluding Observations of the United States, ¶ 21, U.N. Doc. CERD/C/USA/CO/6 (Feb. 6, 2008).

153. Rights of the Child 2006, *supra* note 19, ¶ 31(a).

154. *Id.*

155. Rights of the Child 2007, *supra* note 19, ¶ 36(a) (incorporating U.N. General Assembly, Third Committee, ¶ 24, U.N. Doc. A/C.3/62/L.24 (Oct. 2007)).

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding.[156]

In *Roper v. Simmons*,[157] which abolished the practice of juvenile executions, the United States Supreme Court considered not only the evolution of international law, but also the evolution of the practice in the community of nations. The Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment's prohibition of "cruel and unusual punishments."[158]

In considering constitutional values related to the death penalty, the most severe punishment of juveniles, the Court observed:

> It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. As we understand it, this difficulty underlies the rule forbidding psychiatrists from diagnosing any patient under [eighteen] as having antisocial personality disorder, a disorder also referred to as psychopathy or sociopathy, and which is characterized by callousness, cynicism, and contempt for the feelings, rights, and suffering of others. If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under [eighteen] as having antisocial personality disorder, we conclude that States should refrain from asking jurors to issue a far graver condemnation—that a juvenile offender merits the death penalty. When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.[159]

It has been demonstrated that a juvenile awaiting death in prison under the LWOP sentence also has no opportunity to attain a mature understanding of his or her own humanity.

C. The Prohibition of Juvenile LWOP Is Customary International Law and a *Jus Cogens* Norm

The prohibition against sentencing child offenders to LWOP is part of customary international law and the virtually universal con-

156. U.S. CONST. art. VI, cl. 2.
157. 543 U.S. 551 (2005).
158. *Id.* at 575–78.
159. *Id.* at 573–74 (citations omitted).

demnation of this practice can now be said to have reached the level of a *jus cogens* norm.[160] Once a rule of customary international law is established, that rule generally applies to all nations, including those that have not formally ratified it themselves.[161]

For a norm to be considered customary international law, it must be a widespread, constant, and uniform state practice compelled by legal obligation that is sufficiently long to establish the norm, notwithstanding that there may be a few uncertainties or contradictions in practice during this time.[162] The International Court of Justice ("ICJ") has said that "a very widespread and representative participation in [a] convention might suffice of itself" to evidence the attainment of customary international law, provided it included participation from "States whose interests were specially affected."[163] When customary law is said to be a *jus cogens* norm, no persistent objection by a particular country will suffice to prevent the norm's applicability to all nations. According to Article 53 of the Vienna Convention on the Law of Treaties, it is "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of

160. The doctrine of *jus cogens* focuses on the supremacy of certain customary international law norms in regulating state practice: norms which have been "accepted and recognized by the international community of States as a whole as [ ] norm[s] from which no derogation is permitted and which can be modified only by [ ] subsequent norm[s] of general international law having the same character." Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331 (1969); *see also* Connie de la Vega & Jennifer Brown, *Can a United States Treaty Reservation Provide a Sanctuary for the Juvenile Death Penalty?* 32 U.S.F. L. REV. 735, 754 (1998); Vienna Convention on the Law of Treaties, *supra*, at 352; The Barcelona Traction, Light and Power Company, Limited Case (Belgium v. Spain), 1970 I.C.J. 4, paras. 33–34; IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 512–15 (4th ed. 1990); ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT (1994); de la Vega & Brown, *supra*, at 759–62.

161. The exception is a nation that has persistently objected to the rule, provided it has not already become a rule of customary international law that has reached the level of a *jus cogens* norm.

162. The Anglo-Norwegian Fisheries Case (U.K. v. Norway), 1951 I.C.J. 116, 138–39; Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v. U.S.), 1986 I.C.J. 14, 98, para. 186.

163. North Sea Continental Shelf Cases (FRG v. Denmark; FRG v. Netherlands) 1969 I.C.J. 3, paras. 73–74 (finding that "although the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law on the basis of what was originally a purely conventional rule, an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked; and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved").

general international law having the same character."[164] This definition is accepted by most legal scholars in and outside of the United States.[165] Moreover, United States law recognizes that customary international law is part of domestic United States law and binds the government of the United States.[166]

The International Law Commission has included this principle among those in its Draft Articles on State Responsibility.[167] It commented that "the obligations arise from those substantive rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of states and their peoples and the most basic human values."[168]

The current President of the ICJ, the Honorable Rosalyn Higgins, has stated that what is critical in determining the nature of the norm as a *jus cogens* norm is both the practice and *opinio juris* of the vast majority of nations.[169] It is important to look at the legal expectations of the international community of nations and their practice in conformity with those expectations. As such, G.A. resolutions can provide evidence of such expectations.[170]

The prohibition of LWOP fulfills these requisites for three reasons: (1) there is a widespread and consistent practice by countries to not impose a sentence of LWOP for child offenders as a measure that is fundamental to the basic human value of protecting the life of a child; (2) the imposition of such sentences is relatively new and now practiced by only one nation, the United States—all of the other states which had taken up the practice have joined the global community in abolishing the sentence; and (3) there is virtually universal acceptance that the norm is legally binding, as codified by the CRC and elsewhere, and requires countries to abolish this practice, as evidenced by

164. Vienna Convention on the Law of Treaties, *supra* note 160.

165. *See, e.g.*, RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § n102 (1986); SEAN MURPHY, PRINCIPLES OF INTERNATIONAL LAW 82 (2006).

166. See, for example, the United States Supreme Court opinion in *The Paquete Habana*, 175 U.S. 677, 699 (1900), discussing the place of international law in domestic United States law.

167. *See* Art. 40, and the Commentary, Draft Articles on Responsibility of States for Internationally Wrongful Acts, *available at* http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. The International Law Commission ("ILC") adopted the draft articles and Commentary at its 53rd session in 2001. ILC, Draft Articles on Responsibilities of States for Internationally Wrongful Acts, With Commentaries, *available at* http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

168. *See* ILC, *supra* note 167, at 112 (providing paragraph 3 of Commentary to Article 40).

169. *See* HIGGINS, *supra* note 160, at 22.

170. *Id.* at 23.

the most recent U.N. General Assembly resolution 61/146 (discussed above).

First, there is only one country that is known to still practice the sentencing of juveniles to LWOP, have children serving the sentence, or both: the United States. Second, the sentence has not been consistently and historically applied to child offenders. Even in the United States, the sentence was not used on a large scale until the 1990s when crime reached record levels.[171] It was only between 1992 and 1995 that forty states and the District of Columbia all passed laws increasing the options for sending juveniles to adult courts.[172] Before this time, the sentence had been rarely imposed.[173] Third, there is near universal acceptance that the norm is legally binding, as codified by CRC article 37, which prohibits LWOP sentences for juveniles. All but two countries are party to the CRC (the United States and Somalia), and all countries except the United States have ended the practice of using this sentence in accordance with their treaty obligations.

The Human Rights Committee found that this sentence violates the ICCPR, in evaluating the United States' report to the Committee, as the treaty ensures that every child has the right to such measures necessary to protect his or her status as a minor.[174] Trying and sentencing a child as an adult violates that minor's status. Applying a serious adult sentence to a child also implicates article 7 of the ICCPR relating to cruel, inhuman, and degrading treatment, as was also suggested by the Committee Against Torture.

In addition to the legal prohibition recognized in the context of treaty law, countries have reinforced their obligation to uphold this norm in a myriad of international resolutions and declarations over the past two decades. The General Assembly resolution 61/146 of December 2006, calling for the immediate abrogation of the LWOP sentence for juveniles in any country applying the penalty, is one that grew from many other international legal pronouncements.[175]

171. Note that crime levels reached their peak in 1994 and have been declining since. *See* Fraser, *supra* note 39.

172. *Id.*

173. From 1962 until 1981, an average of two youth offenders in the United States entered prison each year with LWOP sentences. *See* HRW/AI REPORT, *supra* note 18, at 31.

174. Comments on United States, *supra* note 38, ¶ 34.

175. Rights of the Child 2006, *supra* note 19, ¶ 31(a). The authors read the statement by the Committee that the juvenile LWOP sentence is out of compliance with Art. 24 to mean that "compliance" with treaty obligations would require abolition of this sentence. The authors consider that failure to comply with a substantive provision of the ICCPR, such as Art. 24, is a violation of the government's treaty obligations, particularly as country parties expect other country parties to comply with the treaty's substantive provisions.

Prior to this, the G.A. had adopted other statements on the subject which serve as evidence of nations' expectations that all members of the international community of nations should respect this norm. In 1985, the G.A. adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), reiterating that the primary aim of juvenile justice is to ensure the well-being of the juvenile and that confinement shall be imposed only after careful consideration and for the shortest period possible.[176] The Commentary to these rules indicates that punitive approaches are not appropriate for juveniles and that the well-being and the future of the offender always outweigh retributive sanctions.[177]

Similarly, in 1990 the G.A. passed two resolutions extending protections for incarcerated juveniles: the U.N. Rules for the Protection of Juveniles Deprived of Their Liberty[178] and the U.N. Guidelines for the Prevention of Juvenile Delinquency[179] ("Riyadh Guidelines"). Both resolutions consider the negative effects of long-term incarceration on juveniles. The Riyadh Guidelines state that "no child or young person should be subjected to harsh or degrading correction or punishment."[180] Additionally, the U.N. Rules for the Protection of Juveniles Deprived of Their Liberty emphasizes imprisonment as a last resort and for the shortest time possible.[181]

Every year for the last decade of its existence, the U.N. Commission on Human Rights emphasized the need for the global community to comply with the principle that depriving juveniles of their liberty should only be a measure of last resort and for the shortest appropriate time.[182] Its resolutions consistently called for this compli-

176. Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. Res. 40/33, U.N. Doc. A/40/53 (Nov. 29, 1985) [hereinafter Beijing Rules], *available at* http://www.unhchr.ch/html/menu3/b/h_comp48.htm.

177. *Id.*; *see id.* at Rule 17.1(d) (Commentary).

178. United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, U.N. Doc. A/RES/45/113 (Dec. 14, 1990), *available at* http://www.un.org/documents/ga/res/45/a45r113.htm.

179. United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines"), G.A. Res. 45/112, ¶ 46, U.N. Doc. A/RES/45/112 (Dec. 14, 1990) [hereinafter Riyadh Guidelines], *available at* http://www.un.org/documents/ga/res/45/a45r112.htm.

180. *Id.* ¶ 54.

181. United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, *supra* note 178, arts. 1–2.

182. Human Rights in the Administration of Justice, in Particular of Children and Juveniles in Detention, Comm'n on Human Rights Res. 1996/32, ¶ 13, U.N. Doc. E/CN.4/RES/1996/32 (Apr. 19, 1996); Human Rights in the Administration of Justice, in Particular of Children and Juveniles in Detention, Comm'n on Human Rights Res. 1998/

ance, and in 2005, it further called specifically for the abolition of the juvenile LWOP sentences.[183] The Commission's replacement body, the Human Rights Council, included the prohibition in its first substantive resolution on the rights of the child.[184]

A near universal consensus has coalesced over the past fifteen years and even accelerated in the last several years, as evidenced by the recently passed G.A. Resolutions 62/141 and 61/146, the 2006 Conclusions and Recommendations of the Human Rights Committee discussing the United States' practice of sentencing juveniles to LWOP, the similar observations of the Committee Against Torture, and the 2007 Committee on the Rights of the Child's General Comment on Juvenile Justice. Indeed, because only one country, the United States, now applies this sentence and holds 100% of the cases, the prohibition against the sentence can now be said to have reached the level of a *jus cogens* norm, a practice no longer tolerated by the international community of nations as a legal penalty for children. In sum, the United States alone is violating international law by allowing its courts to impose this penalty on children.

IV. Juvenile Justice and Rehabilitation Models

The ICCPR and the CRC provide that deprivation of liberty for child offenders be a "measure of last resort." As previously explained, the Beijing Rules and the Riyadh Guidelines consider long-term incarceration of juvenile offenders antithetical to the purpose and meaning of juvenile justice.[185] The Human Rights Council recognized the

39, ¶ 15, U.N. Doc. E/CN.4/RES/1998/39 (Apr. 17, 1998); Rights of the Child, Comm'n on Human Rights Res. 1999/80, ¶ 28, U.N. Doc. E/CN.4/RES/1999/90 (Apr. 28, 1999); Rights of the Child, Comm'n on Human Rights Res. 2000/85, ¶ 36, U.N. Doc. E/CN.4/RES/2000/85 (Apr. 27, 2000); Rights of the Child, Comm'n on Human Rights Res. 2001/75, ¶ 28, U.N. Doc. E/CN.4/RES/2001/75 (Apr. 25, 2001); Rights of the Child, Comm'n on Human Rights 2002/92, ¶ 31, U.N. Doc. E/CN.4/RES/2002/92 (Apr. 26, 2002); Rights of the Child, Comm'n on Human Rights 2003/86, U.N. Doc. E/CN.4/RES/2003/86 (Apr. 25, 2003); Rights of the Child, Comm'n on Human Rights 2004/48, ¶ 35, U.N. Doc. E/CN.4/RES/2004/48 (Apr. 14, 2004). The Commission was replaced thereafter by the Human Rights Council which has only in 2007-08 begun to adopt thematic resolutions again.

183. *See supra* note 182 and accompanying text; Rights of the Child, Comm'n on Human Rights 2005/44, U.N. Doc. E/CN.4/RES/2005/44 (2005).

184. Rights of the Child, Comm'n on Human Rights ¶ 31 (2008) [hereinafter Rights of the Child 2008], http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A-HRC-7-L11-Add1.doc.

185. "The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance." Riyadh Guidelines, *supra* note 179, ¶ 46.

importance of alternatives to imprisonment of juveniles at its March 2008 session.[186] The following examples of alternative sentencing structures focusing on rehabilitation and reduction of recidivism represent only a few options of the many available to states in improving their juvenile justice practices.

