

## **Juvenile Justice Information Packet**

### **Human Rights Watch Report: The Rest of Their Lives: Life without Parole for Child Offenders in the United States, 2005**

#### **Summary**

*I'm a former cop. I'm a true believer in law and order. But my son was a child when this happened. He wasn't thinking like an adult, and he wasn't an adult . . . how is it that the law can treat him as if he is one?*

-Frank C., father of youth offender sentenced to life without parole, October 22, 2004

Children can and do commit terrible crimes. When they do, they should be held accountable, but in a manner that reflects their special capacity for rehabilitation. However, in the United States the punishment is all too often no different from that given to adults.

In civil matters, state and federal laws recognize the immaturity and irresponsibility of children. For example, they typically establish eighteen as the minimum age to get married without parental consent, to vote, to sign contracts, or to serve on a jury. Yet in forty-two states and under federal law, the commission of a serious crime by children under eighteen—indeed in some states children as young as ten—transforms them instantly into adults for criminal justice purposes. Children who are too young to buy cigarettes legally, boys who may not have started to get facial hair, kids who still have stuffed animals on their beds, are tried as adults, and if convicted, receive adult prison sentences, including life without parole (LWOP).

This report is the first ever national analysis of life without parole sentences for children. Human Rights Watch and Amnesty International have discovered that there are currently at least 2,225 people incarcerated in the United States who have been sentenced to spend the rest of their lives in prison for crimes they committed as children. In the United States, departments of corrections do not maintain publicly accessible and accurate statistics about child offenders incarcerated in adult prisons, and there is no national depository of these data. Therefore, we were able to collect data on individuals sentenced to life without parole for crimes they committed as children only by requesting that it be specially produced for us by each state's corrections department.

The public may believe that children who receive life without parole sentences are "super-predators" with long records of vicious crimes. In fact, an estimated 59 percent received the sentence for their first-ever criminal conviction. Sixteen percent were between thirteen and fifteen years old at the time they committed their crimes. While the vast majority were convicted of murder, an estimated 26 percent were convicted of felony murder in which the teen participated in a robbery or burglary during which a co-participant committed murder, without the knowledge or intent of the teen. Racial disparities are marked. Nationwide, the estimated rate at which black youth receive life without parole sentences (6.6 per 10,000) is ten times greater than the rate for white youth (0.6 per 10,000).

Our research shows significant differences among the states in the use of life without parole sentences for children. For example, Virginia, Louisiana, and Michigan have rates that are three to seven-and-a-half times higher than the national average of 1.77 per 100,000 children nationwide. At the other end of the spectrum, New Jersey and Utah permit life without parole for children but have no child offenders currently serving the sentence. Alaska, Kansas, Kentucky, Maine, New Mexico, New York, West Virginia, and the District of Columbia all prohibit the sentence for youth offenders. In May of 2005, Texas changed its law to allow individuals found guilty of a capital felony (including those below the age of eighteen) to be sentenced to life without parole. However, we could not definitively interpret this legislation, nor could we include data from

Texas in this report, because the law went into effect on September 1, 2005, meaning it had not yet been applied or interpreted by the courts of Texas when this report went to press.

Before 1980, life without parole was rarely imposed on children. The number of child offenders who received the sentence each year began to increase in the late 1980s, reaching 50 in 1989. It peaked in 1996 at 152 and then began to drop off; in 2003, 54 child offenders entered prison with the sentence. But states have by no means abandoned the use of life without parole for child offenders: the estimated rate at which the sentence is imposed on children nationwide remains at least three times higher today than it was fifteen years ago. In fact, the proportion of youth offenders convicted of murder who receive life without parole has been increasing, suggesting a tendency among states to punish them with increasing severity. For example, in 1990 there were 2,234 youth convicted of murder in the United States, 2.9 percent of whom were sentenced to life without parole. Ten years later, in 2000, the number of youth murderers had dropped to 1,006, but 9.1 percent were sentenced to life without parole.

In addition, in eleven out of the seventeen 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 adult murder offenders. Even when we consider murder offenders sentenced to either life without parole or death sentences, in four of those seventeen years, youth were *more* likely than adults to receive one of those two most punitive sentences.

Such harsh treatment for youth offenders cannot be squared with the most fundamental tenets of human rights law. International standards recognize that children, a particularly vulnerable group, are entitled to special care and protection because they are still developing physically, mentally, and emotionally. States are required to offer a range of alternatives to institutionalization. The imprisonment of a child should always be a measure of last resort, focused on the child's rehabilitation, and for the shortest suitable period of time. While incarceration may be proper for youth convicted of very serious crimes such as murder, this report argues that a sentence of life without the possibility of parole is never appropriate for youth offenders.

