

REPORT ON HUMAN RIGHTS VIOLATIONS

SENTENCING OUR
CHILDREN TO DIE IN PRISON

GLOBAL LAW AND PRACTICE

CENTER FOR LAW AND GLOBAL JUSTICE
UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW

SENTENCING OUR CHILDREN TO DIE IN PRISON
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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 (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 is 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 Non-Governmental Organization and can be found at www.humanrightsadvocates.org.

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2,388

The number of children
sentenced to die in U.S. and Israeli prisons.

0

The number of children sentenced
to die in prisons in the rest of the world.

2,381

The number of children
sentenced to die in U.S. prisons.

7

The number of children
sentenced to die in Israeli prisons.

135

The number of countries that
have abolished the juvenile life without
parole sentence.

F R E Q U E N T L Y A S K E D Q U E S T I O N S

WHAT IS A LIFE WITHOUT POSSIBILITY OF PAROLE OR RELEASE (LWOP) SENTENCE?

The person incarcerated will not be given any opportunity for parole review and thus is condemned to die in prison. This is the harshest sentence that can be given to anyone short of execution.

WHY IS A LIFE WITHOUT POSSIBILITY OF PAROLE OR RELEASE (LWOP) SENTENCE NOT APPROPRIATE FOR CHILDREN?

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. Psychologically and neurologically children cannot be expected to have achieved the same level of mental development as an adult, even when they become teenagers. They lack the adult capacity to use reasoned judgment, to prevent inappropriate or harmful action generated as a result of high emotion and fear, or to understand the long-term consequences of rash actions.

HOW MANY COUNTRIES HAVE PERSONS SERVING LWOP FOR CRIMES COMMITTED BEFORE THE AGE OF 18?

Two: the United States and Israel. The United States has 99.9% of all cases of juvenile offenders serving LWOP, with 2,381 such cases. Of those cases, 149 have been sentenced since 2005.

DO CHILDREN OF COLOR SUFFER DISCRIMINATION IN RECEIVING THE LWOP SENTENCE?

Yes. In the United States, African American children are ten times more likely than white children to be given a life without parole sentence. In some states, including California, the rate is 20 to 1.

HAVE ALL OTHER COUNTRIES ELIMINATED THE POSSIBILITY OF SENTENCING CHILDREN TO LWOP TERMS BY LAW?

No. There are nine other countries besides the United States and Israel of concern: Australia could have two child offenders serving the life without parole sentence depending on the outcome of a High Court decision expected in 2008. Eight countries have not officially declared it against law but there are no known cases that exist: Antigua and Barbuda, Belize, Brunei, Cuba (a reform bill is pending), Dominica, Saint Vincent and the Grenadines, the Solomon Islands, and Sri Lanka (legislation is pending). On a positive note, South Africa and Tanzania, which had been reported to have 5 children serving LWOP between them, have now officially indicated they will provide parole for all juvenile offenders.

DO LWOP SENTENCES FOR CHILDREN VIOLATE INTERNATIONAL HUMAN RIGHTS LAWS?

Yes. The sentence violates customary international law binding all nations and is expressly prohibited under any circumstance by Article 37 of the U.N. Convention on the Rights of the Child, ratified by all countries of the world except the U.S. and Somalia. Trying children as adults and imposing a life without parole sentence is also a violation of Article 24 of the International Covenant on Civil and Political Rights and could be considered cruel, unusual or degrading treatment under the Convention Against Torture.

EXECUTIVE SUMMARY

This report focuses on the sentencing of child offenders—those convicted of crimes committed when younger than 18 years of age—to a term of life imprisonment without the possibility of release or parole (“LWOP”). The sentence condemns a child to die in prison. It is the harshest sentence an individual can receive short of death and violates international human rights standards of juvenile justice.

Imposing LWOP on a child contradicts our modern understanding that children have enormous potential for growth and maturity as they move from youth to adulthood, and undergo dramatic personality changes as they mature from adolescence to middle-age. Experts have documented that psychologically and neurologically children cannot be expected to have achieved the same level of mental development as an adult, even when they become teenagers. 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, or to understand the long-term consequences of rash actions.

For many children, LWOP is an effective death sentence, carried out by the state slowly over a long period of time. The young age of those serving time in the United States, for example, makes them more susceptible to severe physical abuse by older inmates, including sexual assault. This can produce additional trauma for children who are likely to have suffered physical abuse before entering prison. Children also endure emotional hardship, hopelessness and neglect while serving time. In the U.S., some child offenders believe execution to be more humane than living with the knowledge that their death will come only after many decades of confinement to a small, concrete and steel cell. With no hope of release, they feel no motivation to improve their development toward maturity. This is reinforced by prison officials who tend to give up on the juveniles sentenced to die in prison, providing them with no real education or life skills (resources better spent on those who have a chance of release). In this context, the sentence is indeed cruel and unusual.

On a global level, the consensus not to impose LWOP sentences on children is virtually universal. Based on the au-

thors’ research, there are only two countries in the world today that continue to sentence child offenders to LWOP terms: the United States and Israel. The U.S. has at least 2,381 children serving life without parole or possibility of release sentences while Israel is known to have 7.

The last documented case in Israel occurred in 2004 but there is concern that Israel may apply the sentence again to child offenders convicted of political or security crimes. Yet, from 2005-2007 alone, U.S. courts sentenced an additional 149 children to LWOP terms. Australia is also a country of concern because a law passed in New South Wales may have the effect of applying life without parole sentences to at least two juveniles whose cases are pending before the country’s highest court.

This year, Tanzania and South Africa, countries reported to have had child offenders serving LWOP sentences, have now officially stated that they will allow parole for juveniles in all cases. This is a laudable departure from earlier positions and one that the authors and other human rights groups look forward to monitoring.

More than ever before, the community of nations today resolutely condemns the practice as against modern society’s shared responsibility toward child protection and, more concretely, as a human rights violation prohibited by treaties and customary international law. The U.S. and Israel have ratified a number of international treaties which they are violating by allowing LWOP sentences for juvenile offenders.

The authors have prepared this report in part to expose this human rights abuse to the global public, other governments and the United Nations and, in part, to share this information more clearly with the American public and officials. This is of particular concern today for Americans because, as was the case with the juvenile death penalty, there is no evidence that the severity of this sentence provides any deterrent effect on youth and the sentence rules out the possibility of rehabilitation and redemption for our children. Given the extraordinary number of child offenders serving

this sentence in the U.S. as compared to the rest of the world, Americans may well ask why so many U.S. states continue to violate international human rights law, as practiced by virtually every other country in the world where children also sometimes commit terrible crimes. Why does the U.S. continue to impose a sentence that is not humane, appropriate or a deterrent to crime and which 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. The country's juvenile justice laws and policies should better reflect this understanding. In fact, the U.S. as a nation could follow the lead of Germany, New Zealand or the U.S. states of Georgia, Florida and Louisiana, where alternative sentencing structures are succeeding in rehabilitation and reduction of recidivism. These would more soundly address the public's concerns over punishment and safety, while enhancing the opportunity for juveniles to become mature and productive contributors to society.

The Report commends 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 juvenile justice standards. The authors conclude by recommending that:

- Countries continue to denounce the practice of sentencing juveniles to life without possibility of release 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; and further 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.
- United States abolish juvenile LWOP sentence under federal law and undertake efforts to bring the U.S. states into compliance with U.S. international obligations to prohibit this sentencing, including to rectify the sentences of those juvenile offenders now serving LWOP; 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 Report; and 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 abolish LWOP sentences for juveniles under all circumstances, including for political and security related crimes and that it rectify and/or clarify the sentences of the seven juveniles in question who may be serving an LWOP sentence to come into compliance with their obligations under the U.N. Convention on the Rights of the Child and customary international law.
- Tanzania 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 and to further bring its juvenile justice system into compliance with its obligations under the U.N. Convention on the Rights of the Child and customary international law.
- South Africa pass without haste the Child Justice Bill to clarify abolition of juvenile LWOP sentencing under all circumstances.
- Australia clarify the legal prohibition of LWOP sentences for juveniles and ensure that its provinces bring their laws into compliance with its obligations under the U.N. Convention on the Rights of the Child, International Covenant on Civil and Political Rights and other international laws related to juvenile justice.

I . I N T R O D U C T I O N & O V E R V I E W

This report 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 committed when younger than 18 years of age, as defined by the international standards contained in the U.N. Convention on the Rights of the Child.¹ The sentence condemns a child to die in prison.

The sentence of life in prison without the possibility of release is the harshest of sentences an adult can receive short of death. Imposing it 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.