A. The German Model of Alternative Sentencing and Juvenile Rehabilitation

The German model of juvenile rehabilitation, or restorative justice, is an example of a juvenile justice system focused on rehabilitation. In the 1970s, Germany withdrew traditional sentencing for juveniles.[187] The conventional model gave way to alternative measures in the 1970s enumerated in the Juvenile Justice Act ("JJA"), including suspensions, probation, community service, and a system of day-fines.[188] As a result, between 1982 and 1990, incarceration of juveniles in Germany decreased more than 50%.[189]

In 1990, the JJA was amended to include additional alternatives to incarceration.[190] In the case of juvenile offenders (fourteen to seventeen years of age), the German criminal justice system predominately aims to educate the juvenile and provides for special sanctions.[191] Initially, education and disciplinary measures are implemented.[192] Only if those measures are unsuccessful is youth imprisonment with the possibility of suspension and probation used.[193]

The current JJA emphasizes release and discharge of child offenders when the severity of the crime is balanced with "social and/or educational interventions that have taken place."[194] Included in Ger-

186. Rights of the Child 2008, *supra* note 184, ¶ 32.

187. Dr. Christian Pfeiffer, *Alternative Sanctions in Germany: An Overview of Germany's Sentencing Practices*, Presentation for the Nat'l Inst. of Justice Research in Progress Seminar Series, Washington, D.C., (Feb. 1996), *available at* http://www.ncjrs.gov/pdffiles/germany.pdf.

188. *Id.*

189. *Id.*

190. Frieder Dünkel, Juvenile Justice in Germany: Between Welfare and Justice § 1 (Mar. 8, 2004), *available at* http://www.esc-eurocrim.org/files/juvjusticegermany_betw_welfar_justice.doc.

191. Lars Horst, Rehabilitation of Juvenile Offenders in South Africa and Germany—A Comparison 9 (2005) (unpublished Master of Law dissertation, Univ. of Cape Town, S. Afr.), *available at* http://lawspace.law.uct.ac.za:8080/dspace/bitstream/2165/52/1/HorstL+2005.pdf.

192. *Id.*

193. *Id.*; *see also* Jugendgerichtsgesetz [Juvenile Justice Act], 1990, §9, 13, 21, and 27 (F.R.G.).

194. Dünkel, *supra* note 190 (citing Juvenile Justice Act §§ 45(1)–(2)).

many's innovative system of juvenile justice and rehabilitation is the equal value given to efforts of reparation to the victim, participation in victim-offender reconciliation (mediation), and education programs.[195] Furthermore, the German model does not restrict rehabilitation and justice by the nature of the offense. Additionally, felony offenses can be reduced or "diverted" under certain circumstances, "e. g. a robbery, if the offender has repaired the damage or made another form of apology (restitution/reparation) to the victim."[196]

Prison sentences for child offenders are a sanction of last resort, *ultima ratio*, in line with international norms including CRC and the Beijing Rules.[197] For child offenders between fourteen and seventeen years of age, the minimum length of youth imprisonment is six months and the maximum is five years.[198] In cases of very serious crimes for which adults could be punished with more than ten years of imprisonment, the maximum length of youth imprisonment is ten years.[199] Additionally, there is no possibility of death sentences or LWOP for child offenders. The low level of juvenile recidivism is a testament to the success of this innovative system.

B. The New Zealand Family Group Conference Model and Juvenile Rehabilitation

New Zealand began utilizing the approach of restorative justice as an alternative for juveniles in the criminal system in 1989 with the passage of the Children, Young Persons, and Their Families Act[200] ("Act"). The Act provides for a Family Group Conference ("Conference") as a first step for dealing with a juvenile offender.[201] These Conferences have now become the lynch-pin of the New Zealand youth justice system, both as pre-charge mechanisms to determine

195. *Id.* § 2.

196. *Id.*

> The situation is different in the general penal law for adults (> 18 or 21 years old) where diversion according to §§ 153 ff. of the Criminal Procedure Act is restricted to misdemeanours. Felony offences (i.e. [sic] crimes with a minimum prison sentence provided by law of one year) are excluded.

Id. § 2 n.3.

197. *See* Juvenile Justice Act, §§ 5(2), 17(2); *see also* Beijing Rules, *supra* note 176, ¶ 17.1 (restricting youth imprisonment to cases of serious violent crimes or repeated violent or other crimes if there seems to be no other appropriate solution).

198. Dünkel, *supra* note 190, § 2.

199. *Id.*

200. Children, Young Persons, and Their Families Act 1989, 1989 S.R. No. 24 (N.Z.), *available at* http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM147088.html.

201. *Id.* § 22.

whether prosecution can be avoided, and also as post-charge mechanisms to determine how to address cases admitted or proved in the Youth Court.[202]

The purpose of the Conference is to establish a safe environment in which the young offender, family members and others invited by the family, the victim or a representative, a support person for the victim, the police, and a mediator or manager of the process may come together to discuss the various issues. Sometimes a social worker, a lawyer, or both are also present.[203]

The main goal of a Conference is to formulate a plan about how best to deal with the offending youth. It consists of three integral components. First, the participants seek to ascertain whether or not the young person admits to the offense—this is a necessary component for the process to go forward.[204] Next, information is shared among all the parties at the Conference about the nature of the offense, the effects of the offense on the victim or victims, the reasons for the offense, any prior offenses committed by the young person, and other information relevant to the dialogue.[205] Third, the participants decide on an outcome or recommendation.[206] The Act requires the police to comply with the recommendations/agreements adopted and findings made by the Conference.[207]

The New Zealand model for family group conferencing is largely inspired by traditional Maori justice practices.[208] Modern day family group conferencing incorporates traditional Maori beliefs "that responsibility was collective rather than individual and redress was due not just to the victim but also to the victim's family."[209] "Understanding why an individual had offended was also linked to this notion of collective responsibility. The reasons were felt to lie not in the individual but in a lack of balance in the offender's social and family envi-

202. New Zealand Ministry of Justice, Youth Justice Process in New Zealand—Family Group Conferencing, http://www.justice.govt.nz/youth/fgc.html (last visited Mar. 29, 2008).

203. Allison Morris & Gabrielle Maxwell, *Restorative Justice in New Zealand: Family Group Conferences as a Case Study*, 1 WESTERN CRIMINOLOGY REV. 1 (1998), *available at* http://wcr.sonoma.edu/v1n1/morris.html.

204. *Id.*

205. *Id.*

206. *Id.*

207. Children, Young Persons, and Their Families Act 1989, § 35, 1989 S.R. No. 24 (N.Z.).

208. Morris & Maxwell, *supra* note 203.

209. *Id.*

ronment."[210] This understanding focuses on the need to address the causes of this imbalance in a collective manner.[211] The emphasis is placed on restoring the harmony between the offender, the victim, and the victim's family.[212]

There are now 8000 Family Group Conferences held every year in New Zealand, and as a result, 83% of youth offenders are diverted from the criminal justice system.[213] Imprisonment and the use of youth justice residences have dropped significantly with the use of Conferences.[214] This alternative to juvenile sentencing provides an excellent model for other states to follow in seeking to decrease juvenile incarceration and recidivism rates.

C. The Georgia Justice Project's Holistic Approach to Juvenile Rehabilitation

In the United States, the Georgia Justice Project ("GJP") also utilizes an innovative approach to breaking the cycle of crime and poverty among children in Atlanta, Georgia.[215] A privately-funded nonprofit organization, GJP minimizes rates of recidivism amongst juveniles by incorporating counseling, treatment, and employment and education programs with its legal services.[216] Its rate of recidivism is 18.8%, as compared to the national United States average of over 60%.[217]

Working with underprivileged minorities in the DeKalb and Fulton counties of Georgia, GJP works with its juvenile clients to form a relationship that extends beyond legal representation.[218] Recognizing that juvenile offenses typically indicate deeper problems such as lack of familial support, insufficient access or motivation for educa-

210. *Id.*

211. *Id.*

212. *Id.*

213. A.J. BECROFT, YOUTH JUSTICE FAMILY GROUP CONFERENCES: A QUICK "NIP AND TUCK" OR TRANSPLANT SURGERY—WHAT WOULD THE DOCTOR ORDER IN 2006? 8 (2006), *available at* http://www.cyf.govt.nz/documents/becroft_paper.pdf (presenting Judge Becroft's views on family group conferences at an international conference in Wellington, New Zealand).

214. *Id.*

215. Georgia Justice Project, About the Georgia Justice Project, http://www.gjp.org/about (last visited Mar. 31, 2008) [hereinafter About the GJP].

216. *Id.*

217. Georgia Justice Project, GJP Programs, http://www.gjp.org/programs (last visited Feb. 19, 2000) [hereinafter GJP Programs]. The authors note, however, that the referenced statistic includes both juvenile and adult clients. *See id.*

218. Georgia Justice Project, GJP Legal Services, http://www.gjp.org/programs/legal (last visited Mar. 29, 2008).

tion, poverty, and lack of access to employment opportunities, GJP works on the criminal defense of the child offender as well as provides a breadth of other programs that reduce the likelihood of recidivism.[219] Along with an attorney, each child offender is paired with a licensed social worker.[220] As a team, the attorney, social worker, and juvenile work together on the case and accompany the juvenile through the entire process.[221] If the judicial proceedings result in incarceration, GJP maintains close contact with the juvenile both during and after incarceration.[222] In this context, GJP provides incentives and support as the child offender rebuilds his or her life. This support is often a critical component in breaking the cycle of crime and poverty.

D. The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative

The Juvenile Detention Alternatives Initiative program ("JDAI"), which has eighty sites in twenty-one states and the District of Columbia, has focused its attention on eight "core strategies" to minimize juvenile delinquency and rehabilitate youth.[223] Notable strategies include encouraging collaboration between juvenile justice agencies and community organizations, new or enhanced alternatives to detention (such as electronic monitoring), case processing reforms to reduce length of stay in custody, and reducing racial disparities.[224] While children who pose a danger to the community are still detained, the program's focus is to stop deviant behavior before children fall into a life of crime.

In Santa Cruz, California, the ten-year-old JDAI program is considered a model. It offers health and drug abuse counseling, resume writing, and computer classes, as well as provides meditation classes and an adult mentor for advice and guidance. Following the JDAI program, Santa Cruz has seen the number of children in detention per day decrease from 46.7 to 15.9 on average, saving millions of dollars

219. *Id.*

220. GJP Programs, *supra* note 217.

221. About the GJP, *supra* note 215.

222. Georgia Justice Project, GJP Social Services, http://www.gjp.org/programs/social (last visited June 5, 2008).

223. Annie E. Casey Found., Results from the Juvenile Detention Alternatives Initiative, http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/JDAIResults.aspx (last visited Feb. 19, 2008) [hereinafter JDAI Results].

224. Annie E. Casey Found., Core Strategies, http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/corestrategies.aspx (last visited Mar. 29, 2008).

per year for the state.[225] Other counties have followed suit with great success. Among others, New Mexico's Bernalillo County JDAI site reduced its average daily detention population by 58% between 1999 and 2004,[226] and New Jersey's Essex County lowered its average daily population by 43% in just two years.[227] In addition, Ada County, Idaho, Pierce County, Washington, and Ventura County, California, have all decreased detention populations by at least one-third since implementing the program.[228]

E. The Bridge City Center for Youth, Louisiana

After finding that the Bridge City Correctional Facility had serious problems of abuse and youth violence, the United States Department of Justice recommended immediate reform.[229] However, it was not until the death of a child inmate and resulting public protest that the facility began to restructure in earnest and comply with the newly enacted Juvenile Justice Reform Act.[230] The facility was shut and reorganized with the help of the Annie E. Casey Foundation and the MacArthur Foundation, reopening in 2005.[231] The reforms abolished the prior boot-camp style youth facility, in which juvenile inmates were treated like adults, and established a home-like environment focusing on therapeutic care and rehabilitation.[232]

In 2005, the center housed approximately seventy young men, ranging from thirteen to twenty years old, in individual dormitories for about eight to twelve persons.[233] The dormitories, which replaced the concrete cells, are carpeted and contain colorful quilts, pillows, curtains, and couches to create a home-like atmosphere. Each dormitory conducts a series of daily "circles" where the young men gather to discuss concerns or complaints together in order to come to nonvio-

225. JDAI Results, *supra* note 223.

226. *Id.*

227. *Id.*

228. *Id.*

229. Letter from Deval Patrick, Assistant Attorney Gen., Civil Right Div., U.S. Dep't of Justice, to Mike Foster, Governor, State of La. (July 15, 1996), *available at* http://www.usdoj.gov/crt/split/documents/lajuvfind3.htm (regarding investigation of secure correctional facilities for children in Louisiana).

230. Katy Reckdahl, *Bayou Betterment: In Louisiana, a New Juvenile Justice System Is Emerging, with the Governor's Strong Support*, AM. PROSPECT, Aug. 15, 2005, at A15, *available at* http://www.prospect.org/cs/articles?article=bayou_betterment.

231. *Id.*

232. *Id.*

233. *Id.*

lent, group-approved solutions to problems.[234] The youths also have daily access to education, mental health, social services, and substance-abuse treatment.[235]

The success of the Bridge City Center for Youth is being replicated throughout the state at other juvenile facilities.[236] Though relatively new, the Annie E. Casey Foundation and the Juvenile Justice Project commended the program as a model state juvenile facility. These and other juvenile justice reforms in Louisiana contributed to a reduction in recidivism among youths from 2004 to 2006 by 23%.[237]

V. Conclusions and Recommendations

The LWOP sentence condemns a child to die in prison. It is cruel and ineffective as a punishment, it has no deterrent value, and it contradicts our modern understanding that children have enormous potential for growth and maturity in passing from youth to adulthood. The sentence further prevents society from ever reconsidering a child's sentence and denies the widely held expert view that children are amenable to rehabilitation and redemption.

The international community has outlawed this sentencing practice and considers it a violation of state obligations to protect the status of a child. States are required to seek recourse in criminal punishment toward more rehabilitative models of justice. The LWOP sentence for juveniles is a direct violation of CRC, the Convention Against Torture, and ICCPR, as well as customary international law. The United States is also out of compliance with the Convention on the Elimination of Racial Discrimination in the application of this sentence disproportionately among youth of color. The fact that the United States is the only country in the world with juveniles serving these sentences alone evidences the clear consensus in the world regarding this prohibition.

Nonetheless, efforts should continue towards complete abolition in the few countries where the sentence still remains a possibility. In regard to the remaining countries of concern, the authors commend

234. *See id.*

235. Kathleen Babineaux Blanco, Governor, State of La., Bridge City Dedication (July 14, 2005) (transcript available at http://blancogovernor.com/index.cfm?md=newsroom&tmp=detail&articleID=857).

236. JUVENILE JUSTICE PROJECT OF LA., ANNUAL REPORT 15 (2005 & 2006), *available at* http://www.jjpl.org/ar06.pdf.

237. La. Office of Youth Dev., Profile of Recidivism in Office of Youth Development (Jan. 25, 2008), *available at* http://www.oyd.louisiana.gov/statistics-05-oyd/1f.pdf.