The dramatic increase in the imposition of life without parole sentences on child offenders in the United States is, at least in part, a consequence of widespread changes in U.S. criminal justice policies that gathered momentum in the last decades of the twentieth century. Responding to increases in crime and realizing the political advantages of promoting tough law and order policies, state and federal legislators steadily increased the length of prison sentences for different crimes and expanded the types of offenders facing prison sentences. They also promoted adult trials for child offenders by lowering the minimum age for criminal court jurisdiction, authorizing automatic transfers from juvenile to adult courts, and increasing the authority of prosecutors to file charges against children directly in criminal court rather than proceeding in the juvenile justice system. The United States thus abandoned its commitment to a juvenile justice system and the youth rehabilitation principles embedded in it.

"Adult time for adult crime" may be a catchy phrase, but it reflects a poor understanding of criminal justice principles. If the punishment is to fit the crime, both the nature of the offense and the culpability or moral responsibility of the offender must be taken into account. As the U.S. Supreme Court has repeatedly recognized, the blameworthiness of children cannot be equated with that of adults, even when they commit the same crime. Most recently, in *Roper v. Simmons* in 2005, the Court ruled that the execution of child offenders was unconstitutional, finding that juveniles are "categorically less culpable" than adult criminals. The ruling noted that juveniles lack the "well-formed" identities of adults, are susceptible to "immature and irresponsible behavior," and vulnerable to "negative influences and outside pressures." Neuroscientists have recently identified anatomical bases for these differences between juveniles and adults, establishing the behavioral significance of the less developed brains of children.

Life without parole sentences for child offenders-meaning there is no possibility of release during the prisoner's lifetime-effectively reject the well-established principle of criminal justice that children are less culpable than adults for crimes they commit. As the father of a teen offender serving life without parole pointed out to us: "I'm a former cop. I'm a true believer in law and order. But my son was a child when this happened. He wasn't thinking like an adult, and he wasn't an adult . . . how is it that the law can treat him as if he is one?"<sup>[1]</sup> The anguish and anger of a victim's family and friends may well be the same whether a murder is committed by a child or an adult. But justice requires a sentence commensurate with both the nature of the crime and the culpability of the offender.

### Three Young Child Offenders

From left to right, Tina B. was fifteen in this photo and sixteen when she committed her crime; Billy L. was thirteen in this photo and fourteen when he committed his crime; Justin I. was fourteen in this photo and fifteen when he committed his crime.

All photographs: © 2005 Private.



For supporters of life without parole sentences, the immaturity of child offenders is not a good enough reason to abolish the sentence. They argue that the punishment also serves to deter future crime. But does youth deterrence actually happen? Research has failed to show that the threat of adult punishment deters adolescents from crime. This is not surprising, given the well-documented limited abilities of children, including teenagers, to anticipate the consequences of their actions and rationally assess their options. Few adolescents are likely to be able to grasp the true significance of a life sentence. One twenty-nine-year-old woman serving life without parole told a researcher for this report that when she was sentenced, at the age of sixteen:

I didn't understand "life without" . . . [that] to have "life without," you were locked down forever. You know it really dawned on me when [after several years in prison, a journalist] came and . . . he asked me, "Do you realize that you're gonna be in prison for the rest of your life?" And I said, "Do you really think that?" You know. . . and I was like, "For the rest of my life? Do you think that God will leave me in prison for the rest of my life?"<sup>[2]</sup>

Virtually all countries in the world reject the punishment of life without parole for child offenders. At least 132 countries reject life without parole for child offenders in domestic law or practice. And all countries except the United States and Somalia have ratified the Convention on the Rights of the Child, which explicitly forbids "life imprisonment without possibility of release" for "offenses committed by persons below eighteen years of age." Of the 154 countries for which Human Rights Watch was able to obtain data, only three currently have people serving life without parole for crimes they committed as children, and it appears that those four countries combined have only about a dozen such cases

Sentencing children as adults means they may well enter prison while they are still under eighteen. One third of the youth offenders now serving life without parole entered prison while they were still children, in violation of international human rights standards that prohibit the incarceration of children with adults. But regardless of the precise age at which they entered prison, all have faced the same conditions as the older adults with whom they live: gangs, sexual predators, extortion, and violence. They also confront special hardships inherent in their sentence. Although it may take time to fully register in a child's mind, the sentence sends an unequivocal message to children that they are banished from society forever. Youth are told that they will die in prison and are left to wrestle with the anger and emotional turmoil of coming to grips with that fact. They are denied educational, vocational, and other programs to develop their minds and skills because access to those programs is typically restricted to prisoners who will someday be released, and for whom rehabilitation therefore remains a goal. Not surprisingly, child offenders sentenced to life without parole believe that U.S. society has thrown them away. As one young man told a researcher for this report, "Seems like. . .since we're sentenced to life in prison, society says, 'Well, we locked them up, they are disposed of, removed.'"<sup>[3]</sup>