“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 40-year-old career criminals serving several life sentences, quite different issues are raised for 14-year-olds, certainly as compared to 40-year-olds, [who] are almost certain to undergo dramatic personality changes as they mature from adolescence to middle age.”²

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, or to understand the long-term consequences of rash actions.⁴

For many children, LWOP is an effective death sentence, carried out by the state over a long period of time. They may be threatened with physical abuse during their incarceration: 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 can produce additional trauma for children who are likely to have suffered physical abuse before entering prison. One recent study of 73 children serving LWOP sentences in the U.S. for crimes committed at age 13 and 14 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 afford.”⁶

Children endure emotional hardship, hopelessness and neglect while serving time. In the U.S, some child offenders believe execution to be more humane than living with the knowledge that their death will come only after many decades of confinement to a small, concrete and steel cell. With no hope of release, they feel no motivation to improve their development toward maturity. This is reinforced by prison officials who tend to give up on the

BASED ON THE AUTHORS’ RESEARCH, THERE ARE ONLY TWO COUNTRIES IN THE WORLD TODAY THAT CONTINUE TO SENTENCE CHILD OFFENDERS TO LWOP TERMS: THE UNITED STATES AND ISRAEL. THE U.S. HAS AT LEAST 2,381 CHILDREN SERVING LIFE WITHOUT PAROLE OR POSSIBILITY OF RELEASE SENTENCES WHILE ISRAEL IS KNOWN TO HAVE 7.

juveniles sentenced to die in prison, providing them no real education or life skills (resources better spent on those who have a chance of release).⁷

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 international norms prohibited by the United Nations Convention Against Torture.⁸

Globally, the consensus against imposing LWOP sentences on children is virtually universal. Based on the authors' research, there are only two countries in the world today that continue to sentence child offenders to LWOP terms: the United States and Israel.⁹

The United States has at least 2,381 children serving life without parole or possibility of release sentences while Israel is known to have seven.¹⁰ The last documented case in Israel occurred in 2004 but there is concern that Israel may apply the sentence again to child offenders convicted of political or security crimes.¹¹ In the United States from 2005 to 2007, courts sentenced 149 children to serve LWOP terms. For both the United States and Israel there are no official reforms underway, nor any expression that they will seek to amend their laws in the future to prohibit juvenile LWOP sentences or any indication they plan to cease their continued violation of international human rights law.

Moreover, Australia is of serious concern. A law passed in New South Wales may have the effect of applying life without parole sentences to at least two juveniles whose cases are pending before the country's highest court.¹²

On a positive front, Tanzania and South Africa, countries reported to have had child offenders serving LWOP sen-

tences, have now officially stated that they will allow parole for juveniles in all cases, as discussed in Section II below. This is a laudable departure from earlier positions and one that the authors and other human rights groups look forward to monitoring.

The community of nations now condemns the practice by any state as against modern society's shared responsibility for child protection and, more concretely, as a human rights violation prohibited by treaties and expressed in customary international law. The authors have prepared this report in part to expose this human rights abuse to the global public, other governments and the United Nations, and to share this information more clearly with the American public and officials. This 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 found to be the case with the juvenile death penalty. The U.S. Supreme Court has found, "...the absence of evidence of deterrent effect is of special concern because the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence."¹³ Americans may well ask why so many U.S. states continue to violate international human rights law, as practiced by virtually every other country in the world where children also sometimes commit terrible crimes. Why does the U.S. continue to impose a sentence that is not humane, appropriate or a deterrent to crime and which 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.¹⁴ The country's juvenile justice laws and policies should better reflect this understanding.

Section II presents a discussion of the global condemnation of this practice which has led to international law

standards, the actual practices of sentencing children to LWOP in the United States and Israel, the countries which have abrogated the law recently and those countries where the law may remain ambiguous. The discussion of current practice in the United States demonstrates that it is the world's single largest practitioner of this sentencing and that racial discrimination has become prevalent in these and other juvenile sentences across the country.

The analysis presented in this Section 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.

Section III analyzes international human rights standards and the violation of international law by countries imposing sentences of life imprisonment without possibility of release for child offenders. Section IV identifies several juvenile justice and rehabilitation models of other countries and U.S. states that can serve as an alternative to harsh and inappropriate sentencing for children.

Section V 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.

II. COUNTRY PRACTICE IN IMPOSING LWOP SENTENCES

Very few countries have historically used life sentences for juvenile offenders. Indeed, a single country is responsible for more than 99.9% of all child offenders serving this sentence: the United States. Most governments have either never allowed, expressly prohibit 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 commitments¹⁵ and 185 of which have done so in the U.N. General Assembly.¹⁶

Of the remaining countries outside the United States, ten may have laws that could permit the sentencing of child offenders to life without possibility of release, though except for Israel there are no known cases where this has occurred. Australia, one of the countries with a law that might permit the LWOP sentence for child offenders, is of special concern because there may soon be two child offenders serving the sentence depending on how Australia's High Court decides their appeals (see discussion below). The ten countries are Antigua and Barbuda, Australia, Belize, Brunei, Cuba, Dominica, Israel, Saint Vincent and the Grenadines, the Solomon Islands, Sri Lanka.¹⁷

The United States has at least 2,381 children who were convicted of crimes committed before the age of 18 who are now serving the LWOP sentence in U.S. prisons (including 149 sentenced since 2005). Israel has seven such cases.¹⁸ Tanzania had been reported to have one child serving the sentence but it has provided evidence in writing to the authors that a life sentence for juveniles must include the possibility of parole now, including for the one child reported. It will also introduce legal reforms to clarify the prohibition, in conformity with the U.N. Convention on the Rights of the Child (as discussed in Section II of this Report).

Consequently, there are now only two countries in the world that can fairly be said to practice sentencing juveniles to die in prison: the United States and Israel. For both of these countries, officials would not assure that either reforms were underway to abolish the practice or that the practice for future cases had effectively ceased. In essence, the two countries are likely to continue to sentence child offenders to die in prison, though Israel's use of the sentence appears quite rare. The Israeli government confirmed recently to the authors that it knows of no additional child offenders serving LWOP in the country since those reported in 2004 but the authors are concerned Israel could apply the sentence again.

A. UNITED STATES: MOST EGREGIOUS VIOLATOR OF THE PROHIBITION AGAINST LWOP SENTENCES FOR CHILDREN

Compared to the number of countries sentencing child offenders to life without possibility of release, the United States, with more than 2,381 juveniles serving life sentences, disproportionately delivers this sentence to child offenders.¹⁹

Forty-four states and the federal government allow life sentences without the possibility of parole to be imposed on juvenile offenders. Among these states, 13 allow sentencing a child of any age to LWOP and one sets the bar at 8 years or older. There are 18 states which could apply the sentence to a child as young as 10 years and 20 states that could do this at age 12. Thirteen states set the minimum age at 14 years. 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 13 and 15 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.²⁰ Following is an updated summary of state practice and law.

SUMMARY OF STATE LAW IN THE UNITED STATES

44 states allow life without parole sentences for juveniles. 11 states and the District of Columbia either do not allow or do not appear to practice LWOP sentences for juveniles. 39 states appear to apply it in practice.

STATES PROHIBITING LWOP:

- Alaska
- Colorado
- Kansas
- Kentucky*
- New Mexico
- Oregon
- District of Columbia

STATES WITH NO CHILDREN KNOWN TO BE SERVING LWOP:

- Maine
- New Jersey
- New York
- Utah
- Vermont

STATES ALLOWING LWOP: AGE LIMITS

Age 16 and above

- Indiana

Age 15 and above

- Louisiana
- Washington

Age 14 and above

- Alabama
- Arizona
- Arkansas
- California
- Connecticut
- Iowa
- Massachusetts
- Minnesota
- New Jersey
- North Dakota

- Ohio
- Utah
- Virginia
- Age 13 and above**
- Georgia
- Hawaii
- Illinois
- Mississippi
- New Hampshire
- North Carolina
- Oklahoma
- Wyoming
- Age 12 and above**
- Missouri
- Montana
- Age 10 and above**
- South Dakota
- Texas
- Vermont
- Wisconsin
- Age 8 and above**
- Nevada

STATES THAT COULD APPLY LWOP AT ANY AGE

- Delaware
- Florida
- Idaho
- Maine
- Maryland
- Michigan
- Nebraska
- New York
- Pennsylvania
- Rhode Island
- South Carolina
- Tennessee
- West Virginia

See Appendix to this Report²¹

Kentucky's law is now uncertain as the only cases of juvenile LWOP are being challenged in the courts as unconstitutional.