Tanzania and South Africa for their recent official agreement and clarification removing the possibility of this sentence. However, the implementation of promised legal reforms should immediately begin if they are to ensure compliance with obligations under CRC and international law, in particular in South Africa where passage of the Child Justice Bill would clarify abolition of juvenile LWOP sentencing under any circumstances. The authors also welcome Israel's clarification of its laws and welcome the review of decisions of lower courts and the military commanders in the Occupied Territories by its Supreme Court.

Nine other countries still need to clarify the ambiguities in their own laws to confirm the prohibition of the LWOP sentence for juveniles: Antigua and Barbuda, Australia, Belize, Brunei, Cuba, Dominica, Saint Vincent and the Grenadines, the Solomon Islands, and Sri Lanka. In particular, Australia must clarify its law most urgently to prevent at least one province from moving in the opposite direction of allowing LWOP sentences for juveniles. Argentina must address the potential effects of its 2004 law and amend it to ensure that it does not result in LWOP sentences. And Israel should continue to review its lower court and military court decisions.

The authors commend the efforts of governments, international organizations, and NGOs for their efforts in the past few years to more urgently bring non-complying governments into compliance with international law and standards of juvenile justice. To solidify these changes, the authors conclude by recommending the following:

Countries should continue to denounce the practice of sentencing juveniles to LWOP as against international law, to condemn the practice of the United States government in allowing such sentencing, and to call upon those where the law may be ambiguous to institute legal reforms confirming the prohibition of such sentencing. The removal of barriers to the enforcement of international standards, expansion of juvenile justice models to focus more extensively on rehabilitation programs, including education, counseling, employment and job training, and social or community service programs, and evaluation of these models to ensure protection of the rights of juveniles should be encouraged.

The United States should abolish the LWOP sentence under federal law and undertake efforts to bring all the states into compliance with the nation's international obligations to prohibit this sentencing. This change would necessarily include rectification of the sentences of those juvenile offenders now serving LWOP. The United States should

also evaluate the disproportionate sentencing of minorities in the country and work more expeditiously to eradicate the widespread discrimination in the country's juvenile justice system, including to consider more equitable and just rehabilitation models as described in this Article. Lastly, the United States should monitor and publish data on child offenders serving LWOP sentences in each state where this occurs. It should also provide information to these states on the status of international law, particularly on the concluding observations of the treaty bodies that have reviewed United States practices in this area. The children in the United States cannot be worse in their nature or their offenses than those in all other countries. They should not be treated as if they are.

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The Center for Law and Global Justice, University of San Francisco School of Law, works university-wide in a multi-disciplinary environment, recognizing that promoting the rule of law with justice requires cooperation among all disciplines (http://www.usfca.edu/law/home/CenterforLawandGlobalJustice/index.html). The work of the USF Center for Law and Global Justice and Frank C. Newman International Human Rights Law Clinic is made possible at the United Nations through the close collaboration of Human Rights Advocates ("HRA") and its Board of Directors. HRA (http://www.humanrightsadvocates.org) is a non-profit organization dedicated to promoting and protecting international human rights. It participates actively in the work of various United Nations human rights bodies, using its status as an accredited NGO.

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Appendix*

At a Glance

43 STATES ALLOW JLWOP

12 STATES AND THE DISTRICT OF COLUMBIA EITHER DO NOT ALLOW OR DO NOT APPEAR TO PRACTICE JLWOP SENTENCES

7 STATES AND THE DISTRICT OF COLUMBIA PROHIBIT IT
Alaska, Colorado, Kansas, Kentucky, Montana, New Mexico, Oregon, District of Columbia

5 STATES HAVE NO CHILDREN KNOWN TO BE SERVING THE SENTENCE THOUGH THEY ALLOW JLWOP BY LAW
Maine, New Jersey, New York, Utah, Vermont

1 STATE APPLIES ONLY TO JUVENILES AT AGE 16 OR ABOVE
Indiana

2 STATES APPLY ONLY TO JUVENILES AT AGE 15 OR ABOVE
Louisiana and Washington

13 STATES APPLY ONLY TO JUVENILES AT AGE 14 OR ABOVE
Alabama, Arizona, Arkansas, California, Connecticut, Iowa, Massachusetts, Minnesota, New Jersey, North Dakota, Ohio, Utah, Virginia

7 STATES APPLY ONLY TO JUVENILES AT AGE 13 OR ABOVE
Georgia, Illinois, Mississippi, New Hampshire, North Carolina, Oklahoma, Wyoming

1 STATE APPLIES ONLY TO JUVENILES AT AGE 12 OR ABOVE
Missouri

* This state law survey was compiled by Michelle Leighton, Director Human Rights Programs, University of San Francisco School of Law, and Brian J. Foley, Visiting Associate Professor of Law, Drexel University College of Law, with assistance from Bradley Bridge, Assistant Defender, Defender Association of Philadelphia, PA, Jill Fukunaga, Law Librarian, University of San Francisco School of Law, and Jennifer Porter, Legal Intern, Center for Law and Global Justice, Graduate of the University of San Francisco School of Law. The authors updated this survey for publication with the accompanying Article. The U.S.F. Law Review updated these citations to reflect the most recent versions of the referenced code sections available.

4 STATES APPLY ONLY TO JUVENILES AT AGE 10 OR ABOVE
South Dakota, Texas, Vermont, Wisconsin

1 STATE APPLIES ONLY TO JUVENILES AT AGE 8 OR ABOVE
Nevada

14 STATES COULD APPLY LWOP AT ANY AGE
Delaware, Florida, Hawaii, Idaho, Maine, Maryland, Michigan, Nebraska, New York, Pennsylvania, Rhode Island, South Carolina, Tennessee, West Virginia

Summary of State Law with Citations in the United States 2007

ALABAMA

Imposes JLWOP (discretionary) Minimum age 14.

ALA. CODE § 13A-5-40 (LexisNexis 2005 & Supp. 2007) (LWOP for murder); *see also* §§ 13A-5-6, 13A-5-9 (2005) (LWOP habitual offenders).

ALA. CODE § 12-15-34 (LexisNexis 2005 & Supp. 2007) (prosecutorial discretion to transfer any child fourteen years or older to adult criminal court, with transfer hearing needed).

ALASKA

Does not impose JLWOP.

ALASKA STAT. § 12.55.125(a), (h), (j) (2006) (providing mandatory ninety-nine-year sentences for enumerated crimes, discretionary ninety-nine-year sentences in others, but permitting a prisoner serving such sentence to apply once for modification or reduction of sentence after serving half of the sentence).

ARIZONA

Imposes JLWOP (discretionary) Minimum age 14.

ARIZ. REV. STAT. ANN. § 13-703.01(A) (Supp. 2007) (LWOP sentences discretionary).

ARIZ. REV. STAT. ANN. § 13-501(A)–(B) (2001 & Supp. 2007) (juvenile of age fifteen, sixteen, and seventeen "shall" be prosecuted as an adult for first degree murder and enumerated felonies; juvenile at least age fourteen "may" be prosecuted as an adult for class one felonies).

ARKANSAS

Imposes JLWOP (mandatory) Minimum age 14.

ARK. CODE ANN. § 5-4-104 (2006 & Supp. 2007) (mandatory LWOP or death for capital murder or treason).

ARK. CODE ANN. § 9-27-318 (2008) (if the juvenile is at least fourteen years of age and commits a felony, he or she can be transferred to adult court and tried as an adult).

CALIFORNIA

Imposes JLWOP (discretionary) Minimum age 14.

CAL. PENAL CODE § 190.5(b) (West 1999 & Supp. 2008) (limiting discretionary LWOP to juveniles age sixteen or older).

CAL. PENAL CODE § 209 (West 2008) (kidnapping with or without bodily harm where death or exposure to substantial risk of death carries LWOP, age fourteen or older); §§ 218, 219 (wrecking a train or bridge); CAL. PENAL CODE § 37 (West 1999 & Supp. 2008) (treason); § 128 (perjury in capital case leading to execution), § 11418(b)(2) (West 2000 & Supp. 2008) (using weapon of mass destruction); CAL. PENAL CODE § 12310 (West 2000 & Supp. 2008) (using a bomb which kills).

COLORADO

Does not impose JLWOP.

COLO. REV. STAT. § 17-22.5-104(IV) (2007) (allowing juveniles sentenced to LWOP to apply for parole after serving forty years). State legislative reform passed in 2006 abolished JLWOP which has not yet been retrospectively applied.

CONNECTICUT

Imposes JLWOP (mandatory) Minimum age 14.

CONN. GEN. STAT. ANN. § 53a-35a (West 2007 & Supp. 2008) (mandatory sentence of LWOP or death for capital murder).

CONN. GEN. STAT. ANN. § 46b-127 (West 2004 & Supp. 2008) (mandatory transfer to adult court for children age fourteen and above for enumerated felonies).

DELAWARE

Imposes JLWOP (mandatory) Any age.

DEL. CODE ANN. tit. 11, § 4209 (2001 & Supp. 2005) (mandatory LWOP for "any person" convicted of first degree murder).

DEL. CODE ANN. tit. 10 §§ 1010, 1011 (1999 & Supp. 2006) ("child shall be proceeded against as an adult" for enumerated felonies; child can request hearing and court may transfer back to juvenile court at its discretion).

FLORIDA

Imposes JLWOP (mandatory) Any age.

FLA. STAT. ANN. § 775.082 (West 2005 & Supp. 2008) (mandatory LWOP for juveniles convicted of murder).

FLA. STAT. ANN. § 985.225 (West 2001) ("child of any age" may be indicted for crimes punishable by death or life imprisonment; once

indicted, child must be "tried and handled in every respect as an adult"; once convicted, "child shall be sentenced as an adult").

GEORGIA

Imposes JLWOP (discretionary) Minimum age 13.

GA. CODE ANN. §§ 17-10-30.1, 17-10-31.1 (2004 & Supp. 2007) (LWOP or life discretionary sentence for murder), 17-10-7(b)(1&2) (authorizing mandatory LWOP for recidivist offenders).

GA. CODE ANN. § 15-11-28(b) (2005 & Supp. 2007) (concurrent juvenile and adult court jurisdiction over child of any age accused of crime where adult would be punished by death, LWOP, or life; mandatory adult court jurisdiction for such crimes if committed by child over 13 years old, no reverse transfer if child over thirteen).

GA. CODE ANN. § 15-11-28(b)(1) (2005 & Supp. 2007) (juvenile court has concurrent jurisdiction with superior court where child is alleged to have committed an act for which an adult defendant would receive the sentences of death, LWOP, life, or imprisonment).

GA. CODE ANN. § 15-11-28(b)(2)(A) (2005 & Supp. 2007) (exclusive superior court jurisdiction over any child ages thirteen to seventeen who has committed enumerated offenses).

GA. CODE ANN. § 16-3-1 (2007) (child cannot be found guilty of crime if committed it below age thirteen).

KMS v. State, 200 S.E.2d 916 (Ga. Ct. App. 1973) (distinguishing between finding of delinquency, which is permitted for children below age thirteen, with adjudication of guilt for crime, not permitted for children below age thirteen).

HAWAII

Imposes JLWOP (discretionary) Any age.

HAW. REV. STAT. §§ 706-656, 706-657 (1993 & Supp. 2007) (mandatory LWOP for first degree murder or attempted murder and for what would be considered "heinous" second degree murder, but, "[a]s part of such sentence the court shall order the director of public safety and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment").

HAW. REV. STAT. § 571-22 (2006 & Supp. 2007) (no age limit for discretionary transfer to adult court of juveniles for first degree murder or second degree attempted murder).

IDAHO

Imposes JLWOP (discretionary) Any age.

IDAHO CODE ANN. § 18-4004 (2004 & Supp. 2007) (LWOP discretionary penalty for first degree murder).

IDAHO CODE ANN. § 20-508 (2004 & Supp. 2007) (mandatory transfer to adult court for juveniles ages fourteen to eighteen accused of enumerated crimes, discretionary transfer for children below age fourteen accused of enumerated crimes).

IDAHO CODE ANN. § 20-509(3)–(4) (2004 & Supp. 2007) (juvenile tried as an adult can be sentenced pursuant to adult sentencing measures, pursuant to juvenile sentencing options, or a court can commit the juvenile to custody of the department of juvenile corrections and suspend the sentence or withhold judgment).

ILLINOIS

Imposes JLWOP (mandatory) Minimum age 13.

730 ILL. COMP. STAT. ANN. 5/5-8-1 (West 2007) (details mandatory minimum sentences for felonies; for first degree murder, if death cannot be imposed and one aggravating factor proven the mandatory sentences is LWOP, if no aggravating circumstances, the sentence is twenty to sixty years).

705 ILL. COMP. STAT. ANN. 405/5-130(4)(a) (West 2007) (mandatory adult court jurisdiction over children at least thirteen years old accused of "first degree murder committed during the course of either aggravated criminal sexual assault, criminal sexual assault, or aggravated kidnapping").

INDIANA

Imposes JLWOP (mandatory) Minimum age 16.

IND. CODE ANN. § 35-50-2-3 (LexisNexis 2004 & Supp. 2007) (limiting discretionary LWOP sentence to people above age sixteen for the crime of murder).

IOWA

Imposes JLWOP (mandatory) Minimum age 14.

IOWA CODE ANN. § 902.1 (West 2003) (LWOP sentences are mandatory upon conviction for "Class A Felony").

IOWA CODE ANN. § 232.45(6)(a) (West 2006) (juvenile court may waive jurisdiction over a child as young as fourteen).

KANSAS

Does not impose JLWOP.

KAN. STAT. ANN. § 21-4622 (2007) (LWOP not permitted as a sentence for capital murder or first degree murder where defendant is less than eighteen years old).

KENTUCKY

Does not impose JLWOP.

KY. REV. STAT. ANN. § 640.040 (West 2006 & Supp. 2007) (limits youthful offender convictions to life with parole after twenty-five years).

KY. REV. STAT. ANN. § 635.020 (West 2006 & Supp. 2007) (mandatory transfer to adult court of juvenile for use of a firearm and adult sentence applied); *see* Britt v. Commonwealth, 965 S.W.2d 147 (Ky. 1998) (section 640.010 applies to juveniles, including cases transferred under 635-020).

See Shepherd v. Commonwealth, 2006-SC-000450-MR, 2008 Ky. LEXIS 30 (Ky. Sup. Ct. Feb. 21, 2008) (error to provide jury instruction on LWOP sentence as an option for youthful offenders but not reversible as lesser sentence awarded); *see also* Workman v. Commonwealth, 429 S.W.2d 374 (Ky. 1968) (juvenile LWOP as penalty for rape violative of state constitution); Edmondson v. Commonwealth, 2001-SC-0253-MR, 2002 Ky. Lexis 271 (Ky. Sup. Ct. Dec. 19, 2002) (unpublished decision concerning felony theft by an adult, citing *Workman* in dicta for general proposition that juvenile LWOP is unconstitutional).