U.S. federal and state governments have the responsibility of ensuring community safety. But government is also responsible for ensuring that justice is served when a person is tried, convicted, and sentenced. The terrible crimes committed by children can ruin lives, causing injury and death to the victims and grief to their families and friends. Sentencing must reflect the seriousness of the crime, but it also must acknowledge that culpability can be substantially diminished by reason of the youth and immaturity of the perpetrator. Child offenders should be given the possibility of freedom one day, when they have matured and demonstrated their remorse and capacity for rehabilitation.

Note: In keeping with international human rights standards, throughout this report we use the terms "child" and "children" to refer to persons under the age of eighteen. Unless otherwise indicated, all references to youth, adolescents, minors, and juveniles also refer to persons under the age of eighteen.

**For the full report, please see:** <http://www.hrw.org/en/reports/2005/10/11/rest-their-lives>

**Human Rights Watch Report: When I Die, They'll Send Me Home: Youth Sentenced to Life without Parole in California, 2008**

## **Summary**

Approximately 227 youth have been sentenced to die in California's prisons.<sup>1</sup> They have not been sentenced to death: the death penalty was found unconstitutional for juveniles by the United States Supreme Court in 2005. Instead, these young people have been sentenced to prison for the rest of their lives, with no opportunity for parole and no chance for release. Their crimes were committed when they were teenagers, yet they will die in prison. Remarkably, many of the adults who were codefendants and took part in their crimes received lower sentences and will one day be released from prison.

In the United States at least 2,380 people are serving life without parole for crimes they committed when they were under the age of 18. In the rest of the world, just seven people are known to be serving this sentence for crimes committed when they were juveniles. Although ten other countries have laws permitting life without parole, in practice most do not use the sentence for those under age 18. International law prohibits the use of life without parole for those who are not yet 18 years old. The United States is in violation of those laws and out of step with the rest of the world.

Human Rights Watch conducted research in California on the sentencing of youth offenders to life without parole. Our data includes records obtained from the California Department of Corrections and Rehabilitation and independent research using court and media sources. We conducted a survey that garnered 130 responses, more than half of all youth offenders serving life without parole in California. Finally, we conducted in-person interviews of about 10 percent of those serving life without parole for crimes committed as youth. We have basic information on every person serving the sentence in the state, and we have a range of additional information in over 170 of all known cases. This research paints a detailed picture of Californians serving life without parole for crimes committed as youth.

In California, the vast majority of those 17 years old and younger sentenced to life without the possibility of parole were convicted of murder. This general category for individuals' crimes, however, does not tell the whole story. It is likely that the average Californian believes this harsh sentence is reserved for the worst of the worst: the worst crimes committed by the most unredeemable criminals. This, however, is not always the case. Human Rights Watch's research in California and across the country has found that youth are sentenced to life without parole for a wide range of crimes and culpability. In 2005 Amnesty International and Human Rights Watch published a report showing that nationally 59 percent of youth sentenced to life without parole are first-time offenders, without a single juvenile court adjudication on their records.

In 2007, Human Rights Watch surveyed youth offenders serving life without parole in California. In 45 percent of cases surveyed, youth who had been sentenced to life without parole had not actually committed the murder. Cases include that of a youth who stood by the garage door as a look-out during a car theft, a youth who sat in the get-away car during a burglary, and a youth who participated in a robbery in which murder was not part of the plan. Forty-five percent of youth reported that they were held legally responsible for a murder committed by someone else. He or she may have participated in a felony, such as robbery, but had no idea a murder would happen. She or he may have aided and abetted a crime, but not been the trigger person. While they are criminally culpable, their actions certainly do not fall into the category of the worst crimes.