As noted above, the sentence was rarely imposed until the 1990s, when most states passed initiatives increasing the severity of juvenile punishments.²² 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.²³

The rate of judicial waiver (allowing children to be tried as adults) increased 68% from 1988 to 1992.²⁴ Since 2000, 43 U.S. states implemented legislation facilitating the transfer of juveniles to adult court.²⁵ Twenty-eight or more states limited or completely eliminated juvenile court hearings for certain crimes and at least 14 states gave prosecutors individual discretion to try children as adults, bypassing the traditional safeguard of judicial review.²⁶

In violation of international law, some children are still being 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 lifelong emotional trauma.²⁷ The National Council on Crime and Delinquency found that “one in 10 juveniles incarcerated on any given day in the U.S. will be sent to an adult jail” to serve their time.²⁸ The number of children serving time in adult jails increased 208% between 1990 and 2004.²⁹ By transferring juveniles to the adult court system, many states neglect to honor the status of these minors as juveniles, a violation of the U.S. obligations under Article 24 of the International Covenant on Civil and Political Rights.³⁰

Although crime rates have been steadily declining since 1994,³¹ it is estimated that the rate at which states sentence minors to life without parole remains at least three times higher than it was 15 years ago,³² suggesting a tendency for states to punish these youths with increasing severity. For example, in 1990, there were 2,234 youths convicted of murder in the United States, 2.9% of whom were sentenced to life without the possibility of parole.³³ Ten years later, in

2000, the number of youth murderers had dropped to 1,006, but 9.1% still received the LWOP sentence.³⁴

DISPROPORTIONATE SENTENCING OF CHILDREN OF COLOR TO LWOP

Also alarming is the disproportionate number of children of color sentenced to life without possibility of release in the United States. Although significant racial disparities exist in the overall juvenile justice system, African American children are reportedly serving life without possibility of release sentences at a rate that is 10 times higher than white children.³⁵

For example, in California, which has the greatest system-wide racial disparity in this regard, 190 of the 227 persons serving the sentence for crimes committed before the age of 18 are of minority background and African American children in California are 20 times more likely to receive a life without parole sentence than white children: Hispanic children are five times more likely.³⁶ Racial disparities track in jurisdictions across the United States. Other examples are:

ALABAMA

Children of color are: 36% of the child population;³⁷ 73% of children serving LWOP sentences (49% are African American);³⁸ and 100% of children serving LWOP for non-homicide offenses.³⁹

COLORADO

African-Americans are 4.4% of the child population and 26% of those serving LWOP sentences.⁴⁰

MICHIGAN

Children of color are 27% of the population⁴¹ and 71% of children serving LWOP sentences.⁴²

Under age 17, African American children in Michigan are 19% of the population but 65% of children serving LWOP sentences. On a county-by-county basis, the disparities are even more significant.

For children of color: in Wayne County, they are 94% of the children given LWOP sentences though accounting for 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, they are 50% of children serving LWOP sentences but 13% of the child population.⁴³

MISSISSIPPI

African American children are 45% of the population⁴⁴ and 75% of children serving LWOP sentences (compared to 20% of white children).⁴⁵

Racial disparity permeates the U.S. 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.⁴⁶ In analyzing the “relative rate index,” (a standardized index that compares rates of racial and ethnic groups compared to whites),⁴⁷ 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; Wisconsin 18:1; New Jersey 15:1; Wyoming 12:1; Nebraska 11:1; and New Hampshire 10:1.⁴⁸

Children of color are also held in custody and prosecuted “as adults” in criminal courts and given adult sentences more often than white children.⁴⁹ African American children are nine times more likely to be brought into custody than white children, even though they make up just 16% of the total U.S. child population (compared to 78% white children).⁵⁰

Children of color are also much more likely than white youth to do their time in adult prison. As Figure 1 (right) shows, 26 out of every 100,000 African American children were sentenced to and are serving time in adult prison while for white children the rate is only 2.2 per 100,000. On a state-by-state basis, these disparities are magnified, as discussed above.

The U.S. government is aware of this disparity, as are most Americans. A recent survey indicated that this is a fact well-understood by most Americans, 60% of whom believe that non-white youth are more likely to be prosecuted in adult court.⁵¹ 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 to which the United States is a party.⁵²

Finally, of serious concern is that there is a “cumulative” disadvantage to minorities entering the justice system via arrest through the period of incarceration so that racial disparity actually increases as the youth is arrested, processed, adjudicated, sentenced and incarcerated as shown in Figure 2, (right).⁵³

Within the juvenile system, the trends for juvenile placements out of the home demonstrate that youth of color suffer discrimination. From 1997 to 2003, the total placements decreased from approximately 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%.⁵⁴

While institutions in the country have documented racial disparities in growing numbers over the past decade, the U.S. government has done little to address the most serious discriminatory practices leading to this disparity. Even after passing the 2002 Juvenile Justice and Delinquency Act, a law designed to address discrimination of children, the government has not ensured that effective action is taken by states to address the offending discrimination in their jurisdictions. Moreover, data on racial disparity among juveniles receiving life without parole is neither collected nor analyzed by the federal government or by states in any systematic manner, and thus the government does not inform the public of this disparity. Without such a systematic effort, the United States cannot effectively ensure the eradication of discrimination as required by the U.N. Convention on the Elimination of Racial Discrimination (“CERD”).

Figure 1 Youth in Adult Prison: Rates of New Commitments to Prison by Offense

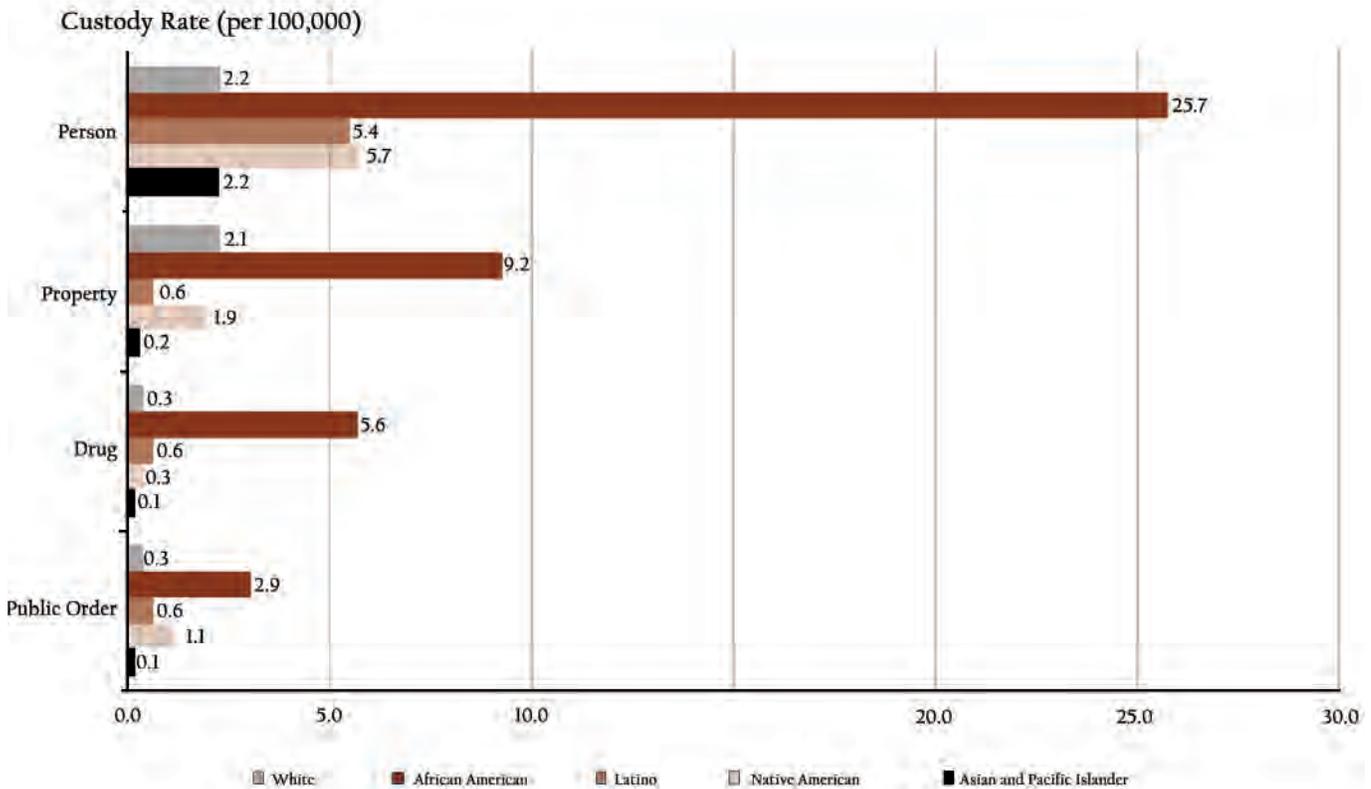
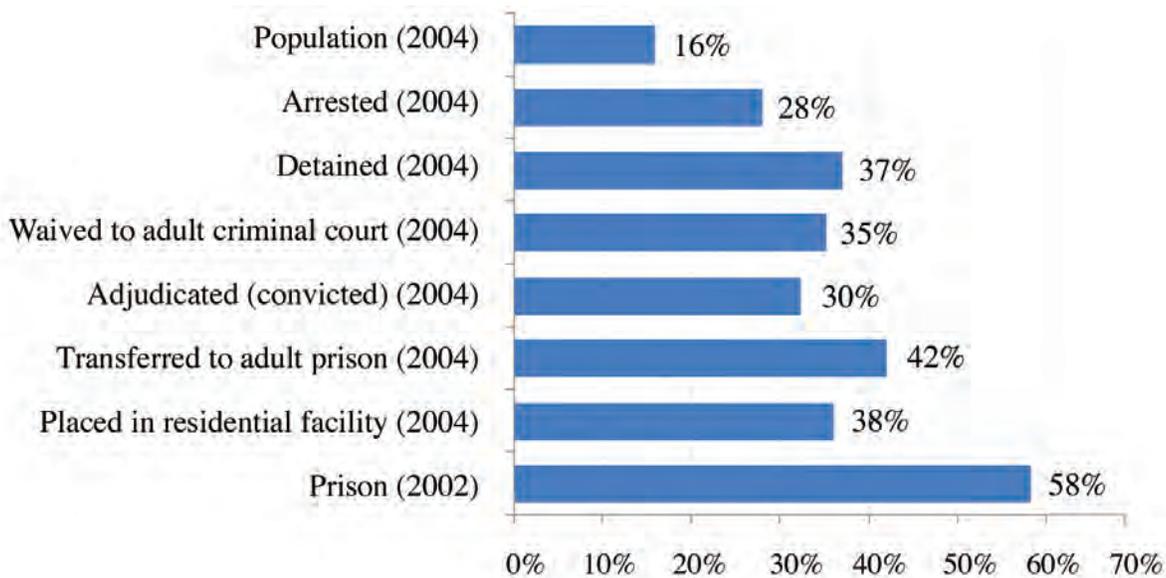


Figure 2 African American Youth Disproportionately Represented through every Stage in the Juvenile Justice Process



Both Figure 1 and Figure 2 were produced by the National Council on Crime and Delinquency, “And Justice for Some” (2007). Figure 1 rates are based on numbers per 100,000 youth of that race in the population.