LOUISIANA

Imposes JLWOP (mandatory) Minimum age 15.

LA. REV. STAT. ANN. §§ 14:30, 14:30.1 (2007 & Supp. 2008) (mandatory LWOP for first- and second-degree murder).

LA. CHILD CODE ANN. art. 305 (2004 & Supp. 2008) (any juvenile fifteen years old or older charged with first-degree murder, second-degree murder, aggravated rape, or aggravated kidnapping must be tried as an adult).

MAINE

Imposes JLWOP (discretionary) Any age.

ME. REV. STAT. ANN. tit. 17-A, § 1251 (Supp. 2006 & Supp. 2007), State v. St. Pierre, 584 A.2d 618, 621 (Me. 1990) (LWOP sentences are discretionary under § 1251).

ME. REV. STAT. ANN. tit. 15, § 3101 (2003 & West Supp. 2007) (discretionary hearing to determine whether to transfer juvenile of any age to adult court for trial for murder or enumerated felonies).

MARYLAND

Imposes JLWOP (discretionary) Any age.

MD. CODE ANN., CRIM. LAW §§ 2-202, 2-203, 2-304 (LexisNexis 2002 & Supp. 2007) (LWOP sentence discretionary for enumerated crimes).

MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-06 (LexisNexis 2006 & Supp. 2007) (discretionary transfer to adult court of child of any age accused of murder).

MASSACHUSETTS

Imposes JLWOP (mandatory) Minimum age 14.

MASS. GEN. LAWS ANN. ch. 265, § 2 (West 2002 & Supp. 2008) (LWOP mandatory for juvenile convicted of first degree murder). MASS. GEN. LAWS ANN. ch. 119, § 72B (West 2002) (treating a juvenile fourteen or older as an adult for murder in the first or second degree); § 74 (removing from juvenile court jurisdiction any juvenile fourteen or older charged with murder in first or second degree).

MICHIGAN

Imposes JLWOP (discretionary) Any age.

MICH. COMP. LAWS § 712A.4 (2005 & Supp. 2008) (court has discretion to try children as adult offenders, but if under fourteen years old waiver hearing required).

MICH. COMP. LAWS § 769.1 (2002 & Supp. 2008) (allows adult sentences for children convicted of certain crimes).

MICH. COMP. LAWS § 750.316 (2003 & Supp. 2008) (imprisonment for life for first-degree murder); MICH. COMP. LAWS § 791.234(6) (certain sentences of life imprisonment mean no eligibility of parole, including murder in first degree § 750.316).

MICH. COMP. LAWS § 791.244 (2005 & Supp. 2008) (Governor may grant clemency after serving ten years of an LWOP sentence).

MINNESOTA

Imposes JLWOP (mandatory) Minimum age 14.

MINN. STAT. ANN. § 609.106 (West 2003 & Supp. 2008) (mandatory LWOP for enumerated "heinous" crimes, including first degree murder).

MINN. STAT. ANN. § 260B.125 (West 2007 & Supp. 2008) (discretionary waiver, age fourteen).

MISSISSIPPI

Imposes JLWOP (discretionary) Minimum age 13.

MISS. CODE ANN. § 97-3-21 (West 2005 & Supp. 2007) (LWOP sentence discretionary for murder).

MISS. CODE ANN. §§ 43-21-151(a), 43-21-157(8) (West 2008) (mandatory adult court jurisdiction limited to age thirteen for any felony punishable by life; mandatory adult court jurisdiction after age thirteen for any felony punishable by life in prison or death).

MISSOURI

Imposes JLWOP (mandatory) Minimum age 12.

MO. ANN. STAT. § 565.020 (West 1999 & Supp. 2008) (mandatory LWOP for first-degree murder juveniles).

MO. ANN. STAT. § 211.071 (West 2004 & Supp. 2008) (discretionary transfer, age limit of twelve for enumerated crimes).

MONTANA

Does not impose JLWOP.

MONT. CODE ANN. § 46-18-219 (2006) (a LWOP sentence must be given if the defendant has been previously convicted of one of the following: deliberate homicide, aggravated kidnapping, sexual intercourse without consent, sexual abuse of children, or ritual abuse of a minor, otherwise LWOP is discretionary sentence for deliberate murder defined by MONT. CODE ANN. § 45-5-102).

MONT. CODE ANN. § 41-5-206 (2006) (discretionary transfer if the child is twelve years or older for enumerated offenses; when the minor is sixteen years of age, more types of offenses are added to the list; if a child is age seventeen and commits enumerated offense, county attorney "shall" file with the district court).

MONT. CODE ANN. § 46-18-222(1) (2007) ("[M]andatory minimum sentences . . . and restrictions on parole eligibility do not apply if . . . the offender was less than eighteen years of age at the time of the commission of the offense."). A 2007 amendment to statute provides exceptions to mandatory minimum sentences and restrictions on parole eligibility for juveniles.

NEBRASKA

Imposes JLWOP (mandatory) Any age.

NEB. REV. STAT. §§ 43-247 (2004 & Supp. 2006), 43-276 (2004) (juvenile court has concurrent jurisdiction with district court for juveniles under age sixteen who commit a felony).

NEB. REV. STAT. § 43-276 (2004 & Supp. 2006) (District Attorney has discretion to file in criminal court, list of factors to be considered).

NEB. REV. STAT. § 28-105 (1995 & Supp. 2006) (Punishment for Class IA felony can be LWOP, discretionary).

NEB. REV. STAT. § 29-2522 (1995 & Supp. 2006) (murder in the first degree mandates LWOP if death penalty not unanimous).

NEVADA

Imposes JLWOP (discretionary) Minimum age 8.

NEV. REV. STAT. ANN. § 200.030 (LexisNexis 2006 & Supp. 2007) (Murder in first degree punishable, among other things, by death or LWOP).

NEV. REV. STAT. ANN. § 194.010 (LexisNexis 2006) (children under eight years of age not liable to punishment, but between ages eight and fourteen are liable to punishment if clear proof that they knew the act's "wrongfulness" at time of commission).

NEV. REV. STAT. ANN. § 62B.330 (LexisNexis 2006) (juveniles committing murder among other offenses not deemed "delinquent acts" and juvenile court has no jurisdiction; crimes are automatically tried in adult court).

NEW HAMPSHIRE

Imposes JLWOP (discretionary) Any age.

N.H. REV. STAT. ANN. § 630:1-a (LexisNexis 2007) (murder in the first degree shall be punished by LWOP).

N.H. REV. STAT. ANN. § 628:1 (LexisNexis 2007) (juvenile under age fifteen not criminally responsible, but for murder in the first or second degree, manslaughter, assault, or other specified crimes, the thirteen-year-old can be held criminally responsible if transferred to superior court).

N.H. REV. STAT. ANN. § 169-B:24 (LexisNexis 2001 & Supp. 2007) (transfer of juvenile to superior court for a trial as adult).

NEW JERSEY

Imposes JLWOP (mandatory) Minimum age 14.

N.J. STAT. ANN. § 2C:11-3(b), (g) (West 2005 & Supp. 2007) (specifically limiting LWOP for juveniles to mandatory LWOP for murder

of police officer, killing a child under age fourteen, or murder in the course of a sexual assault or criminal sexual contact).

N.J. STAT. ANN. § 2A:4A-26 (West 1987 & Supp. 2007) (discretionary waiver of juvenile court jurisdiction over the case if child is age fourteen or over).

NEW MEXICO

Does not Impose JLWOP

N.M. STAT. ANN. § 31-21-10 (LexisNexis 2000 & Supp. 2007) (maximum sentence in state, life imprisonment, has parole eligibility after thirty years).

NEW YORK

Imposes JLWOP Any age—but JLWOP applied only if crime is terrorist act.

N.Y. PENAL LAW §§ 125.25(5), 125.26, 125.27 (McKinney 2004) (element of crime of murder in the first degree (carrying LWOP under § 70.00) is being over age eighteen).

N.Y. PENAL LAW § 490.25(d) (McKinney 2008) (for the crime of terrorism, LWOP applied with no restriction on age as element of crime). *But see* N.Y. PENAL LAW §§ 30.00(1)–(2) (McKinney 2004 & Supp. 2008) (under age sixteen not held criminally responsible, including exceptions for children ages thirteen to fifteen).

NORTH CAROLINA

Imposes JLWOP (mandatory) Minimum age 13.

N.C. GEN. STAT. § 14-17 (2007) (mandatory LWOP sentence for murder in the first degree, for persons under age eighteen).

N.C. GEN. STAT. § 7B-2200 (2007) (mandatory transfer to adult court where probable cause that juvenile committed Class A felonies, age limit thirteen years).

NORTH DAKOTA

Imposes JLWOP (discretionary) Minimum age 14.

N.D. CENT. CODE § 12.1-32-01 (1997 & Supp. 2007) (LWOP discretionary for enumerated crimes).

N.D. CENT. CODE § 12.1-04-01 (1997) (juvenile under the age of seven not capable of committing a crime, and juvenile cannot be tried as adult if under fourteen years of age when he or she committed the offense).

OHIO

Imposes JLWOP (mandatory) Minimum age 14.

OHIO REV. CODE ANN. § 2929.03(E) (LexisNexis 2006 & Supp. 2008) (LWOP or life mandatory for aggravated murder).

OHIO REV. CODE ANN. § 2971.03 (LexisNexis 2007 & Supp. 2008) (mandatory LWOP for murder, rape of victim under ten years, and other sexually violent acts).

OHIO REV. CODE ANN. § 2152.10(B) (LexisNexis 2007 & Supp. 2008) (discretionary transfer of fourteen years or older for felonies, mandatory if prior adjudicated delinquent for other offenses).

OKLAHOMA

Imposes JLWOP (discretionary) Minimum age 13.

OKLA. STAT. ANN. tit. 21, § 701.9 (West 2002 & Supp. 2008) (discretionary LWOP for certain crimes).

OKLA. STAT. ANN. tit. 10, § 7306-1.1(B) (West 2007 & Supp. 2008) (mandatory transfer if age thirteen and above, for first-degree murder).

OREGON

Does not Impose JLWOP.

OR. REV. STAT. § 161.620 (2007); *see also* State v. Davilla, 972 P.2d 902 (Or. Ct. App. 1998) (interpreting § 161.620 to bar juvenile LWOP).

PENNSYLVANIA

Imposes JLWOP (mandatory) Any age.

18 PA. CONS. STAT. ANN. §§ 1102, 9711 (West 1998 & Supp. 2008) (mandatory minimum penalty for murder is life).

61 PA. CONS. STAT. ANN. § 331.21 (West 1999 & Supp. 2008) (no parole until minimum term of sentence served, i.e., life means LWOP).

42 PA. CONS. STAT. ANN. § 6302 (West 2000 & Supp. 2008) (murder not in "delinquent act" definition for juvenile court jurisdiction; certain other crimes not included for child of fifteen years or more).

42 PA. CONS. STAT. ANN. § 6322 (West 2000 & Supp. 2008) (court can transfer murders to juvenile court).

42 PA. CONS. STAT. ANN. § 6355(e) (West 2000 & Supp. 2008) (juvenile court cannot transfer case back to criminal court where criminal court has transferred it to juvenile court pursuant to section 6322).

RHODE ISLAND

Imposes JLWOP (discretionary) Any age.

R.I. GEN. LAWS § 12-19.2-4 (2002 & Supp. 2007) (LWOP discretionary for certain crimes).

R.I. GEN. LAWS § 14-1-7 (2002 & Supp. 2007) (no age limit for transfer of juvenile for enumerated crimes; discretionary, because hearing required).

R.I. GEN. LAWS § 12-19-11 (2002) (mandatory LWOP sentence cannot be suspended or allowed parole).

R.I. GEN. LAWS § 11-23-2 (2002 & Supp. 2007) (sentence for first-degree murder is mandatory life imprisonment).

SOUTH CAROLINA

Imposes JLWOP (mandatory) Any age.

S.C. CODE ANN. § 17-25-45 (2003 & Supp. 2007) (except in cases that impose the death penalty, when convicted of a serious offense as defined in statute, a person must be sentenced to a term of LWOP only if that person has prior convictions for enumerated crimes).

S.C. CODE ANN. § 20-7-7605(6) (Supp. 2007) (discretionary transfer and there is no age limit for murder or "criminal sexual conduct"); *see also* State v. Corey, *529 S.E.2d 20* (S.C. 2000) (construing the lack of discussion of age in § 7605(6) as requiring that there is no age limit).

SOUTH DAKOTA

Imposes JLWOP (mandatory) Minimum age 10.

S.D. CODIFIED LAWS §§ 22-6-1 (1998 & Supp. 2003) (life imprisonment mandatory minimum for juvenile convicted of class A felony), 24-15-4 (life imprisonment means LWOP).

S.D. CODIFIED LAWS § 26-11-3.1 (1999) (mandatory transfer to adult court of juveniles sixteen or older who commit enumerated felonies, hearing at option of juvenile charged where juvenile must prove transfer back to juvenile court is in the best interests of the public; discretionary transfer for ages ten to sixteen).

TENNESSEE

Imposes JLWOP (discretionary) Any age.

TENN. CODE ANN. §§ 39-13-202, 39-13-204 (2006 & Supp. 2007) (penalty for murder in first degree is death, LWOP or life imprisonment).

TENN. CODE ANN. § 37-1-134 (a)(1) (2005 & Supp. 2007) (mandatory transfer for enumerated crimes, no age limit for murder and other enumerated crimes).

TEXAS

Imposes JLWOP (mandatory) Minimum age 10.

TEX. FAM. CODE ANN. § 54.04(d)(3)(A) (Vernon 2005) (maximum term under juvenile court jurisdiction for enumerated felonies including murder is forty years).

TEX. FAM. CODE ANN. § 54.02(a)(2)(A) (Vernon 2002 & Supp. 2007) (juvenile can be transferred to adult court at fourteen years of age for capital felony among others).

TEX. FAM. CODE ANN. § 54.02(j)(2) (Vernon 2002 & Supp. 2007) (transfer allowed between ages ten and seventeen for capital offense per section 19.02).

TEX. FAM. CODE ANN. § 54.02(m) (Vernon 2002 & Supp. 2007) (mandatory waiver without transfer proceedings if previously transferred and convicted in criminal court).

TEX. PENAL CODE ANN. § 8.07(a) (Vernon 2003 & Supp. 2007) (other means of waiving juveniles under age fifteen to adult court jurisdiction).

TEX. PENAL CODE ANN. § 12.31 (Vernon 2003 & Supp. 2007) (mandatory death or LWOP for capital felony).