Murder is a horrible crime, causing a ripple-effect of pain and suffering well beyond that of the victim. Families, friends, and communities all suffer. The fact that the perpetrator is legally a child does nothing to

alleviate the loss. But societies make decisions about what to weigh when determining culpability. California's law as it stands now fails to take into consideration a person's legal status as a child at the time of the crime. Those who cannot buy cigarettes or alcohol, sign a rental agreement, or vote are nevertheless considered culpable to the same degree as an adult when they commit certain crimes and face adult penalties. Many feel life without parole is the equivalent of a death sentence. "They said a kid can't get the death penalty, but life without, it's the same thing. I'm condemned...I don't understand the difference," said Robert D., now 32 years of age, serving a life without parole sentence for a crime he committed in high school. He participated in a robbery in which his codefendant unexpectedly shot the victim.

The California law permitting juveniles to be sentenced to life without parole for murder was enacted in 1990. Since that time, advances in neuroscience have found that adolescents and young adults continue to develop in ways particularly relevant to assessing criminal behavior and an individual's ability to be rehabilitated. Much of the focus on this relatively new discovery has been on teenagers' limited comprehension of risk and consequences, and the inability to act with adult-like volition. Just as important, however, is the conclusion that teens are still developing. These findings show that young offenders are particularly amenable to change and rehabilitation. For most teens, risk-taking and criminal behavior is fleeting; they cease with maturity. California's sentencing of youth to life without parole allows no chance for a young person to change and to prove that change has occurred.

In California, it is not just the law itself that is out of step with international norms and scientific knowledge. The state's application of the law is also unjust. Eighty-five percent of youth sentenced to life without parole are people of color, with 75 percent of all cases in California being African American or Hispanic youth. African American youth are sentenced to life without parole at a rate that is 18.3 times the rate for whites. Hispanic youth in California are sentenced to life without parole at a rate that is five times the rate of white youth in the state.

California has the worst record in the country for racially disproportionate sentencing. In California, African American youth are sentenced to life without parole at rates that suggest unequal treatment before sentencing courts. This unequal treatment by sentencing courts cannot be explained only by white and African American youths' differential involvement in crime.

Significantly, many of these crimes are committed by youth under an adult's influence. Based on survey responses and other case information, we estimate that in nearly 70 percent of California cases, when juveniles committed their crime with codefendants, at least one of these codefendants was an adult. Acting under the influence and, in some cases, the direction of an adult, however, cannot be considered a mitigating factor by the sentencing judge in California. In fact, the opposite appears to be true. Juveniles with an adult codefendant are typically more harshly treated than the adult. In over half of the cases in which there was an adult codefendant, the adult received a lower sentence than the juvenile.

Poor legal representation often compromises a just outcome in juvenile life without parole cases. Many interviewees told us that they participated in their legal proceedings with little understanding of what was happening. "I didn't even know I got [life without parole] until I talked to my lawyer after the hearing," one young man said. Furthermore, in nearly half the California cases surveyed, respondents to Human Rights Watch reported that their own attorney did not ask the court for a lower sentence. In addition, attorneys failed to prepare youth for sentencing and did not tell them that a family member or other person could speak on their behalf at the sentencing hearing. In 68 percent of cases, the sentencing hearings proceeded with no witness speaking for the youth.

While some family members of victims support the sentence of life without parole for juveniles, the perspective of victims is not monolithic. Interviews with the families of victims who were murdered by teens show the complex and multi-faceted beliefs of those most deeply affected. Some families of victims believe that sentencing a young person to a sentence to life without parole is immoral.

California's policy to lock up youth offenders for the rest of their lives comes with a significant financial cost: the current juvenile life without parole population will cost the state approximately half a billion dollars by the end of their lives. This population and the resulting costs will only grow as more youth are sentenced to spend the rest of their lives in prison.

California is not the only state that sentences youth to life without parole. Thirty-eight others apply the sentence as well. However, movement to change these laws is occurring across the country. Legislative efforts are pending in Florida, Illinois, and Michigan and there are grassroots movements in Iowa, Louisiana, Massachusetts, Nebraska, and Washington. Most recently, Colorado outlawed life without parole for children in 2006.

If life without parole for youth under age 18 were eliminated in California, other existing state law provides ample protection for public safety. California's next harshest penalty for murder secures a minimum of 25 years in prison. There are no reductions in the minimum time served for a murder conviction. Even then, parole is merely an option and won only through the prisoner's demonstrating rehabilitation. If they do earn release after 25 years or more, they are statistically unlikely to commit a new crime of any type. Prisoners released after serving a sentence for a murder have the lowest recidivism rate of all prisoners.

Public awareness about this issue has increased recently through newspaper and magazine articles and television coverage. With a significant number of the country's juvenile life without parole cases in its prisons, California has the opportunity to help lead the nation by taking immediate steps to change this unnecessarily harsh sentencing law.

**For the full report, please see:** <http://www.hrw.org/reports/2008/us0108/>