B. ISRAEL

Israel has anywhere between one and seven child offenders serving life without possibility of parole sentences.⁵⁵ It is still unclear how many of the seven youths given life sentences are ineligible for parole. 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 17-year-olds who stabbed a bus passenger to death as part of the “initiation rite” of a terrorist organization; and on a youth age 17 and 10 months who strangled his employer to death after she commented on his work and delayed payment of his salary for two days”.⁵⁶

Human Rights Watch identified three other juveniles sentenced to life terms in 2004.⁵⁷

Israeli law provides for review of life sentences at a minimum after 30 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, in which case a juvenile would serve an LWOP sen-

tence.⁵⁸ The seven juveniles that could be serving LWOP sentences, discussed above, would have presumably been sentenced for political or security crimes. No reform in the Emergency Regulations Act or sentencing procedure is underway to prohibit this sentence.

In a 2005 report, Human Rights Watch 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.⁵⁹ In the authors’ meetings and correspondence with Israeli officials during 2007, officials confirmed that there is no change in the general number of life and/or LWOP cases as noted in this Report.⁶⁰ Since 2004 there have been no additional cases reported. However the authors continue to seek accurate information about each of the previous cases identified.

G. COUNTRIES THAT RECENTLY CHANGED THEIR 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.⁶¹ In the past year, all of these countries have clarified their practice and/or law to prohibit LWOP sentences for juveniles, as discussed below.

1. TANZANIA

In Tanzania, the government asserts that no child under the age of 18 is sentenced to life without possibility of release.⁶² Several children recently sentenced to life terms have now been given parole.⁶³ Tanzania has confirmed that one child offender who was 17 at the time of the crime is serving a life sentence in the country. There was concern that the Act under which he was sentenced does not provide for parole. In meetings with the authors and written follow-up, the government has confirmed that all children, including this case, are to be eligible for parole. 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, on behalf of the Permanent Representative, 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 the 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 give the High Court reversionary and discretionary powers, in this regard the court can in suo 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 his sentence has the possibility of parole...It is our expectation that this information is [sic] sufficient to inform you that there are mechanisms that allow a 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.”⁶⁴

In Tanzania, the child welfare department and a parole review board monitor children in custody and “upon being satisfied that the child has been rehabilitated will then

start a process for releasing the child.”⁶⁵ 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 of young children.⁶⁶

The one law which poses an issue for sentencing of juveniles as adults is the Sexual Offenses Special Provisions Act (“SOSPA”), 7/1998 No. 4/98, 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 5 years old. The law sought to reduce violence against children by increasing education and punishment for such crimes.⁶⁷ The age of the child is not considered in prosecuting cases under the Act and children are prosecuted as adults. The law imposes stricter sentences for second- or third-time offenders, and offenders can be sentenced to between 30 years and life. In the case of rape of a child under the age of 10, the Act mandates the automatic sentence of life imprisonment.⁶⁸ Moreover, under any other criminal convictions the President of the country confirms personally every sentence given to a child offender in Tanzania but under SOSPA the court issues the sentence without review by the President.

As noted above, the Tanzanian Minister of Justice is introducing a reform bill in Parliament to bring sentencing under this Act into compliance with the Convention on the Rights of the Child (“CRC”), prohibiting cruel and unusual punishments for children, including life without parole sentences for child offenders. The Act will provide the courts with discretion in determining all sentences under the Act with respect to juveniles, in compliance with the CRC.⁶⁹ 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 Convention on the Rights of Child prohibition on life without possibility of release sentences.⁷⁰ The authors will monitor these developments in the coming months.

2. SOUTH AFRICA

South Africa no longer allows sentences of life without possibility of release 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 life without possibility of release sentences.⁷¹ The government's second report to the CRC does not discuss or further clarify this figure.⁷² 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, e.g. no persons who committed crimes before age 18, and that all sentenced persons qualify now to apply for parole after a determinate period.⁷³ 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.⁷⁴ In 2004, the South Africa Supreme Court of Appeals issued a critical decision, *Brandt v. S.*, which gave judges sentencing discretion with regard to juveniles. The decision emphasized the importance of children's rights and reaffirmed CRC 37(b) principles which required juvenile imprisonment to be a last resort and for the shortest time possible.⁷⁵

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 that the South African government has made minimal efforts to ensure that its incarcerated youth receive special protections over its older prison populations. The Criminal Procedure Act 51 of 1977 at section 73(6)(b)(iv) specifies that a person serving life imprisonment may not be placed on parole until he or she has served at least 25 years, or has reached 65 years if at that time he has

served 15 years. There is no parallel clause benefiting young offenders, and it appears that the Act aids only people who were 50 years or older at the time of the commission of the offence. The Reform bill under consideration may address these deficiencies and be clarified in the government's report to the Committee on the Rights of the Child.

More recently, in January of this year, the government announced that in an attempt to curb prison overcrowding, it would release 300 adults serving life sentences, some of which were former death row inmates. 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."⁷⁶

SOUTH AFRICA NO
LONGER ALLOWS SEN-
TENCES OF LIFE WITHOUT
POSSIBILITY OF RELEASE
FOR CHILD OFFENDERS
AND HAS NO
CHILDREN SERVING
THIS SENTENCE.

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 the U.N. Human Rights Council session and subsequently both countries clarified that they do not allow for such sentences and provided written explanation to the authors.⁷⁷ 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 (oversight body for the CRC) in its General Comment on Juvenile Justice, published in February 2007.⁷⁸

In Burkina Faso, there is no law providing for child offenders younger than 16 to be given life sentences. After age 16, 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. However, this has never been pronounced by a judge in the country and officials have

stated this cannot be done now in contravention of Burkina Faso's treaty obligations under the CRC, which apply directly in domestic law.⁷⁹

Kenya has specifically clarified its compliance with the Convention on the Rights of the Child in a report submitted to the CRC in 2006.⁸⁰ It ratified a bill which outlaws LWOP sentences for all children under age 18.⁸¹

D. COUNTRIES THAT COULD CONCEIVABLY ALLOW LWOP SENTENCES FOR JUVENILES BUT WHERE NO PRACTICE EXISTS

The other countries with life without possibility of release sentences available for child offenders reportedly do not have any child offenders serving this sentence. For the other 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.⁸² Besides the U.S. and Israel there remain nine countries where it is unclear but reportedly possible for a child offender to serve an LWOP sentence are: Antigua and Barbuda, Australia, Belize, Brunei, Cuba,⁸³ 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). The authors observe that Australia could soon become the exception depending on the outcome of a case now before Australia's High Court, discussed below.

AUSTRALIA

According to Australia's report to the CRC in 2005, state, territory and federal laws are now standardized in the age of criminal responsibility, which is 10 years of age. 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 omis-

sions."⁸⁴ There are no child offenders convicted under federal law serving LWOP sentences: Australian officials have indicated that there are currently about 26 federal prisoners with life sentences and only two of those do not have a non-parole period set, but neither of these persons were sentenced when they were juveniles.⁸⁵

State practice in Australia is more difficult to evaluate in this regard. In Queensland, children aged 17 in conflict with the law may be tried as adults in particular cases though the authors are not aware of any children serving the adult LWOP sentence.⁸⁶ This was noted of concern to the Committee on the Rights of the Child in evaluating Australia's compliance with its treaty obligations.⁸⁷

In New South Wales, two juveniles who were sentenced to life imprisonment are challenging a law enacted after their sentencing which would give legal weight to a judge's recommendation that they not be given parole. The cases, *Elliot v. the Queen*⁸⁸ and *Blessington v. the Queen*⁸⁹ are being heard now by Australia's High Court.⁹⁰ No other juvenile LWOP cases are known. Thus, the decision of the Court to reduce or clarify the sentence will be critical to determining whether Australia will allow juvenile LWOP sentences for child offenders and carry out these sentences. If the High Court allows the LWOP sentences, Australia would be in violation of its treaty obligations under the Convention on the Rights of the Child ("CRC").⁹¹

The Committee on the Rights of the Child was concerned by Australia's juvenile justice system in 2005 and with the ability of the courts 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," and recommended Australia "strengthen its efforts to bring its domestic laws and practice into conformity with the principles and pro-

visions of the Convention, and to ensure that effective remedies will be always available in case of violation of the rights of the child.”⁹²

It is therefore surprising that an Australian province would be moving in the opposite direction and consider allowing an LWOP sentence for juveniles, as may be the case with the New South Wales Crimes (Sentencing Procedure) Act of 1999 at issue in the High Court cases of *Elliott* and *Blessington*.