UTAH

Imposes JLWOP (discretionary) Minimum age 14.

UTAH CODE ANN. § 76-3-206 (2003 & Supp. 2006) (LWOP is a discretionary sentence).

UTAH CODE ANN. § 78-3a-502(3) (2002 & Supp. 2007) (discretionary age limit of fourteen for adult court jurisdiction).

VERMONT

Imposes JLWOP (discretionary) Minimum age 10.

VT. STAT. ANN. tit. 13, § 2303 (1998 & Supp. 2007) (LWOP discretionary for first-degree and second-degree murder).

VT. STAT. ANN. tit. 33, § 5506 (2001 & Supp. 2007) (discretionary jurisdiction for enumerated crimes, with an age limit of ten years).

VIRGINIA

Imposes JLWOP (mandatory) Minimum age 14.

VA. CODE ANN. § 18.2-10 (2005) (life imprisonment mandatory for enumerated offenses); *see* Lenz v. Warden of Sussex I State Prison, 593 S.E.2d 292 (Va. 2004) ("life" means LWOP because there is no parole for someone who receives a life sentence).

VA. CODE ANN. §§ 16.1-269.1 (2003 & Supp. 2007) (mandatory transfer of age fourteen or over if probable cause for certain felonies), 16.1-269.4 (2003) (however, the juvenile can appeal the juvenile court's transfer decision).

VA. CODE ANN. § 53.1-151(B1) (2005 & Supp. 2007) (enumerates when a person sentenced is not eligible for parole including conviction of three felony offenses of murder, rape, robbery).

WASHINGTON

Imposes JLWOP (mandatory) Minimum age 15.

WASH. REV. CODE ANN. § 10.95.030 (West 2002 & Supp. 2008) (mandatory death or LWOP for aggravated murder in first degree).

WASH. REV. CODE ANN. §§ 13.04.030 (West 2004 & Supp. 2008) (exclusive adult court jurisdiction over child sixteen years or older who is accused of committing serious violent offense), 13.40.110 (West 2004 & Supp. 2008) (juvenile court to hold waiver hearing if child is aged fifteen to seventeen and accused of class A felony or attempt, solicitation, or conspiracy to commit class A felony).

WEST VIRGINIA

Imposes JLWOP (discretionary) Any age.

W. VA. CODE ANN. §§ 61-2-2, 62-3-15 (LexisNexis 2005) (LWOP discretionary for first-degree murder).

W. VA. CODE ANN. § 49-5-13(e) (LexisNexis 2004 & Supp. 2007) (notwithstanding any other part of code, court may sentence a child tried and convicted as adult as a juvenile).

W. VA. CODE ANN. § 49-5-10 (LexisNexis 2004 & Supp. 2007) (mandatory transfer of juvenile who is age fourteen or over for certain felonies; discretionary transfer where child below age fourteen accused of committing murder or other enumerated felon under the code).

WISCONSIN

Imposes JLWOP (discretionary) Minimum age 10.

WIS. STAT. ANN. § 973.014 (West 2007) (LWOP discretionary).

WIS. STAT. ANN. §§ 938.18, 938.183 (West 2000 & Supp. 2007) (exclusive adult court jurisdiction with age limit of ten years, for first-

degree intentional homicide, first-degree reckless murder, second-degree intentional homicide; age limited to fourteen for other felonies; limited exceptions also provided).

WYOMING

Imposes JLWOP (discretionary) Minimum age 13.

WYO. STAT. ANN. § 6-2-101 (2005) (LWOP discretionary for first-degree murder).

WYO. STAT. ANN. § 14-6-203(d) (2007) (juvenile court has exclusive jurisdiction in cases involving minor under age thirteen for felony or misdemeanor punishable by over six months in prison).

WYO. STAT. ANN. § 14-6-203(f)(iv) (2007) (concurrent adult and juvenile court jurisdiction, with an age limit of fourteen, for enumerated felonies).

WYO. STAT. ANN. § 14-6-237 (2007) (discretionary transfer between adult and juvenile court).

DISTRICT OF COLUMBIA

Does not Impose JLWOP

D.C. CODE § 22-2104(a) (2001 & Supp. 2008) (no LWOP for juveniles).

Otter Creek Associates

Psychiatric and Psychological Services for Children, Adults and Families

86 Lake Street
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Fax 802-860-5011

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June 2, 2009

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
2409 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Conyers and Ranking Member Smith,

I'm writing in support of H.R. 2289, The Juvenile Justice Accountability and Improvement Act of 2009. It's my understanding that this bill would eliminate life without parole for crimes committed by juveniles at both the state and federal level. It would also enhance access to appropriate legal representation for indigent youth.

As a child and adolescent psychiatrist, I have had firsthand experience working with juveniles who have committed serious crimes. From a clinical perspective, I have seen an increased incidence of abuse, head injuries, mental illness and early exposure to drugs, alcohol and violence. I have also met adults incarcerated for crimes committed as juveniles, sometimes decades in the past. From a developmental perspective, it's clear that they are now very different people.

As you may be aware, there are currently over 2,500 people serving sentence of life without parole for crimes committed before age 18. Fifty-nine percent received their sentences for their first ever criminal conviction. Sixteen percent were between 13 and 15 when they committed their crimes, and 26% were sentenced under a felony murder charge where their offenses did not involve carrying a weapon or pulling a trigger.

Our society recognizes that juveniles differ from adults differ from adults in their thinking, reasoning, and decision making capacities. Research has also demonstrated that adolescents actually use their brains in fundamentally different ways from adults. As a result, they are more likely to act on impulse, without fully considering the consequences of their actions.

Legislation eliminating juvenile life without parole is currently under review in several states. The Supreme Court has also agreed to hear the cases of two people sentenced to life without parole for crimes committed as juveniles. Oral arguments are scheduled for the fall term. I'm pleased that Congress will also have an opportunity to review and consider this issue through H.R. 2289. I would urge you to act favorably on this legislation. It's time to stop sentencing young people to die in jail.

Please feel free to contact me if I can be of any assistance on this issue.

Regards,

David Fassler, M.D.
Clinical Director

Clinical Professor of Psychiatry
University of Vermont
College of Medicine

Allen K. Perritt
5200 Burgamy Swamp Rd.
Highland Home, AL. 36041

Dear Members of the committee on the Judiciary,

I am writing today as a family member of someone serving JLWOP, to urge you to co sponsor the Juvenile Justice Accountability and Improvement Act of 2009 (HR2289). My brother is serving a life sentence with no possibility for parole for a crime committed when he was only 17 years old. Please give him the chance to go before the parole board and let the parole board decide whether my brother has been rehabilitated and could lead a productive law abiding life if released. Otherwise he will die in prison without ever having had a chance to prove that he has changed and is deserving of a second chance.

My name is Allen Perritt. My brother Victor Perritt is serving the rest of his life for a crime committed when he was a child. My brother and I lost both of our parents in a horrible car wreck when we were young teens . We were sent to live with our oldest brother and his wife. His wife felt we were a burden and mistreated us. Victor left and stayed with a friend. I was misbehaving, skipping school and later sent to Louisiana Training Institute. Victor started drinking and doing drugs with his friend whom later committed a crime. Victor was scared and didn't tell on his friend so he was charged as an accomplice. I was not allowed to attend Victor's trial because I was in school. My brother was sent to Angola to serve the rest of his human life locked behind bars. Victor was a seventeen year old child locked behind bars with adult men where he was raped, beaten and abused. I got into a lot of trouble growing up and went to jail numerous times for small crimes. I left Louisiana as an adult. I honestly believe that if I hadn't left the great state of Louisiana, I too would be serving time in Angola. Since leaving Louisiana, I have kept the same job for nine years. I have gotten married. I found God and I am now a deacon of my church in Alabama. I am an example of the fact that someone can be rehabilitated and live a normal life away from crime.
I try to visit Victor at least twice a year, take phone calls and sent a small money order monthly. I couldn't help Victor at trial as a child but I can try to stand up for him now as we are both adults. Pease give my brother a chance to prove that he has grown up. He has learned his lesson and could be a productive law abiding citizen if given a chance.

This bill, if made law would require reviews of life sentences give to youth after 15 years of incarceration, and then every three years thereafter, which is an appropriate alternative to sentencing youths to life without the possibility of parole. In the United States there are more that 2,500 people serving life without the possibility of parole for crimes committed before their 18th birthday. There are no such cases in the rest of the world. Punishment of youths should be focused on rehabilitation and reintegration into society.
Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released into the streets. Instead , it will allow for careful periodic reviews to determine whether, 15 years later people sentenced to life without parole as a youth continue to a threat to the community. I urge you to co-sponsor the Juvenile Justice

Accountability and Improvement Act of 2009, which acknowledges the critical difference between youths and adults , and imposes an age appropriate sentence that recognizes a young persons potential for growth and reform. I urge Congress to pass this law to hold youth accountable, prioritize public safety, and protect one's human right to the opportunity for rehabilitation.

Sincerely,
Allen K. Perritt

May 30, 2009

TO: The Honorable John Conyers for the Judiciary Committee

RE: Hearing on HR 2289, June 9, 2009

Dear Chairman Conyers and the Judiciary Committee,

I want to express my desire for my letter to be a part of the public record at this hearing. We have a systemic problem in our society which begins much earlier than when a child commits a crime for which ~~there~~ we, as the most powerful country in the world, have no mercy.

Of course, it is a daunting task to fix the problem where it begins in our American households. But we can begin to influence our youth in schools, churches, with diversion programs, volunteer programs and education. We must begin to give our youth back the soul of this country which has been lost to media, the apathy of generations they spring forth from and the breakdown of American families and schools.

But what do we do as a society about these youths being held in our prisons with no hope of release EVER? Many of these youths deserve a second chance. There are mitigating circumstances in almost all of the cases. There are mandatory sentencing laws which gave judges no choice even though many saw the absurdity of the sentencing. There was negative adult involvement, influence and abuse in many of these cases. There are an outstanding number of these youths who were not killers and have been given life in prison with no hope of parole for a first offense. There is huge racial disparity among these youths.

Are these throw away children? I think not! You must act to adopt HR 2289 as a standard for these children so that they have a chance to be looked at for meaningful parole. We, as a society, must come together with plans for re-education and restorative justice. We must begin to heal this country starting with our youth.

Sincerely,

Catherine C. Lambert
919 Silver Mesa Dr.
Durango, CO 81301
970-382-9089
lambert@mydurango.net

Cat Lambert

From: "Amy Pullella" <apullella@hotmail.com>
To: "Cat Lambert" <lambert@mydurango.net>
Sent: Thursday, May 28, 2009 9:05 PM
Subject: Letter for June 9th Hearing

AMY L. PULLELLA
2069 River Reach Dr.
Apt. 424
Naples, FL 34104
Phone (239) 234-6638
apullella@hotmail.com

May 29, 2009

To Whom It May Concern,

I am contacting you on behalf of the more than 2,500 juveniles in our country that are currently serving their entire lives behind bars without any possibility of release. Here in America, our justice system is riddled with children who commit illegal acts. Violating the law is common among many juveniles. Many of these young violators are in need of mental health or substance abuse treatment. However, instead of receiving the necessary help, they are subject to undue sentences.

Our country, along with only one other country, agrees that putting kids away forever is a justified practice. We, as a nation, believe that this is a deterrent for future juvenile crime and is reasonably delivered. Somalia is the only other country that engages in this malicious treatment.

The effects of JLWOP on the offenders' families is immeasurable. Parents and guardians of these kids are devastated and have to watch helplessly while their own child is thrown away into a facility to live out the rest of his/her days. The child is essentially raised in an environment that is neither nurturing nor accommodating to the needs of a youngster.

Studies have proven that the human brain is not developed to full capacity until age 25. "During adolescence, the brain begins its final stages of maturation and continues to rapidly develop well into a person's early 20s, concluding around the age of 25" (Coalition for Juvenile Justice, 2009). Thus, how can one be tried and convicted as an adult if the individual has not nearly reached complete development both in brain function and chronological age?

America contends to base its principles upon equality, making laws that prevent discrimination in the workplace and otherwise. Yet, adults are continually receiving lighter sentences than that of minors. The value of life is demeaned when kids are becoming our wasted future generations.

Mental illnesses and abusive familial circumstances play a major role in the behavior and

conditions of children's actions. Many of the kids that are subject to criminalized activity are the result of mental abnormalities and/or endured abuse. Often, these components are not factored into a youth's sentencing. Moreover, no treatment for any of this is adequately provided in the prison system.

Some people may object to lessening penalties for persons who commit crimes due to the reasoning of "do the crime, do the time." Others may view it as insensitivity to the victims of the crimes. However, justice can be served without complete destruction of many lives, and children are the most susceptible to being rehabilitated to then live productive, successful lives. Do some particular crimes committed by these young people rightfully and morally even deserve a life sentence? Shouldn't each case be examined individually to determine the proper sentencing structure for the specific person and situation of crime? If we view humanity as a whole, we fail to recognize individuality and neglect to implement equity for each person into society.

Furthermore, the parole board will make a decision whether to release an individual based on several factors comprehensively examined. Some of these elements include: "the seriousness of the crime committed, danger to the public, the offender's risk of re-offending, history of prior criminal activity, history of deviant behavior" (Department of Corrections, 2009) and many more. The parole board is acceptable for determining outcomes for adult offenders and should be provided for investigating juveniles in this lifelong circumstance as well.

This is not to say that all youth offenders will merely be released out into society. The Juvenile Justice Accountability and Improvement Act of 2009 will enable each case to be examined after a period of 15 years to determine the readiness and capability of the individual in question. I urge you to co-sponsor this bill, so that our children may have a fair chance at successful and productive futures.

Sincerely,

Amy L. Pullella
Advocate for Abolishment of Juvenile Life Without Parole

References:

Coalition for Juvenile Justice, (2009). Adolescent Brain Development. Retrieved April 20, 2009, from Act 4 Juvenile Justice Web site: http://www.act4jj.org/media/factsheets/factsheet_12.pdf

Department of Corrections, (2009). Decision making by the parole board. Retrieved April 20, 2009, from Department of Corrections, Agency of Human Services Web site: http://www.doc.state.vt.us/about/parole-board/parole-decisions

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521-09

To the Honorable John Conyers, Chairman
of Judiciary Committee.

