

**Submission by The Coalition for the Fair Sentencing of Children to the  
ABA's Juvenile Justice Committee's Town Hall Meeting  
November 6, 2008**

## **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, 39 US states and the federal government have tried teens who are too young to vote, buy cigarettes, or serve on the juries they appear before, and have sentenced them to juvenile life without parole (JLWOP). Life without parole means that a young person is sentenced to die in prison.

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.

## **Recommendations**

The United States must stop sentencing youth offenders to life without possibility of parole. Specifically, the Coalition for the Fair Sentencing of Children recommends:

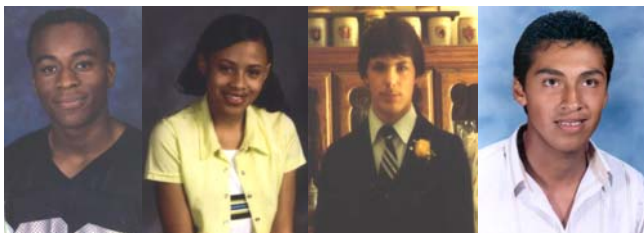
### **To the Newly Elected President of the United States and the US Congress**

- Abolish the sentence of life without parole for youth charged with violating federal laws. 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.
- Pass HR 4300, or other legislation to condition federal funding of state programs upon the state's elimination of life without parole sentences for youth offenders.

## **Life without Parole for Youth: A Nationwide Problem**

According to Human Rights Watch:

- 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.
- Nationally, black youth are serving life without parole at a per capita rate that is 10 times that of white youth.
- There are no youth serving JLWOP anywhere else in the world.



Four youth 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.

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 fifteen 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.<sup>1</sup>

**Figure 1 – State Distribution of 2,484 Juvenile Offenders Serving JLWOP<sup>2</sup>**

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	Discretionary	New Mexico	0	No JLWOP
Colorado	48	No JLWOP (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	Discretionary	Oregon	0	No JLWOP
Idaho	4	Discretionary	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	No JLWOP	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	Discretionary	Wyoming	6	Discretionary
Missouri	116	Mandatory	Federal Prisons	2	Discretionary
Montana	1	No JLWOP (2007)	Washington, D.C.	0	No JLWOP

<sup>1</sup> 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.

<sup>2</sup> Sources: State prison systems provided data directly to Human Rights Watch as of mid-2004 (except that HRW 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. State law researched by Human Rights Watch and updated by Connie de la Vega and Michelle Leighton, “Sentencing Our Children to Die in Prison: Global Law and Practice,” *University of San Francisco Law Review*, Spring 2008.

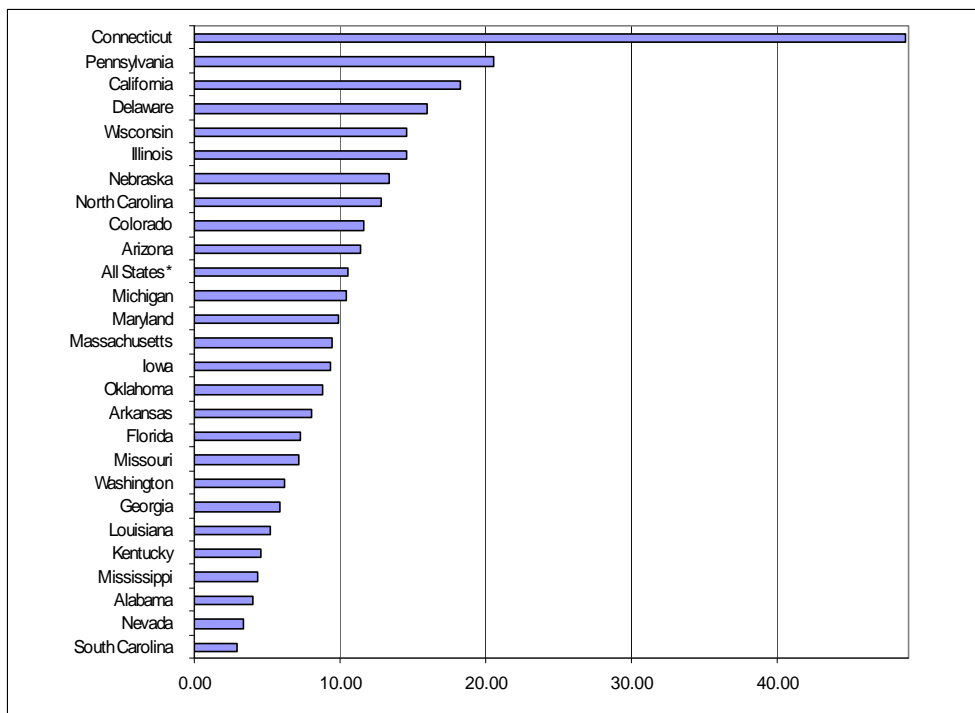
## Crimes That Can Lead to a Life without Parole Sentence

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.

- **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.
- **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.

## Racially Discriminatory Sentencing

Figure 2 – Ratio of Black to White Youth Serving JLWOP Sentences<sup>3</sup>



<sup>3</sup> Sources: See Figure 1 above for JLWOP sentencing data. Population data extracted by Human Rights Watch from C. Puzanchera, 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.ojdp.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.

As shown in figure 2 above, 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 Human Rights Watch 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.

## **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 JLWOP sentences for youth, the United States is an international anomaly.

The United States' practice of sentencing youth to JLWOP is a violation of at least two 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." In addition, 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."

## **Fair Sentences for Youth**

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. In this regard, we note that the American Bar Association adopted resolution 105C in 2008, urging the adoption of laws to ensure that "Youthful offenders should generally be eligible for parole or other early release consideration at a reasonable point during their sentence; and, if denied, should be reconsidered for parole or early release periodically thereafter."

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.

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. Finally, incapacitation as a justification for life without parole sentences fails because some youth offenders can be rehabilitated and become productive members of society.

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.

### **Submitted by the Coalition for the Fair Sentencing of Children**

Children's Advocacy Clinic, Children in Prison Project, Florida State University College of Law

Children's Law Center, Massachusetts

Citizens for Juvenile Justice, Massachusetts

Columbia Legal Services, on behalf of clients, Seattle, Washington

DLA Piper, LLP

Bernardine Dohrn, Director, Children & Family Justice Center, Northwestern University School of Law

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Shaena Fazal, Director, Long-Term Prisoner Policy Project, John Howard Association of Illinois

Brian J. Foley, Visiting Associate Professor of Law, Boston University School of Law

Human Rights Advocates, California

Human Rights Watch, New York

Individual parents, relatives, or friends of youth serving JLWOP sentences throughout the United States

Juvenile Justice Project of Louisiana

Juvenile Law Center, Philadelphia, Pennsylvania

Michelle Leighton, Director Human Rights Programs, University of San Francisco School of Law

NAACP, Legal Defense Fund, New York

National Center for Youth Law, Oakland, California

National Juvenile Justice Network, Washington, D.C.

Penal Reform International, Washington, D.C.

Pendulum Foundation, Colorado

The Sentencing Project, Washington, D.C.

Jeffrey Shook, Assistant Professor of Social Work and Law, University of Pittsburgh

Randolph N. Stone, Clinical Professor of Law, University of Chicago Law School

Rev. Bonnie Young, Kings Crossing Foundation, Colorado

Youth Advocacy Project, Massachusetts Committee for Public Counsel Services

Youth Justice Coalition, Los Angeles (led by youth, including many serving LWOP and other life sentences)