Moreover, if the High Court were to allow the retroactive application of the harsher sentence of “no parole” as mandatory on the juvenile offenders, it would be in violation of its treaty obligations under Article 15(1) of the International Covenant on Civil and Political Rights, which prohibits the retroactive application of a harsher penalty that comes into law after the commission of a crime.⁹³ It is hoped that the Australian High Court will consider these international legal prescriptions in its determination of the *Elliott* and *Blessington* cases now before it.

III. INTERNATIONAL LAW PROHIBITS LIFE WITHOUT POSSIBILITY OF RELEASE OR PAROLE FOR JUVENILES

International law has recognized that the special characteristics of children preclude them from being treated the same as adults in the criminal justice system.

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 the 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.⁹⁴ 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 LWOP in their laws⁹⁵ evolved a century ago to impose a separate punishment structure on children and to prohibit LWOP sentences.⁹⁶ The Children Act of 1908 in England required the special treatment of children from adults and "leniency in view of the age of the offender at the time of the offense."⁹⁷ The practice to impose LWOP sentences on children has been a more recent phenomenon at the end of the last century, largely in the 1990s, by a small minority of countries seeking harsher sentences against juvenile offenders.⁹⁸

A. TREATIES PROHIBIT LWOP SENTENCES BECAUSE OF THE SPECIAL CHARACTERISTICS OF CHILDREN

The Convention on the Rights of the Child ("CRC"), a treaty ratified by every country in the world except the United States and Somalia, codifies an international customary norm of human rights that forbids the sentencing of child offenders to life in prison without possibility of release.⁹⁹ In early 2007, the Committee on the Rights of the Child, the implementation authority for the Convention on the Rights of the Child, 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) CRC [of the treaty]."¹⁰⁰

The General Comment's additional paragraph 27 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 18. Providing greater clarity to this norm is the Committee's interpretation of treaty obligations around procedure for trial of juveniles, requiring states to treat juveniles strictly under the rules of juvenile justice.¹⁰¹ This would effectively prohibit courts from trying juveniles as adults—the primary mechanism in U.S. courts and elsewhere for applying the LWOP sentence.

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 (hereinafter "ICCPR").¹⁰² Article 7 prohibits cruel, unusual and degrading treatment or punishment. Life terms without the possibility of parole ("LWOP") are cruel, as discussed above, when applied to children. Juvenile LWOP sentences also violate Article, 10(3) which pro-

vides, “[t]he 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.” In sentencing, governments are to “[i]n the case of juvenile persons...take account of their age and the desirability of promoting their rehabilitation” as prescribed by Article 14(4) of the treaty. 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.”

B. THE UNITED STATES IS IN DIRECT VIOLATION OF ITS TREATY OBLIGATIONS

The United States ratified the International Covenant on Civil and Political Rights (“ICCPR”) in 1992.¹⁰³ 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 by allowing LWOP sentences for juveniles. It 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.” The extraordinary breadth and rapid development in the United States of sentencing child offenders to LWOP since the U.S. ratification of the ICCPR contradicts the assertion that the United States has applied this sentence only in exceptional circumstances—the total children tried as adults and sentenced to LWOP now exceeds 2,381, many of whom were first-time offenders (see Section II for discussion).

In 2006, in evaluating U.S. compliance with the treaty, the Committee on Human Rights found the United States to be out of compliance with its treaty obligations, concluding that its practice to sentence child offenders to life without parole violates article 24(1): “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...”

The Committee expressed its grave concern “that the treatment of children as adults is not applied in exceptional circumstances only...[t]he 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.”¹⁰⁴

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, further commented in 2006 as it evaluated U.S. compliance that the life imprisonment of children “could constitute cruel, inhuman or degrading treatment or punishment,”¹⁰⁵ in violation of the treaty.

Moreover, the United States has done nothing to reduce the pervasive discrimination evident in many U.S. states’ application of the LWOP sentence to children of color. As discussed in Section II, the rate of African American youth compared to white youth per 100,000 youths incarcerated in adult prisons is 26 to 2; youth of color in some jurisdictions receive more than 90% of the LWOP sentences given and national rates for African Americans are 10 times that of white youth.¹⁰⁶

Most recently, the United Nations General Assembly (“G.A.”) acted on the issue. By a vote of 185 to 1 (with the United States being the only country voting against it) the G.A. passed a resolution December 19, 2006, codified in Resolution A/61/146, calling upon states 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 offence.”¹⁰⁷ A similar resolution has been introduced in October of 2007 at the General Assembly calling again for abolition of LWOP sentences for juveniles.¹⁰⁸

International law as evidenced through international treaties and other agreements is the supreme “law of the land” in the United States and these principles should be applied in the context of juvenile sentencing. The Supremacy Clause is the common name given to Article VI, Clause 2 of the U.S. Constitution which states:

“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 or Laws of any State to the Contrary notwithstanding.”¹⁰⁹

The U.S. Supreme Court in *Roper v. Simmons*, abolishing the practice of juvenile executions, considered not only the evolution of international law but the evolution of 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.”¹¹⁰

In considering Constitutional values related to the most severe punishment of juveniles, death, 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.[citations omitted]. As we understand it, this difficulty underlies the rule forbidding psychiatrists from diagnosing any patient under 18 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.[citations omitted]. If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 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.”¹¹¹

THE EXTRAORDINARY BREADTH AND RAPID DEVELOPMENT IN THE UNITED STATES OF SENTENCING CHILD OFFENDERS TO LWOP SINCE THE U.S. RATIFICATION OF ICCPR CONTRADICTS THE ASSERTION THAT THE UNITED STATES HAS APPLIED THIS SENTENCE ONLY IN EXCEPTIONAL CIRCUMSTANCES.

It has been demonstrated that juveniles awaiting death in prison under the LWOP sentence also have no opportunity to attain a mature understanding of his or her own humanity.

G. THE PROHIBITION OF JUVENILE LWOP IS CUSTOMARY INTERNATIONAL LAW AND A *JUS COGENS* NORM

The prohibition against sentencing child offenders to life without the possibility of release is part of customary international law and the virtually universal condemnation of this practice can now be said to have reached the level of a *jus cogens* norm. Once a rule of customary international law is established, that rule becomes binding on all states, including those that have not formally ratified it themselves.

For a norm to be considered customary international law there must be 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.¹¹² The International Court of Justice (“ICJ”) has said that “a very widespread and representative participa-

tion 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.”¹¹³ Israel falls into this category having ratified the convention and having voted in favor of the resolution condemning this practice (A/61/146).

When customary law is said to be a *jus cogens* norm, no persistent objection by a state will suffice to prevent the norm’s applicability to all states: 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 general international law having the same character.”¹¹⁴ This definition is accepted by most legal scholars in and outside of the United States.¹¹⁵ Moreover, U.S. law recognizes that customary international law is part of domestic U.S. law and binds the government of the United States.¹¹⁶

The International Law Commission has included this principle among those in its Draft Articles on State Responsibility.¹¹⁷ 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.”¹¹⁸

The current President of the International Court of Justice, 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 states.¹¹⁹ What is important is to look at the legal expectations of the international community of nations and their practice in conformity with those expectations. As such, General Assembly resolutions can provide evidence of such expectations.¹²⁰

The prohibition of life without parole or possibility of release fulfills these requisites for three reasons: (1) There is

widespread and consistent practice by states not to impose a sentence of life without parole or possibility of release 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 two 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 Convention on the Rights of the Child and elsewhere, and requires states to abolish this practice, as evidenced by the most recent United Nations General Assembly resolution 61/146 (discussed above).

First, there are only two countries that are known to still practice the sentencing of juveniles to LWOP and/or have children serving, the United States and Israel. In Israel, not only are there no more than 7 child offenders reportedly serving LWOP, but the sentence appears not to have been given to a juvenile since 2004, suggesting that the “practice” is rare. Australia’s High Court will determine whether it joins this group in two cases now before it, as discussed in Section II of this Report. 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 1990’s when crime reached record levels.¹²¹ It was only between 1992 and 1995, that 40 states and the District of Columbia all passed laws increasing the options for sending juveniles to adult courts.¹²² Before this time, the sentence had been rarely imposed.¹²³

Third, there is near universal acceptance that the norm is legally binding, as codified by the CRC article 37, which prohibits life without possibility of release sentences for juveniles. All but two countries are party to the Convention (the United States and Somalia) and all but two countries (the United States and Israel) have ended the practice of using this sentence, and in accordance with their treaty obligations.

The Human Rights Committee found that this sentence violates the ICCPR, in evaluating the U.S. report to the Committee, as the treaty ensures that every child has the right to such measures necessary to protect his/her status as a minor.¹²⁴ Trying and sentencing children as adults violates that minor's status. Applying a serious adult sentence to a child also implicates article 7 of the ICCRP relating to cruel, inhuman and degrading treatment, as was also suggested by the Committee Against Torture, discussed above.

In addition to the legal prohibition recognized in the context of treaty law, states 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.