My Uncle Albert Baker, Has been in Prison
for some years now, and had the chance to
think about what He has done or has not done.
Mr. Conyers as being a child in life at the age
of 14 a child Brains is not fully develop to know
what He or she May think or do. My Uncle is truly
sorry for what Has happed in the Family Life
and wish he could turn Back the Hands of time.
But all due to respect. I Sunshine Baker ask you
in Jesus Name to give My Uncle Albert Baker Parole
June 9th HR 2219-2289) So He can Prove him
Self to God and Society. He Has already changed
now. Please give Him that chance, He can't change
what Happed but he can talk to others not to go
down the same Path He did. Thank you for
Hearing My Cry For My Uncle Albert Baker.

Sign Sunshine Baker
Priscilla Baker
Willie Baker
244 College St.
Brundidge, AL
36010

To Honorable John Conyers, Chairman.
5-21-09

To whom it May Concern of House Judiciary Committee My Brother albert Baker Has a Crime on his Life that He is Very Very sorry about My brother has been in Prison since He was 14 years old and now He is 42 or 43 years old He Has Turned his Life around and now Living for Jesus Christ and Helping others to do the same. He is not the same Person He was when He went in. He Has truly changed for the Better. I Terica Baker ask the House of Judiciary Committee to Please in the Name of Jesus Christ to Please give My Brother Albert Baker 2nd Chance in Society. a Chance to Prove Himself to God and to Society. I ask you for Grace and Mercy in the Name of Jesus Christ I ask you to Hear My Cry here My Plea for My Brother albert Baker. To Redeem Himself.

Thank you Jesus

To The House Judiciary Committee.
HR 2219-2289

Amen

Terica Baker
244 College St.
Brundidge, AL
36010

Tara Barber
1353 17th Way SW
Birmingham, Al 35211
Phone: (205)929-6524 or (205)296-3582
Email: tara.barber@fms.treas.gov

Dear Jody Kent,

I am writing to you on behalf of Cecil Montgomery (AIS#216083), in the West Jefferson Correctional Facility. I have known him for 17 years and he is a really great person. I don't see him as a bad person at all. He is a loving, caring, respectful, and smart person. I can see that he has built a relationship with God and put him first in his life. He is not a violent person that goes around looking for trouble. He's been incarcerated for almost nine years and nothing is in his file about violence. I think he deserves another chance to show society that he is really a great person. He talks about giving back to his community and talking with schools about drugs and violence and I really believe that a good thing for him to want and do that. He has got his Diploma and his GED while incarcerated. He come from a loving family that love and care about him. I also believe that he has learned a lot since he's been incarcerated and I believe that prison is not for him and that he did not get a fair sentencing. I really believe that Cecil Montgomery is a changed person and that he has open his heart to God and God has helped turn his life around. God has really changed his life in many ways. He has let go of all negative people and things. He reads his Bible and goes to church. He has learned that when things seem difficult and the devil try and stand in your way, that when you go to God he will turn it around for your good. God is with him and "If God is for him, who can be against him", Cecil Montgomery is truly loved and he is a loving and friendly person.

MAY-27-2009 18:49 FROM:JAMES JUSTICE/JENNIF 970 2473072 TO:3823830 P.1/1

May 27, 2009

The Honorable John Conyers
Chairman of the House Judiciary Committee
1201 Longworth HOB
Washington DC 20515

Dear Judge Conyers,

We support HR 2289, the Juvenile Justice Accountability and Improvement Act of 2009. Young people must be at least given the opportunity to reform and grow. Justice can be doled out so unequally that it is imperative that after 15 years of incarceration a person is able to have the possibility of parole.

Please consider the case of Jimmy Shane Click, 178051, Alabama DOC. He was present at a murder, but did not commit it. He has been in prison since he was 17 years old and has become a stable individual. As a man now in his mid-30s, Mr. Click could become a contributing member of the community.

We urge wide support of HR 2289.

Jennifer V. Guy
James Justice
3648 County Road 228
Durango CO 81301

May 27, 2009

The Honorable John Conyers, Chairman of the House Judiciary Committee
1201 Longworth HOB
Washington, DC 20515

RE: Letter to the Judiciary, regarding HR 2289, the Juvenile Justice Accountability and Improvement Act of 2009

Dear Honorable Members of the Judiciary Committee,

I am writing on behalf of the National Campaign for the Fair Sentencing of Youth to urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009. This bill, if made law, would require reviews of life sentences given to youth (individuals under the age of 18) after 15 years of incarceration, and every three years thereafter, which is an appropriate alternative to sentencing youth to life without the possibility of parole. We oppose sentences of juvenile life without parole (JLWOP) because the differences between youth and adults are recklessly disregarded and young people are declared beyond reform.

As the mother of a sixteen year old son, one thing is very clear to me, and behavioral research confirms, ***children do not have adult levels of judgment, impulse control, or the ability to assess risks and consequences.*** I sometimes think my son's brain is mush! I can surely see how a teenager, like my friend's son, Jimmy Shane Click, 178051, Alabama DOC, who was being treated for schizoaffective disorder, might choose the wrong friends, make some foolish choices, and end up incarcerated for life without parole. Shane has made incredible progress in the past 20 years against unbelievable odds, but has no chance to prove it! I look at Shane's situation and think, "That could be my nephew", who also has schizoaffective disorder, or "That could be my son", who is just an impulsive teen who has made poor choices that fortunately didn't have serious consequences, knock on wood!

In *Roper v. Simmons* the Court explained, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Punishment of youth should be focused on rehabilitation and reintegration into society. Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released to the streets. Instead, it will allow for careful, periodic reviews to determine whether, 15 years later, people sentenced to life without parole as youth continue to pose a threat to the community. This bill acknowledges the critical difference between youth and adults, and imposes an age-appropriate sentence that recognizes a young person's potential for growth and reform. We urge Congress to pass this law to hold youth accountable, prioritize public safety, *and* protect one's human right to the opportunity for rehabilitation.

Sincerely,

Debra A. Williams

Debra A. Williams
1117 Bluefield Ave.
Huntsville, AL 35801

To: Letter to members of the U.S. House of Representatives Judiciary Committee

RE: June 9, 2009 hearing for HR 2289

As members of the U.S. House of Representatives Judiciary Committee, I believe you have a moral responsibility to educate yourself concerning HR 2289, to share your findings concerning this extremely important legislation with your peers and then to vote in support of its passage.

Research shows undeniable evidence that young people are more capable of creating positive change in their lives than adults. Therefore, youth under the age of 18 should never be sentenced to prison for the rest of their lives without hope of release.

The world community has recognized this fact and it is a travesty that the United States of America, who boasts of protecting the rights of the individual, is the only country in the world with individual states which deny young people the right to be remorseful, to be rehabilitated and to return to society as productive citizens.

This bill does not guarantee undeserved freedom. It merely insures periodic review which will determine if these individuals still pose a threat or if they have indeed paid their debt, and have earned the right to freedom.

Signed:

Ronald S. Tyner
120 CR 236
Durango, CO 81301

Ronald S. Tyner

To: Letter to members of the U.S. House of Representatives Judiciary Committee

RE: June 9, 2009 hearing for HR 2289

As members of the U.S. House of Representatives Judiciary Committee, I believe you have a moral responsibility to educate yourself concerning HR 2289, to share your findings concerning this extremely important legislation with your peers and then to vote in support of its passage.

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This bill does not guarantee undeserved freedom. It merely insures periodic review which will determine if these individuals still pose a threat or if they have indeed paid their debt, and have earned the right to freedom.

Sincerely,

Kathryn Tyner
120 CR 236
Durango, CO 81301

Kathryn Tyner

Kathryn Tyner

Fernandez A. Steele, Jr.
10314 Colevas Turn
Cheltenham, MD 20623

Dear Representative Bobby Scott,

I am writing as a former resident of Louisiana with a family member serving JLWOP to urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009 (HR 2289). My brother, Ronald Reynolds, is serving a life sentence with no possibility for parole for a crime committed when he was 17 years old in the Louisiana State Prison. Please give him the chance to go before a parole board and let the parole board decide whether my brother has been rehabilitated and could lead a productive law-abiding life if released. Otherwise, he will die in prison without ever having a chance to prove that he has changed and deserving of a second chance.

In the 18 years Ronald has been incarcerated, he has obtained his GED, completed Votech trade in carpentry, completed several distant learning classes from LSU in psychology, trained in American Sign Language I, IB, and IC and II by Dr. Daniel D. Burch, interprets for the deaf at Louisiana State Penitentiary, assists and cares for the sick and dying as a member of the Hospice Program; has helped hundreds of prisoners with recovery from drug addiction as the President of the Substance Abuse Clinic, counseled a multitude of men with alcohol problems as the President of New Hope Group A.A., has may hours of training in the law and works as an Inmate Counsel Substitute and currently assist other inmates with their criminal law cases, he has spoken to hundreds of youths visiting the Louisiana State Penitentiary as part of the Juvenile Awareness Program, currently the Secretary of Full Gospel Business Fellowship and serves a spiritual advisor in the church, he is an HIV and AIDS peer counselor, successfully completed the Jaycees personal development classes and now instructs numerous classes for Jaycees, he unselfishly serve the Angola community as a member of the Point Look-Out Project that is responsible for burying the deceased prisoners with dignity, and possesses many certificates of completion for his participation in many organizations and programs the prison has to offer.

This bill, if made law, would require reviews of life sentences given to youth (individuals under the age of 18) after 15 years of incarceration, and every three years there after, which is an appropriate alternative to sentencing youth to life without possibility of parole. In the United States, there are more than 2,500 people serving life sentences without the possibility of parole for crimes committed before their 18th birthday. There are no such cases in the rest of the world.

In Louisiana, children are incarcerated for life at a higher rate than any other state in the country. This is because of automatic adult transfer laws intersecting with mandatory sentencing laws. HR 2389 would correct this sentencing practice that has lead to incredibly high incarceration rates without compromising public safety by allowing for a meaningful review of those currently serving life without parole for crimes committed when they were juveniles. In our great sate, the Catholic Bishops, the Council of

Juvenile and Family Court Judges, the children's Defense Fund as well as numerous Wardens and Law Enforcement Officials have come out in support of ending this sentencing practice. You have the support of people at home, and we urge you to take this important step for our children.

Punishment of youth should be focused on rehabilitation and reintegration into society.

Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released to the streets. Instead, it will allow for careful periodic reviews to determine whether, 15 years later, people with sentences of life without parole as a youth, continue to pose a threat to the community. I urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009, which acknowledges the critical difference between youth and adults, and imposes an age-appropriate sentence that recognizes a young person's potential for growth and reform. I urge Congress to pass this law to hold youth accountable, prioritize public safety, and protect one's human right to the opportunity for rehabilitation.

Very Respectfully,

Fernandez A. Steele, Jr.
10314 Colevas Turn
Cheltenham, MD 20623

IllinoisVictims.Org

IllinoisVictims.Org
Board of Directors

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Loves Park, IL

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Rockford, IL

Barbara McNally
Bartlett, IL

Terry Hoyt
St. Petersburg, FL

Kristina Lindsay
Chicago, IL

June 15, 2009

To the Crime Subcommittee of the United States House Judiciary Committee;

We, the Board of Illinois' statewide Victims Rights Organization, are writing to officially oppose HR 2289 that would retroactively, as we believe unconstitutionally, change life without parole sentences for some of the worst murderers in the nation.

While reforms are often called for, protections to the offender should be made on the INPUT end, and once they are convicted and duly sentenced, retroactive changes should not be made, especially when, as this bill does, the primary burden is only shifted to the Victims Families of these horrific murder cases.

We respectfully insist that the US Congress cease and desist these kind of legislative efforts that are largely a re-traumatization of innocent and deeply damaged victims' families.

And if there is an issue, like "juvenile life without parole" that you all think needs a public policy discussion, then you must first bring the victims' families as KEY stakeholders into this debate with notification and some small resources for supporting their ability to have a say in a discussion that so profoundly would affect them.

HR 2289 is torture to victims' families, taking away all legal finality and requiring them to have to fight the offender's release every three years for potentially the rest of their lives.

We stand ready to assist as needed to advise you on better ways to proceed. You can contact us through our website anytime.

Respectfully,

Terry Mayborne,
President

June 15, 2009

House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Chairman, Robert "Bobby" Scott & Ranking Member, Louie Gohmert
2138 Rayburn House Office Building
Washington SC 20515
Attention: Kimani Little, Kimani@mail.house.gov

RE: OPPOSITION TO H.R. 2289

Dear Committee Chairman, Robert "Bobby" Scott
and Ranking Member, Louie Gohmert,

The Crime Victims Action Alliance strongly opposes HR 2289.

The Crime Victims Action Alliance (CVAA), formerly known as the Doris Tate Crime Victims Bureau, is a crime victim's rights organization based in California. CVAA has been active in the legislative process, supporting legislation that helps victims and promotes public safety, for 17 years.

The sentence, life without the possibility of parole, is reserved for individuals who have committed the most **egregious** crimes.

HR 2289 creates defacto lifer hearings for LWOP juveniles that is costly and unnecessary. Currently, all persons are afforded ample screening under current state laws to determine the appropriate sentence. In determining whether to apply the sentence of life without the possibility of parole, the prosecutor, the judge and the jury must all agree that the sentence fits the crime. In the event the convicted does not agree with the sentence, there are remedies such as filing an appeal, or a habeas petition - a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. In addition, the Governor of each state has the power to grant clemency and pardons.

HR 2289 will override the will of the people in many states, overturning statewide initiatives that were placed on the ballot and voted for by the people of that state. In addition state legislatures and Governors across the country have continued to support this punishment as suitable for the most violent and dangerous individuals.

Due to the fact that there are currently legal remedies in place for those who believe that they have been wrongly convicted, there is no justification for this costly legislation. We vehemently oppose HR 2289.

Sincerely,
Christine Ward
Executive Director

1809 S Street, #101316 Sacramento, CA 95811
Phone: 916-273-3603 Toll Free/Fax: 888-235-7067 Email: information@cvactionalliance.org

House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Chairman, Robert Bobby Scott & Ranking Member, Louie Gohmert
2138 Rayburn House Office Building
Washington SC 20515
Attention: Kimani Little, Kimani@mail.house.gov

OPPOSITION TO: H.R. 2289:

Dear Committee Chairman Scott, Ranking Member Gohmert, and Committee Members

Crime Victims United of California is opposed to HR 2289.

The sentence, life without the possibility of parole, is reserved for individuals who have committed the most egregious crimes. This bill destroys the punishment that the people, in many states, have voted to enact. In addition state legislatures and Governors across the country have continued to determine that this punishment is suitable for the most violent and dangerous individuals and important to protecting the safety of their citizens.

HR 2289 creates defacto lifer hearings for LWOP juveniles that are costly and unnecessary. Currently, in most states, all persons are afforded ample screening under current laws to determine the appropriate sentence. In the event the convicted does not agree with the sentence, there are remedies such as filing an appeal, or habeas petition - a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. In addition, the Governor of each state has the power to grant clemency and pardons.

For many states, HR 2289 will override the will of the people, by basically overturning statewide initiatives that were voted on by the citizens of that state.

Due to the fact that there are currently legal remedies in place for those who believe that they have been wrongly convicted, there is no justification for this costly, unnecessary legislation.

Where is the compassion for the innocent victim and their family? H.R. 2289 is a disgrace and re-victimizes victim survivors of Juvenile LWOP Killers.

CVUC would appreciate your "NO" vote on H.R.2289

Sincerely,

Harriet Salarno
President/Chair
Crime Victims United of California
1346 N. Market Blvd
Sacramento CA 95834
P: 916-928-4797 / F: 916-928-0072
www.crimevictimsunited.com,
Email; mail@crimevictimsunited.com

AUBURN OFFICE:
11400 Atwood Rd
Auburn CA 95603
P: 530-885-9544 / F: 530-885-4608
Email; cvuc@sbcglobal.net

HS: me

CITIZENS FOR LAW AND ORDER, INC.
"dedicated to law and order with justice for all"

June 15, 2009

House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Chairman, Robert "Bobby" Scott & Ranking Member, Louie Gohmert
2138 Rayburn House Office Building
Washington SC 20515
Attention: Kimani Little, Kimani@mail.house.gov

RE: OPPOSITION TO H.R. 2289

Dear Committee Chairman, Robert "Bobby" Scott
and Ranking Member, Louie Gohmert,

Citizen's for Law and Order strongly opposes HR 2289.

Citizen's for Law and Order (CLO) is a social welfare organization. For almost 40 years, CLO has successfully encouraged ordinary citizens to actively involve themselves through lawful means in the active support of law and order in our nation, our state, and our local communities. We are committed to reducing violent crime, bringing about a fair and balanced criminal justice system, and rooting out inequities from our judicial processes. We also hold a very special concern for victims and survivors of violent crime and strive constantly to insure for them a central position within the justice system.

The sentence, life without the possibility of parole, is reserved for individuals who have committed the most **egregious** crimes.

HR 2289 creates a defacto lifer hearing process for LWOP juveniles that is costly and unnecessary. Currently, in our nation, all persons are afforded ample screening under state laws to determine their guilt or innocence. If found guilty of a crime, in determining whether to apply the sentence of life without the possibility of parole, the prosecutor, the judge and the jury must all agree that the sentence fits the crime. In the case of jury trials, judges have the authority to over-ride a jury's decision. Though this discretion is rarely if ever used, it is there as a safeguard. If a convicted individual does not agree with their sentence, there are remedies that include filing an appeal, or a habeas petition - a judicial mandate to a prison official ordering that an inmate he brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. In addition, the Governors of each state have the power to grant clemency and pardons.

1809 S Street, #101316, Sacramento, CA 95811
Phone 916-273-3603 Toll Free/Fax 888-235-7067

HR 2289 is a bully tactic that will force states to comply with a decision that many do not agree with. Especially in these tough economic times, limiting law enforcement funds if the states do not abolish LWOP for juveniles will place states in a position that will leave them with no other choice then to adhere to the will of the federal government.

HR 2289 will override the will of the people in many states, overturning statewide initiatives that were placed on the ballot and voted for by the people of that state. In addition, state legislatures and Governors across the country have continued to support this punishment as suitable for the most violent and dangerous individuals.

There are currently legal remedies in place for those who believe that they have been wrongly convicted, there is no justification for this costly legislation.

Citizen's for Law and Order vehemently opposes HR 2289.

Sincerely,
Christine Ward
President

1809 S Street, #101316, Sacramento, CA 95811
Phone 916-273-3603 Toll Free/Fax 888-235-7067

June 13, 2009

House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Chairman, Robert "Bobby" Scott & Ranking Member, Louie Gohmert
2138 Rayburn House Office Building
Washington SC 20515
Attention: Kimani Little, Kimani@mail.house.gov

OPPOSITION TO: H.R. 2289: Removing LWOP sentences from CHILDREN who Murder.

Dear Committee Chairman Scott, Ranking Member, Gohmert and Committee Members:

As a homicide victim survivor of my husband's BRUTAL MURDER by two juveniles, (children?) ages 15 & 16, **I write to you with GREAT OPPOSITION to H.R. 2289.**

On April 28, 1993, my husband was brutally beaten into a coma with a metal pipe during a robbery of his business, "AAA Guns & Archery" in Vista California. Yes he owned a legal business and yes I have been told that he asked to be murdered as he owned a gun shop…what a sick society we live in.

Damion Miller, 4 months short of 16 went in the front door of Ross's business and distracted Ross while Kristopher Kirchner, 2 months over 16 came in the back door with a metal pipe and started to bet Ross of the head with the pipe. The got him down on the floor and continued to beat him. There was blood spatter under the shelves and up the walls. They stole 7 handguns. Thank GOD one of Ross's customers was driving by the front door of the business and seen them run out. He started to chase them until they pointed a gun at him. He went back to the shop and found Ross lying on the floor and called 911. These two were caught in 45 minutes. Ross had 25 skull fractures, was in a COMA for 41 days and passed away on June 7, 1993. It has been 16 long years of pain, sorrow, trying to survive and fighting those with more compassion for the guilty killers.

Damion & Kristopher were in a gang called 187 Crips. Damion's Street name was NINE as he could get Nine MM hand guns for other…YES DAMION HAD PARTICIPATED IN TWO OTHER MURDERS DONE BY TWO 14 YEAR OLD CHILDREN, AS HE SUPPLIED THE GUNS AND WAS NEVER CHANGED. Your theory of this being their FIRST CRIME, is all wrong….THIS is just the FIRST Crime they where caught for and charged with. Damion was held in California Youth Authority for ONLY 9 years because I was at every yearly hearing he had. He was released the day before he turned 25 with no parole. No Responsibility for Restitution that he owns me for the medical bills of $246,000.00. He has been out 6 years and no one knows where he is at. I wonder how many more crimes he is getting away with.

Kristopher Kirchner, street name of 187 INSANE, and two months over 16, went through a 707 hearing to see if he could be tried as an adult. He was turned over to adult court. After many delays he opted for a trial with no jury. I thanked God, as all it would have taken for him to walk free again was one person who had more compassion for the Guilty Killer then the Innocent Victim. We had the fasted murder trial in Vista, Ca. One and ½ days and the Judge found him guilty of First Degree Murder with Special Circumstances. On Sept 15, 1994 the Judge sentenced him to "LIFE WITHOUT THE POSSIBILTY OF PAROL (LWOP)" He was sent to the Ca Youth Authority and after a counselor was murdered at YTS; all CHILDREN over 18 in for murder with life sentences were moved to adult prisons. Since Kristopher has been in adult prison, he has been bad and a danger to the peace officers. He set his cell on fire, he had a cell extraction done on him, he got drunk on pruno and the last event that I know about and attended was his Sacramento trial for almost killing another inmate which he received another 25 to life sentence.

When Kristopher was sentenced to LWOP I walked out of the court room feeling that Ross had received justice, that we would never have to worry about this "CHILD KILLER" getting out and we could try to go on with our lives. Never thinking that we should be looking over our shoulders to make sure that those

6/13/09
Elvey

who have more compassion for guilty juvenile killers, then the innocent victim would be trying to do away with Life sentence for the poor Children and also to go RETROACTIVE in reducing LWOP for those CHILDREN who had already received the LWOP Sentence for a brutal, violent crime they CHOOSE to do.

Here in California we have fought a few pieces of this type of legislation on Juvenile LWOP removal and they did not get through. NOW we are fighting Senator Leland Yee's SB399 which is a retroactive bill to do away with LWOP. They say they are not removing LWOP, but the LWOP that I know does not allow for hearings, possible parole hearing, and victims having to attend hearings, reliving the brutal crime over and over. It does not contain stupid stipulations like being in contact with you family, staying out of trouble in prison, etc to qualify you for a hearing. This bill will do away with all LWOP and the Adult Killers will also become able to remove LWOP from their sentence. Check out Defense Attorney Daniel Horowitz web site, www.sb399.com Daniels beautiful wife was brutally murdered by a 16 year old who is doing LWOP as he should be.

I find H.R 2289 to have many flaws;

How can the Federal system go into states and "BLACKMAIL" states into change sentencing laws.
I thought it was ILLEGAL to threaten to take away funding from states if they do not change their LWOP sentence for Juveniles.

In 1990 the voters in the state of California passed Proposition 115 which made it a law that Juvenile Killers, not children, can be sentenced to Life without the Possibility of Parole when they have committed and were found guilty of a First Degree Crime with Special Circumstances. How can the Federal Government come in and change the will of the voters?

Way are the lawmakers and the compassionate friends of Inmates not trying to find and inform the survivors of Homicide Victims of Juvenile LWOP of what is happening across the USA? One day we just wake up and read in the paper that our loved ones killer has had his sentenced reduced. And I have seen this happen.

What about the cost to the victim to attend hearings, parole hearing, to relive the crime over and over, The expense of traveling to where ever the inmate is for a hearing, lodging, food. The victims need for counseling again. Since when is saving money by letting all these killers out more important then public safety.

This is not always the "Childs" first crime; they just have never been caught or charged. Race has nothing to do with the sentencing of LWOP for Juveniles. My husband was murdered by one White who is doing life and one African American who is walking the streets. We have more whites on Death Row here in California then any other race. Why? Maybe it is called, "YOU DO THE CRIME, YOU DO THE TIME."

H.R. 2289 is a disgrace, a slap in the face and re-victimization of victims past and future who have had a loved one murdered by a Juvenile who was or maybe sentenced to a LWOP Sentence.

I ASK FOR YOUR **NO** VOTE ON H.R. 2289.

6/13/09
Elvey

Sincerely,

Maggie Elvey, a Homicide Survivor of Juvenile LWOP
7573 Greenhaven Dr Apt 200 Sac Ca 95831
708 North Ave Escondido CA 92026
H 916-392-9330, W 916-928-4797
magilv@sbcglobal.net

Member of: National Organization of Victims of "Juvenile Lifers"
Parents of Murdered Children, Sacramento Chapter
Crime Victims Action Alliance, Ca
Victim Advocate for Crime Victims United of CA.

CC: Senator Dan Lungren: Fax 202-226-1298
Senator Bryan Bilbray: Fax 202-225-2558
Senator Darrell Issa: Fax 202-225-3303
Senator Ted Poe: Fax 202-225-5547

Kayren Beattie
7811 Phebus Dr.
Baton Rouge, La. 70812
June 11, 2009

Dear Karen Wilkinson,

I am writing as a resident of Louisiana with a friend serving JLWOP, Juvenile Life Without Parole, in Angola State Prison, to urge you to co-sponsor the Juvenile Justice Accountability and Improvement act of 2009 (HR2289). Elijah Wilson is serving a life sentence with no possibility for parole for a crime committed when he was an irresponsible, immature, poorly raised teenager, without positive parental examples, discipline, influences, or support in his life. My husband, Mark, and I tried to encourage him in the right direction and took him under wing through a neighborhood Bible study sponsored through our church, Christian Life Fellowship. Unfortunately, we had to compete with neighborhood thugs, a very dysfunctional home life and the recklessness of his age. Yet, we call him friend. Through our continual contact with Elijah through the years of his incarceration, we have reason to believe that he has changed and is no longer the threat to society that he once was as a teenage boy. Can it be on our own conscience and integrity to allow him to die in prison without ever having had the chance to prove that he has changed and is deserving of a second chance? Please give him the chance to go before a parole board and let the parole board decide whether he has been rehabilitated and could lead a productive law-abiding life if released.

This bill, if made law, would require reviews of life sentences given to youth (individuals under the age of 18) after 15 years of incarceration, and every three years thereafter, which is an appropriate alternative to sentencing youth to life without the possibility of parole. In the United States, there are more than 2,500 people serving life sentences without the possibility of parole for cries committed before their eighteenth birthday. There are no such cases in the rest of the world.

In Louisiana, we incarcerate children for life at a higher rate that any other state in the country. This is because of automatic adult transfer laws intersecting with mandatory sentencing laws. HR 2389 would correct this sentencing practice that has lead to incredibly high incarceration rates without compromising public safety by allowing for the meaningful review

of those currently serving life without parole for crimes committed when they were juveniles. In our great state, The Catholic Bishops, The Council of Juvenile and Family Court Judges, The Children's Defense Fund as well as numerous Wardens and Law Enforcement Officials have come out in support of ending this sentencing practice. You have the support of people at home, and we urge you to take this important step for righteous sake.

Punishment of youth should be focused on rehabilitation and reintegration into society. Enactment of the Juvenile Justice Accountability and Improvement Act of 2009 would not mean that violent people will simply be released to the streets. Instead, it will allow for careful, periodic reviews to determine whether, 15 years later, people sentenced to life without parole as youth continue to pose a threat to the community. I urge you to co-sponsor the Juvenile Justice Accountability and Improvement Act of 2009, which acknowledges the critical difference between youth and adults, and imposes an age- appropriate sentence that recognizes a young person's potential for growth and reform. I urge Congress to pass this law to hold youth accountable, prioritize public safety, and protect one's human right to the opportunity for rehabilitation.

Sincerely,
Mark and Kayren Beattie
7811 Phebus Dr.
Baton Rouge, La. 70812

Psalm 107:10-16

Some sat in darkness and the deepest gloom, prisoners suffering in iron chains, for they had rebelled against the words of God and despised the counsel of the Most High. So he subjected them to bitter labor they stumbled, and there was no one to help. Then they cried to the Lord in their trouble, and he saved them from their distress. He brought them out of darkness and the deepest gloom and broke away their chains. Let them give thanks to the Lord for his unfailing love and his wonderful deeds for men, for he breaks down gates of bronze and cuts through bars of iron.

House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Chairman, Robert Bobby Scott & Ranking Member, Louie Gohmert
2138 Rayburn House Office Building
Washington SC 20515
Attention: Kimani Little, Kimani@mail.house.gov

OPPOSITION TO: H.R. 2289:

Dear Committee Chairman, Robert "Bobby" Scott
and Ranking Member, Louie Gohmert,

I strongly oppose HR 2289.

The sentence, life without the possibility of parole, is reserved for individuals who have committed the most egregious crimes. This bill destroys the punishment that the people, in many states, have voted to enact. In addition state legislatures and Governors across the country have continued to determine that this punishment is suitable for the most violent and dangerous individuals and important to protecting the safety of their citizens.