Prior to this, the General Assembly had adopted other statements on the subject which serve as evidence of states' expectations that all members of the international community of states should respect this norm. In 1985, the General Assembly adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (known as the 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.¹²⁵ The Commentary to this rule indicates that punitive approaches are not appropriate for juveniles and that the well-being and the future of the offender always outweigh retributive sanctions.¹²⁶

Similarly, in 1990 the General Assembly passed two resolutions extending protections for incarcerated juveniles: the U.N. Rules for the Protection of Juveniles Deprived of Their Liberty¹²⁷ and the U.N. Guidelines for the Prevention of Juvenile Delinquency (known as the "Riyadh Guidelines").¹²⁸ Both 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,"¹²⁹ and 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.¹³⁰

Every year for the past decade, the Commission on Human Rights has emphasized the need for states to comply with the principle that depriving juveniles of their liberty should only be a measure of last resort and for the shortest appropriate period of time.¹³¹ Its resolutions have consistently called for this compliance and in 2005 it further called specifically for the abolition of the juvenile LWOP sentences.¹³²

The recently passed GA Resolution 61/146, the 2006 Conclusions and Recommendations of the Human Rights Committee on the U.S. practice, the similar observations of the Committee Against Torture, and the 2007 Committee of the Rights of the Child's General Comment evidence a near universal consensus that has coalesced over the past 15 years, with accelerated pace in condemnations during the last several years. Indeed, because only two countries now would apply this sentence and because 99.9% of the cases come from only one country, the United States, 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 and Israel are violating international law by allowing their 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.¹³³ The following examples of alternative sentencing structures focusing on rehabilitation and reduction of recidivism represent only a few options 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 1970’s, Germany withdrew traditional sentencing for juveniles. The conventional model gave way to alternative measures in the 1970’s enumerated in the Juvenile Justice Act: suspensions, probation, community service, and a system of day-fines. Between 1982 and 1990, incarceration of juveniles in Germany decreased more than 50%.¹³⁴

In 1990, the Juvenile Justice Act (JJA) was amended to include additional alternatives to incarceration. In the case of juvenile offenders (14-17 years), the German criminal justice system predominately aims to educate the juvenile and provides for special sanctions. Initially, education and disciplinary measures are implemented. Only if unsuccessful is youth imprisonment with the possibility of suspension and probation used.¹³⁵

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.”¹³⁶ Included in Germany’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.¹³⁷ Furthermore, the German model does not restrict rehabilitation and justice by the nature of offence. Additionally, felony offences (“Verbrechen”) 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.”¹³⁸

Prison sentences for child offenders are a sanction of last resort (“ultima ratio”) in line with international norms including the CRC and Beijing Rules.¹³⁹ For child offenders between 14 and 17 years of age, the minimum length of youth imprisonment is six months; the maximum is five years.¹⁴⁰ In cases of very serious crimes for which adults could be punished with more than 10 years of imprisonment, the maximum length of youth imprisonment is ten years.¹⁴¹ Additionally, there is no possibility of death sentences or life without possibility of release sentences 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 OF 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.¹⁴² The Act provides for a Family Group Conference as a first step for dealing with a juvenile offender. These Conferences have now become the lynch-pin of the New Zealand youth justice system, both as pre-charge mechanisms to determine whether prosecution can be avoided, and also as post-charge mechanisms to determine how to address cases admitted or proved in the Youth Court.¹⁴³

The purpose of the Family Group Conference is to establish a safe environment in which the young person who has committed the offense, 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 and/or a lawyer are also present.¹⁴⁴

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). Next, information is shared among all the parties at the Conference about the nature of the offense, the effects of the offense on the victims, the reasons for the offense, any prior offending by the young person, and other information relevant to the dialogue. Third, the participants decide on an outcome or recommendation.¹⁴⁵ The Act requires the police to comply with the recommendations/agreements adopted and findings made by the Family Group Conference.¹⁴⁶

The New Zealand model for family group conferencing is largely inspired by traditional Maori justice practices.¹⁴⁷ Modern day family group conferencing incorporates traditional Maori beliefs that responsibility is collective rather than individual and redress is due not just to the victim but also to the victim's family.¹⁴⁸ "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 environment."¹⁴⁹ This understanding focuses on the need to address the causes of this imbalance in a collective manner.¹⁵⁰ The emphasis is placed on restoring the harmony between the offender, the victim, and the victim's family.¹⁵¹

There are now 8,000 Family Group Conferences held every year in New Zealand and 83% of youth offenders are diverted from the criminal justice system as a result.¹⁵² Imprisonment and the use of youth justice residences have dropped significantly with the use of Family Group Conferences.¹⁵³ This alternative to juvenile sentencing provides an excellent model for other states to follow in seeking to lower the level of juvenile incarceration and recidivism rates.

C. THE GEORGIA JUSTICE PROJECT HOLISTIC APPROACH TO JUVENILE REHABILITATION

In the U.S., the Georgia Justice Project (GJP) also has an innovative approach to breaking the cycle of crime and poverty among children in Atlanta, Georgia. A privately funded non-profit organization, GJP minimizes rates of recidivism amongst juveniles by incorporating counseling, treatment, employment and education programs with its legal services. Its rate of recidivism is 18.8%, as compared to the national U.S. average of 50 to 60%.¹⁵⁴

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. Recognizing that juvenile offenses typically indicate deeper problems such as lack of familial support, insufficient access or motivation for education, poverty, and lack of access to employment opportunities, GJP works on the criminal defense of the child offender as well as the breadth of other problems which strengthen the likelihood of recidivism.¹⁵⁵ Along with an attorney, each child offender is paired with a licensed social worker. As a team, the attorney, social worker and juvenile work together on the case. Win or lose, the juvenile's 'team' accompanies the juvenile through the entire process. If the judicial proceedings result in incarceration, GJP maintains close contact with the juvenile both during and after incar-

ceration. In this context, GJP provides incentives and support as the child offender rebuilds his/her life. This support is often a critical lynchpin 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”), existing in 75 sites in 19 states has focused its attention on eight “core strategies” to minimize juvenile delinquency and rehabilitate youth. 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. 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 10-year-old JDAI program is considered a model. It offers health and drug-abuse counseling, resume writing and computer classes, as well as 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 50 to 16 on average, saving the state millions of dollars per year. Other counties have followed suit with great success. New Mexico’s Bernalillo County JDAI site reduced their average daily detention population by 58% between 1999 and 2004, and New Jersey’s Essex County lowered its average daily population by 43% in just two years. In addition, Ada County, Idaho; Pierce County, Washington; and Ventura County, California have all lowered detention populations by at least one-third since implementing the program.¹⁵⁶

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 U.S. Department of Justice recommended immediate reform.¹⁵⁷ However, it was not until the death of a child inmate and resulting public protest that the facility began in earnest to restructure, and to comply with the newly enacted Juvenile Justice Reform Act.¹⁵⁸ The facility was shut and reorganized with the help of the Annie E. Casey Foundation and the MacArthur Foundation, reopening in 2005. The reforms abolished the prior boot-camp style youth facility, in which juvenile inmates were treated as “little adults,” and established a home-like environment focusing on therapeutic care and rehabilitation.

Today, the center houses approximately 70 young men, ranging from 13 to 20 years old in individual dormitories for about 8 to 12 persons.¹⁵⁹ 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 with the other youths in order to come to nonviolent, group-approved solutions to problems.¹⁶⁰ The youths also have daily access to education, mental health, social services and substance abuse treatment.¹⁶¹

The success of the Bridge City Center for Youth is being replicated throughout the state at other juvenile facilities.¹⁶² Though relatively new, the program was commended by the Annie E. Casey Foundation and the Juvenile Justice Project as a model state juvenile facility. These and other juvenile justice reforms in Louisiana contributed to a reduction from 1427 to only 611 individuals in the juvenile justice system between 2004 and 2006.¹⁶³

V. CONCLUSIONS AND RECOMMENDATIONS

The life without parole or possibility of release (“LWOP”) sentence condemns a child to die in prison. It is cruel and ineffective as a punishment; it has no deterrent value and contradicts our modern understanding that children have enormous potential for growth and maturity in passing from youth to adulthood. It further prevents society from reconsidering a child’s sentence ever and denies the wide expert knowledge that children are susceptible to rehabilitation and redemption.

The international community has outlawed this sentencing practice as a violation of state obligations to protect the status of a child and to seek recourse in criminal punishment toward more rehabilitative models of justice. The LWOP sentence for juveniles is a direct violation of the Convention on the Rights of the Child, Convention Against Torture, and the International Covenant on Civil and Political Rights, as well as customary international law. Countries that would impose this sentence are in violation of their international legal obligations. Today, that amounts to Israel and the United States.

In regard to the remaining countries of concern, the authors commend Tanzania and South Africa for their recent official agreement and clarification in removing the possibility of this sentence. However, the follow-through in legal reforms promised should immediately be undertaken if they are to ensure compliance with obligations under the CRC and international law.

In addition, nine other countries will 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 needs to clarify its law most urgently to prevent at least one province from mov-

ing in the opposite direction of allowing LWOP sentences for juveniles.

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.

The authors conclude by recommending the following:

- Countries continue to denounce the practice of sentencing juveniles to life without possibility of release as against international law, to condemn the practice among the remaining governments allowing such sentencing, and to call upon those where the law may be ambiguous to institute legal reforms confirming the prohibition of such sentencing; 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.
- United States abolish this sentence under federal law and undertake efforts to bring all U.S. states into compliance with U.S. international obligations to prohibit this sentencing, including to rectify the sentences of those juvenile offenders now serving LWOP; 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 Report; and monitor and publish data on child offenders serving LWOP sentences in each state.

- Israel abolish LWOP sentences for juveniles under all circumstances, including for political and security related crimes and that it rectify and/or clarify the sentences of the seven juveniles in question who may be serving a LWOP sentence to come into compliance with their obligations under the Convention on the Rights of the Child and international law.
- Tanzania 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 and to further bring its juvenile justice system into compliance with its obligations under the Convention on the Rights of the Child and international law.
- South Africa pass without haste the Child Justice Bill to clarify abolition of juvenile LWOP sentencing under any circumstances.
- Australia clarify the legal prohibition of LWOP sentences for juveniles and ensure that its provinces bring their laws into compliance with obligations under the Convention on the Rights of the Child, International Covenant on Civil and Political Rights and other international laws.

A P P E N D I X

JUVENILE LWOP LAWS IN THE UNITED STATES

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AT A GLANCE

44 STATES ALLOW JLWOP

11 states and the District of Columbia either do not allow or do not appear to practice JLWOP sentences.

6 STATES AND D.C. PROHIBIT IT:

Alaska, Colorado, Kansas, Kentucky, New Mexico, Oregon, D.C.

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 AT 16 OR ABOVE

Indiana

2 STATES APPLY ONLY AT AGE 15 OR ABOVE

Louisiana and Washington

13 STATES APPLY ONLY AT AGE 14 OR ABOVE

Alabama, Arizona, Arkansas, California, Connecticut, Iowa, Massachusetts, Minnesota, New Jersey, North Dakota, Ohio, Utah, Virginia

8 STATES APPLY ONLY AT AGE 13 OR ABOVE

Georgia, Hawaii, Illinois, Mississippi, New Hampshire, North Carolina, Oklahoma, Wyoming

2 STATES APPLY ONLY AT AGE 12 OR ABOVE

Missouri and Montana

4 STATES APPLY ONLY AT AGE 10 OR ABOVE

South Dakota, Texas, Vermont, Wisconsin

1 STATE APPLIES AT AGE 8 OR ABOVE

Nevada

13 STATES COULD APPLY LWOP AT ANY AGE

Delaware, Florida, 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 (LWOP for murder); see also 13A-5-6, 13A-5-9 (West 2005) (LWOP habitual offenders).

Ala. Code § 12-15-34 (1994 & Supp. 2005) (prosecutorial discretion to transfer any child 14 years or older to adult criminal court). Transfer hearing needed.

ALASKA

Does not Impose JLWOP.

Alaska Stat. § 12.55.125(a), (h), & (j) (LexisNexis 2004) (providing mandatory 99 year sentences for enumerated crimes, discretionary 99 year sentence in others, but permitting 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) (Westlaw 2006) (LWOP sentences discretionary).

Ariz. Rev. Stat. Ann. § 13-501(A-B) (2001 & Supp. 2005) (juvenile age 15, 16, and 17 "shall" be prosecuted as an adult for first degree murder and enumerated felonies and juvenile at least age 14 "may" be prosecuted as an adult for class one felonies).

ARKANSAS

Imposes JLWOP (mandatory) Minimum age 14.

Ark. Code Ann. § 5-4-104 (2006) (mandatory LWOP or death for capital murder or treason).

Ark. Code Ann. § 9-27-318 (2002 & Supp. 2005) (if the juvenile is at least 14 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) (limiting discretionary LWOP to juveniles age 16 or older).

Cal. Penal Code § 209 (kidnapping with or without bodily harm carries LWOP, age 14 or older).

Cal Penal Code § 218 and § 219 (wrecking a train or bridge), §37 (treason), §128 (perjury in capital case leading to execution), §11418(b)(2) (using weapon of mass destruction), and §12310 (using a bomb which kills). See, e.g., NUNEZ (ANTONIO D.) ON H.C. Case. Antonio Nunez was 14 at the time of the crime involving kidnapping/no death or bodily injury occurred (California Supreme Court case number S151522, filed April, 2007).

COLORADO

Does not Impose JLWOP.

C.R.S.A. section 17-22.5-104 (IV) (2006) (allowing juveniles sentenced to LWOP to apply for parole after serving 40 years). State legislative reform passed in 2006 to abolish JLWOP which has not yet been retrospectively applied.

CONNECTICUT

Imposes JLWOP (mandatory) Minimum age 14.

Conn. Gen. Stat. § 53a-35a (West 2001) (mandatory sentence of LWOP or death for capital murder).

Conn. Gen. Stat. Ann. § 46b-127 (West 2004 & Supp.

2005) (mandatory transfer to adult court for children age 14 and above for enumerated felonies).

DELAWARE

Imposes JLWOP (mandatory) Any age.

Del. Code Ann. tit. 11, § 4209 (2005) (mandatory LWOP for "any person" convicted of first degree murder).

Del. Code Ann. tit. 10, §§ 1010, 1011 (1999 & Supp. 2004) ("child shall be proceeded against as an adult" for enumerated felonies. Child can request transfer hearing and court may transfer back to juvenile court at its discretion).

FLORIDA

Imposes JLWOP (mandatory) Any age.

Fla. Stat. §775.082, (2005) (mandatory LWOP for juveniles convicted of murder).

Fla. Stat. § 985.225 (2005) ("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 (Westlaw 2006) (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 (2002) (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 13).

Ga. Code Ann. § 15-11-28(b)(1) (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 (2)(A)(exclusive superior court jurisdiction over any child age 13-17 who has committed enumerated offenses).

Ga. Code Ann. § 16-3-1(child cannot be found guilty of crime if committed it below age 13).

KMS v. State, 200 S.E.2d 916 (Ga. App. 1973) (distinguishing between finding of delinquency, which is permitted for children below age 13, with adjudication of guilt for crime, not permitted for children below age 13).

HAWAII

Imposes JLWOP (mandatory) Minimum age 13.

Haw. Rev. Stat. §§ 706-656, 706-657 (LexisNexis 2003) (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. Ann. § 571-22 (LexisNexis 2005 & Supp. 2005) (discretionary transfer to adult court of juveniles: no age limit for first degree murder or second degree attempted murder).

IDAHO

Imposes JLWOP (discretionary) Any age.

Idaho Code Ann. § 18-4004 (Michie 2004)(LWOP discretionary penalty for murder).

Idaho Code Ann. §§ 20-508, 20-509 (Michie 2004) (mandatory transfer to adult court for juveniles age 14-18 accused of enumerated crimes, discretionary transfer for children below age 14 accused of enumerated crimes).

Idaho Code Ann. § 20-509(3)-(4) (Michie 2004) (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. 5/5-8-1 (West Supp. 2005) (details mandatory minimum sentences for felonies; for first degree murder, if death cannot be imposed and one aggravating factor is proven the mandatory sentence is LWOP, if no aggravating circumstances, the sentence is 20-60 years).

705 Ill. Comp. Stat. Ann. 405/5-130(4)(a) (Westlaw 2006) (mandatory adult court jurisdiction over children at least 13 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 2002) (limiting discretionary LWOP sentence to people above age 16).

IOWA

Imposes JLWOP (mandatory) Minimum age 14.

Iowa Code §§ 902.1 (West 2003) (LWOP sentences are mandatory upon conviction for "Class A Felony").

Iowa Code Ann. §232.45(6)(a) (West 2000 & Supp. 2006) (juvenile court may waive jurisdiction over a child as young as 14).

KANSAS

Does not Impose JLWOP.

Kan. Stat. Ann. § 21-4622 (2005 Supp.) (LWOP not permitted as a sentence for capital murder or first degree murder where defendant is less than 18 years old).

KENTUCKY

Does not Impose JLWOP.*

Ky Rev.Stat.Ann. § 640.040 (Westlaw 2006) (limits youthful offender convictions to life with parole after 25 years);

Ky.Rev.Stat.Ann. §635.020 (mandatory transfer to adult court of juvenile for use of a firearm and adult sentence applied). See *Britt v. Commonwealth of Kentucky* 965 S.W.2d 147 (1998)(§ 640.010 applies to juveniles, including cases transferred under 635-020).

See earlier cases: *Workman v. Commonwealth of Kentucky* (429 S.W.2d 374 (1968)(juvenile LWOP as penalty for rape violative of state constitution); *Edmondson v. Commonwealth* 2002 Ky Lexis 271 (2002) (unpublished decision concerning felony theft by an adult, citing *Workman* in dicta for general proposition that juvenile LWOP unconstitutional).

*The law needs clarification that JLWOP is not allowed since certain legislative amendments to the penal code

have created some ambiguity in whether the sentencing limitations of Ky Rev.Stat. Ann. § 640.040 apply to all juvenile offenders being prosecuted in adult court.