HR 2289 creates defacto lifer hearings for LWOP juveniles that is costly and unnecessary. Currently, in most states, all persons are afforded ample screening under current laws to determine the appropriate sentence. In the event the convicted does not agree with the sentence, there are remedies such as filing an appeal, or habeas petition - a judicial mandate to a prison official ordering that an inmate be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he should be released from custody. In addition, the Governor of each state has the power to grant clemency and pardons.

For many states, HR 2289 will override the will of the people, by basically overturning statewide initiatives that were voted on by the citizens of that state.

Due to the fact that there are currently legal remedies in place for those who believe that they have been wrongly convicted, there is no justification for this costly, unnecessary legislation.

Tatyana Skatyr

108 County Road
Woodland, California 95695
p.s.
As a retired law enforcement officer I have an informed perspective on criminals. Many juveniles today grow up very early in their lives. Older gang members and other criminals routinely use them to commit crimes knowing they will get reduced sentences. There are alternatives for them even in the worst communities and neighborhoods. I am very aware of the young people who choose to avail themselves of these alternatives even though it is not "cool'. The crimes these young

criminals knowingly commit still violently kill and injure many people - and they should pay for these terrible crimes just like 'adults" - who may be only days older than them (just turned 18).
--
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American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™

AAP Headquarters
141 Northwest Point Blvd
Elk Grove Village, IL 60007-1098
Phone: 847/434-4000
Fax: 847/434-8000
E-mail: kidsdocs@aap.org
www.aap.org

Reply to
Department of Federal Affairs
Homer Building, Suite 400 N
601 13th St NW
Washington, DC 20005
Phone: 202/347-8600
Fax: 202/393-6137
E-mail: kids1st@aap.org

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July 24, 2009

The Honorable Bobby Scott
United States House of Representatives
Washington, DC 20515

Dear Representative Scott:

On behalf of the 60,000 pediatricians, pediatric medical subspecialists and pediatric surgical specialists of the American Academy of Pediatrics, I would like to express our strong support for H.R. 2289, the *Juvenile Justice Accountability and Improvement Act of 2009*. H.R. 2289 would take a significant first step toward eliminating life prison sentences for juveniles convicted of crimes and reaffirming that the primary goal of the juvenile justice system is the rehabilitation of youth offenders.

The majority of children in the juvenile justice system enter with diagnosable mental health conditions. Many of these children will have had exposure to parental abuse and neglect, substance abuse, and sexual abuse. The guiding principle behind the existence of a different justice system for youth is that adolescents are still maturing through psychosocial development and should receive rehabilitation and necessary treatment rather than excessive punishment. Sentencing these developing adolescents, who often bear the disadvantages of abuse and mental illness, to a lifetime of incarceration without the opportunity for parole is contrary to this principle.

H.R. 2289 would establish a new standard for juvenile offenders, granting them at least one meaningful opportunity for parole in the first 15 years of incarceration and at least one meaningful opportunity for parole every three years thereafter. Those convicted before the age of 18 and those serving at least 15 years in prison would be eligible for these parole guidelines. The bill would also authorize grants to improve the legal representation of juveniles "facing or serving" life in prison.

Thank you for your dedication to the health and well-being of children and adolescents. We look forward to working with you in the passage of this legislation.

Sincerely,

David T. Tayloe Jr., MD, FAAP
President

DTT/mdm

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I. Scott Messinger
Chief Operating Officer

June 8, 2009

United States House of Representatives
House Judiciary Committee
Subcommittee on Crime, Terrorism, and Homeland Security
Washington, DC 20510

Dear Representative,

The Constitution Project strongly supports Section 6 of H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009. Section 6 dedicates much needed federal funding to the legal representation of children facing or serving life imprisonment.

The Constitution Project's National Right to Counsel Committee recently published a report on America's indigent defense system. The report, entitled *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel,* details many of the system's structural failures, including those pertaining to the representation of juveniles. Among a variety of urgently-needed reforms, the report stresses the need for federal funding to help spur systemic improvements.I have enclosed for your reference a copy of the report.

I hope you find this information helpful in your deliberations, and I urge you to support the inclusion of Section 6 in H.R. 2289. Thank you for your consideration.

Sincerely,

Virginia E. Sloan
President

QUOTES FROM LETTERS

"I would not hesitate to recommend clemency and parole for John and I feel that he has served enough time to pay for his crime." - Ralph Kyzer, former ADC Employee - page 30

"If John was to be released, I would be proud to have him as my neighbor, and also would be welcome in my home at any time." - Charles Grauel, former ADC Employee - page 31

"John is no longer the mixed up 15 year old boy who was involved in the tragic event 27 years ago." - Sue Medlock - page 32

"John has told me that he has never and will never forgive himself for what occurred on that terrible night. I know God has forgiven him and I believe that it is time that the state forgave him. He has done enough time to pay for his crime and done it constructively." - Sue Medlock - page 32

"If Mr. Lohbauer were granted parole, I would not hesitate to recommend him for a job. I feel he has much to offer society as a productive citizen." - Dr. Teresa Medlock, DVM - page 33

①

5-13-07

This letter is a heartfelt plea to the House of Representatives Judiciary Committee.

Dear Sirs,

32 years ago I was a 12 year old girl. My big brother was 15 years old. This story begins with a confused kid who decides on a whim to run away from home. Horrifiedly a tragic chain of events unfolded.

This 15 year old boy (my brother John C. Lohbauer) had never been in trouble of any kind. Him & his friend decided they would live off the land. To help them with their judgement they were consuming alcohol. After several days they had made it three states South to Arkansas →

at which time they attempted to purchase beer. The clerk denied them due to their age. (all 15) Much later that night my brother and his friends broke into the closed liquor store to obtain booze.

The police arrived and a shoot out ensued. At the end an officer of the law lay dead. His name was LT. Ed Worell from Texarkana AR. The weapon which killed this officer was fired by my brother. He obtained the gun from one of his friends father.

John was tried as an adult. He was up for the death penalty. Ultimately he received a sentence of life. (an unforgivable person who shall never be fit to obtain parole) all this for a 15 year old kid.

I am filled with sorrow and remorse for the unmeasurable pain John caused the Worell family. This many life deserve to have John be held accountable. This I do not deny. However, the shooting took place 32 years ago

(3)

since that time, (1977), John has served his time at the Tucker Unit in Tucker Ar. This is a facility within the Arkansas Department of Corrections. He has been housed there for 32 years.

My brother is a decent, hardworking human being. He is forever remorseful over his actions and these horrible consequences. John has never in all his years at Tucker had a single disciplinary. He has taken every opportunity to educate himself. Once he was even recognized as Arkansas Student of the year. John is a certified Electrician, plumber, HVAC Engineer, dog trainer, and many other things. He has the loyal respect of the personal employed at Tucker. John is quiet, unassuming, intelligent, funny well-read, humble, and very aware of how his actions caused all of this.

For Arkansas to say he can never be rehabilitated is simply wrong & unjust.

John C. Dohlman can make a positive difference in the world. He is not the fifteen year old selfish, impulsive person he was in 1977. What happened that night was a tragedy for many, many individuals.

Please help us give John and others like him a second chance by signoring into law H.R. 2289.

Thank You so much for hearing our story.

Sincerely,

Jane H. Carter

carterJm@msn.com
773-945-6774

Ralph Kyzer
#11 Shoreline Dr.
Mayflower, AR 72106
February 25, 2005.

To Whom It May Concern:

I am a former Department of Correction Employee and I am writing this letter of recommendation on behalf of John Lohbauer.

I was the head supervisor of the maintenance program at the Tucker unit from approximately 1982 to 1985. It was during this time that John worked for me as a clerk, doing bidding and purchasing work. John also worked in the water treatment plant and Waste water plant taking chemical tests.

John was always taking college courses and took every opportunity to educate and improve himself in the various programs offered at the unit. He never, to my knowledge had a disciplinary or caused any problems. He showed many times that he could handle the responsibilities that I assigned to him.

Over the years I have kept in contact with him and I know that he has kept up his good record and continued his education. He has used his experience to get his heating and air conditioning license and is now a 1A class trusty working at the Dog Kennel.

I would not hesitate to recommend clemency and parole for John and I feel that he has served enough time to pay for his crime. I hope that soon John can be a productive member of our community.

Sincerely,

Ralph Kyzer

5/18/2002

To Whom It May Concern:
Ref. John Lohbauer - ADC#70497

John Lohbauer worked for me in my maintenance shop at the Tucker Unit for eight and one-half years. At that time Lt. Ashcraft requested John Lohbauer to work for him at the dog kennel. John was always an asset to my maintenance program in the capacity as a clerk. John called different venders to get prices on materials and parts. He typed up all requisitions for my signatures. Not once did I have any complaints from venders or any of the free world workers. Since that time John has been working at the dog kennel in the capacity of training dogs to track and run down any escapees. He has assisted the Arkansas State and local law enforcement officers numerous times with the dogs tracking lost individuals and escaped prisoners. He has been in the Arkansas Department of Correction for approximately 25 years. He has had a 1-B class for up to 7 years ago, where he obtained a class 1-A which is the highest class an inmate can obtain. John has been a model inmate all these years and has applied himself to learning and taking advantage of all schooling that he can obtain. He holds a boiler operators license, a heat & air conditioning license, and assisted me at the water treatment plant and the wastewater treatment plant at the Tucker Unit.

If John was to be released I would be proud to have him as my neighbor, and also would be welcome in my home at any time.

In closing, I would like to state that Inmate Lohbauer was led to the Lord while painting the state house that I was living in at that time and accepted Christ as his Lord and Savior, and I saw a wonderful change in him. To my knowledge, in the twenty-five years that John has been incarcerated, he has never had a disciplinary. Any consideration for clemency and John's release would be appreciated by me and my family. Any further information that I might be able to assist with I can be reached after 5:00 P.M. and weekends at our phone # 870-766-4037, or at p.o.box132, Sherrill, AR. 72152.

Yours truly,

Charles E. Grant

Charles E. Grant

March 1, 2004

To Whom It May Concern:

I am writing in regard to John Lohbauer. I have known him for about 4 years now. We have attended Chapel services with him when Chaplain Wilson was assigned to the Tucker unit and holding Deliverance Services. We were able to attend the monthly services for about a year. We all grew spiritually during that time.

Since the deliverance services have ended, John and I have continued to correspond and do Bible studies by mail. My husband and I plan to keep John in our prayers and we truly value his friendship.

John is no longer the mixed up 15 year old boy who was involved in the tragic event 27 years ago. He is now a 42 year old man who loves his Lord and Savior, Jesus Christ. John is an outstanding example of how the prison system can rehabilitate a person for the good. He has a perfect record, no disciplinaries. He is respected by the other prisoners and the staff from the officers up to the Warden. When asked to do a job, he does it willingly and he does a good job. He has continued his education from getting his G.E.D. to completing almost two years of college. He has received his Heating and Air conditioning License and is a volunteer fireman at the unit.

John is now working at the Dog Kennel and does a great job training dogs, laying tracks and riding horses, following the dogs. He has trained a scent specific tracking dog and has traveled all over the state searching for lost children and escaped convicts.

27 years ago John and his friends went joyriding and ended up in the tragic events of that awful night. John has told me that he has never and will never forgive Himself for what occurred on that terrible night. I know that God has forgiven him and I believe that it is time that the State forgave him. He has done enough time to pay for his crime and did it constructively.

I am writing this letter to ask that John be granted clemency and paroled to his family in Illinois. John is not a threat to society. Drugs and alcohol would not exist for him because he is a dedicated Christian. I believe he will make a valuable contribution to society and I hope that you can find it in your heart to give him a second chance.

Sincerely,

Sue Madlock

Sue Madlock
4201 German Springs Rd.
Pine Bluff, AR 71602

June 29, 2021

Post Prison Transfer Board
105 West Capitol
Two Union National Plaza Building – Suite 501
Little Rock, AR 72201

Dear Sir or Madam:

I am writing this letter on behalf of Mr. John C. Lohbauer ADC # 070497. Mr. Lohbauer is currently incarcerated in the Arkansas Department of Corrections – Tucker Unit Dog Kennel.

During the last three years I have worked with this young man in my duties as the veterinarian of the unit horses. In all my contacts with him I have only seen loyalty and dedication for his job and fellow workers. I have always felt confident that all instructions given to him for the follow up care of the animals would be carried out fully. He was never disrespectful to me. In fact on numerous occasions he asked other individuals to be more respectful by watching their language and actions around me.

If Mr. Lohbauer were granted parole I would not hesitate to recommend him for a job. I feel he has much to offer society as a productive citizen.

Thank you for your valuable time and consideration of this letter on behalf of Mr. Lohbauer. Please feel free to contact me at any time for more information.

Sincerely,

Teresa L. Medlock, DVM

Teresa L. Medlock, DVM
Owner – Crystal Springs Vet Services

4293 GERMAN SPRINGS ROAD • PINE BLUFF, AR • 71603
PHONE: 870-247-4427

Crystal Springs Vet Services

4205 German Springs Road
Pine Bluff, AR 71602

December 8, 2002

2400 State Farm Road
Tucker, AR 72166

Dear Warden White:

I wish to inform you of some outstanding work done by three inmates assigned to the dog kennel at your facility. Michael Pratt (DC #109761), John Lohbauer (DC # 70497), and Larry Burnett (DC # 83244) have recently assisted me in saving the lives of two horses that were experiencing a severe bout of colic. These horses were critical for five days and I depended greatly on these men to carry out my treatments. The men monitored the horses' conditions, administered pain relievers as directed and also changed out numerous bags of intravenous fluids. They checked the horses every two to four hours around the clock. Any changes in the horses' conditions, both positive and negative, were noted and passed on to me. Due to the men's diligence, the two horses survived and are doing fine now.

Just this week, these same three men noted an attitude change in one of the young horses. I examined the mare numerous times and initially found no obvious abnormalities. Yet they were insistent that something was wrong with her. Saturday evening I examined her again and found the beginning stages of a very serious abdominal condition. The mare was not exhibiting any definite physical signs yet the men knew this horse well enough to detect a problem. If they had not insisted that I examine the mare again she would have died within a few days due to complications related to the abdominal condition. Although the mare is still undergoing rigorous treatment at this time, I am confident that these individuals will do their very best to help the mare survive this painful condition.

These three men need to be commended for their hard work and dedication. Although I have singled out these three individuals for their recent actions, I must express my appreciation to all the other inmates (former and current) assigned to the dog kennel and horse barn. Without them, I would not be able to do my job as your unit veterinarian.

Sincerely,

Dr. Teresa L. Medlock

Dr. Teresa L. Medlock

CC: Major E. Bell
Lt. R. Schwin
Lt. L. Keeth
Lt. J. Williams