There are three cases on appeal involving JLWOP, all unusual cases. See *Stanford v. Kentucky* (where the death sentence was commuted by the Governor to LWOP pre *Roper* case); see also *Phon v. Kentucky* (where defendant consented to LWOP; the case is now on appeal. In a prior decision, 17 S.W.3d 106, 108 (2000), the court allowed LWOP for defendant [17 years at time of crime]. *Spencer*, a third case, is being appealed similarly and another defendant, Louis Lee Anderson, just agreed to a plea of LWOP on condition he would challenge the sentence.

LOUISIANA

Imposes JLWOP (mandatory) Minimum age 15.

LSA-R.S. 14:30, 14.30.1 (Westlaw 2006) (mandatory LWOP for first- and second degree murder).

La. Child. Code Ann. art. 305 (West 2004) (any juvenile 15 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 (West Supp. 2005), *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 and West Supp. 2005) (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 (*Michie* 2002) (LWOP sentence discretionary for enumerated crimes).

Md. Code Ann., Cts. & Jud. Proc. § 3-8A-06 (West 2002 & Supp. 2005) (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 2000) (LWOP mandatory for juvenile convicted of first degree murder); Mass. Gen. Laws Ann. Ch. 119, § 72B (West 2003 & Supp. 2005) (treating juvenile 14 or older as an adult for murder in the first or second degree); Mass. Gen. Laws Ann. Ch. 119 § 74 (removing from juvenile court jurisdiction any juvenile 14 or older charged with murder in first or second degree).

MICHIGAN

Imposes JLWOP (discretionary) Any age.

Mich.Comp. Laws Ann. (“M.C.L.A.”) § 712A.4 (court has discretion to try children as adult offenders, if under 14 require waiver hearing).

M.C.L.A. § 769.1 (allows adult sentences for children convicted of certain crimes).

M.C.L.A. § 750.316 (imprisonment for life for 1st degree murder); M.C.L.A. § 791.234(6) (certain sentences of life imprisonment mean no eligibility of parole, including murder in first degree § 750.316).

M.C.L.A. § 791.244 (Governor may grant clemency after serving 10 years of an LWOP sentence).

MINNESOTA

Imposes JLWOP (mandatory) Minimum age 14

Minn. Stat. Ann. § 609.106 (West Supp. 2005) (mandatory LWOP for enumerated "heinous" crimes, including first degree murder).

Minn.Stat.Ann. § 260B.125 (2003 & Supp. 2006) (discretionary waiver, age 14).

MISSISSIPPI

Imposes JLWOP (discretionary) Minimum age 13.

Miss.Code Ann. §97-3-21 (2005) (LWOP sentence discretionary for murder).

Miss.Code Ann. §§ 43-21-151(a) (West 1999), § 43-21-157(8) (West 1999 & Supp. 2005) (mandatory adult court jurisdiction limited to 13 for any felony punishable by life; Mandatory adult court jurisdiction after 13 for any felony punishable by life in prison or death).

MISSOURI

Imposes JLWOP (mandatory) Minimum age 12.

Mo. Rev. Stat. § 565.020 (2005) (mandatory LWOP for first degree murder for juveniles).

Mo. Ann.Stat. § 211.071 (Westlaw 2006) (discretionary transfer, age limit of 12 for enumerated crimes).

MONTANA

Imposes JLWOP (mandatory) Minimum age 12.

Mont. Code Ann. § 46-18-219 (2005) (a sentence of life without parole 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, Mont. Code Ann. § 45-5-102 (2005)).

Mont. Code Ann. § 41-5-206 (2005)(discretionary transfer if the child is 12 years or older for enumerated offenses; when the minor is 16 years of age, more types of offenses are added to the list; if a child is age 17 and commits enumerated offense, county attorney "shall" file with the district court).

Mont.Code Ann. § 46-18-222 (1) (Westlaw 2007) ("mandatory minimum sentences"... "and restrictions on parole eligibility do not apply if the offender was less than 18 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.

Mont.Code Ann. § 46-18-222 (1) (Westlaw 2007).

NEBRASKA

Imposes JLWOP (mandatory) Any age.

Neb. Rev. Stat. §§ 43-247, 43-276 (juvenile court has concurrent jurisdiction with district court for juveniles under age 16 who commit a felony).

Neb. Rev. Stat. § 43-276 (D.A. has discretion to file in criminal court, list of factors to be considered).

Neb.Rev.Stat § 28-105 (Punishment for Class IA felony can be LWOP, discretionary).

Neb.Rev.Stat § 29-2522 (murder first degree mandates LWOP if death penalty not unanimous).

NEVADA

Imposes JLWOP (discretionary) Minimum age 8.

Nev. Rev. Stat. Ann. § 200.030 (Murder in first degree punishable by death or LWOP).

Nev.Rev.Stat.Ann § 194.010 (children under 8 years not liable to punishment but between ages 8 and 14 are liable to punishment if clear proof that they knew the act's "wrongfulness" at time of commission).

Nev.Rev.Stat.Ann. §62B.330 (juveniles committing murder among other offenses not deemed "delinquent acts" and juvenile court has no jurisdiction; crimes automatically tried in adult court).

NEW HAMPSHIRE

Imposes JLWOP (discretionary) Any age.

N.H.Rev.Stat. § 630:1-a. (Murder in first degree can be punished by LWOP).

N.H. Rev. Stat. Ann. §628:1 (juvenile under age 15 not criminally responsible but for murder in first or second degree, manslaughter, assault, or other specified crimes than the 13 yr old can be held criminally responsible if transferred to superior court).

N.H. Rev.Stat.Ann §169-B:24 (transfer of juvenile to superior court for trial as adult).

NEW JERSEY

Imposes JLWOP (mandatory) Minimum age 14.

N.J. Stat. Ann., § 2C:11-3 (West 2005) (b) & (g) (specifically limiting LWOP for juveniles to mandatory LWOP for murder of police officer, killing a child under age 14, or murder in the course of a sexual assault or criminal sexual

contact; N.J. Stat. Ann. 2a:4A-26 (West 1987 & Supp. 2005) (discretionary waiver age 14 or over).

NEW MEXICO

Does not Impose JLWOP

N.M. Stat. Ann. § 31-21-10 (Supp. 2005) (maximum sentence in state, life imprisonment, has parole eligibility after 30 years).

NEW YORK

Imposes JLWOP Any age – but JLWOP applied only if crime is terrorist act.

N.Y. McKinney's Penal Law §§ 125.25(5),125.26,125.27 (element of crime of murder in first degree (carrying LWOP § 70.00) is being over age18).

N.Y. McKinney's Penal Law, Crime of Terrosism, § 490.25 and 490.25(d)(LWOP applied with no restriction on age as element of crime). But see, §§30.00(1)-(2) (under age 16 not held criminally responsible).

NORTH CAROLINA

Imposes JLWOP (mandatory) Minimum age 13.

N.C. Gen. Stat. § 14-17 (2003) (mandatory LWOP sentence for murder in the first degree).

N.C.Gen.Stat.§ 7B-2200(2005) (mandatory transfer to adult court where probable cause that juvenile committed Class A felonies, age limit 13 years).

NORTH DAKOTA

Imposes JLWOP (discretionary) Minimum age 14.

N.D. Cent. Code § 12.1-32-01 (Michie 1997) (LWOP discretionary for enumerated crimes).

N.D.Cent.Code § 12.1-04-01 (1997) (juvenile under 7 not capable of committing a crime, and juvenile cannot be tried as adult if under 14 years).

OHIO

Imposes JLWOP (mandatory) Minimum age 14.

Ohio. Rev. Code Ann. § 2929.03 (E) (LexisNexis 2005) (LWOP or life mandatory for aggravated murder if youth over 14).

Ohio. Rev. Code Ann. § 2971.03 (LexisNexis 2005) (mandatory LWOP for murder, rape of victim under 10 years, and other sexually violent acts).

Ohio Rev. Code Ann. § 2152.10(B) (LexisNexis 2002 & Supp. 2005) (discretionary transfer of 14 years or older for felonies, mandatory if prior adjudicated delinquent for other offenses).

OKLAHOMA

Imposes JLWOP (discretionary) Minimum age 13.

Okla. Stat. tit. 21 § 701.9 (West Supp. 2006) (discretionary LWOP for certain crimes).

Okla. Stat. Ann. title 10, § 7306-1.1(B) (West 1998 & Supp. 2006) (mandatory transfer 13 and above, first degree murder).

OREGON

Does not Impose JLWOP.

Or. Rev. Stat. § 161.620(2005).

State v. Davilla, 157 Ore.App. 639, 972 P.2d 902 (Or. Ct. App. 1998) (interpreting §161.620 to bar juvenile LWOP).

PENNSYLVANIA

Imposes JLWOP (mandatory) Any age.

18 Pa.C.S.A. §§ 1102, 9711 (West 1998 & Supp. 2005) (mandatory minimum penalty for murder is life).

61 Pa.C.S.A. § 331.21 (West 1999 & Supp. 2005) (no parole until minimum term of sentence served, i.e., life means LWOP).

42 Pa.C.S.A. §§ 6302 (Westlaw 2006) (murder not in “delinquent act” definition for juvenile court jurisdiction; certain other crimes not included for child of 15 years or more).

42 Pa.C.S.A. §6322 (court can transfer murder case to juvenile court).

42 Pa.C.S.A. 6355(e) (juvenile court cannot transfer case back to criminal court where criminal court has transferred it to juvenile court pursuant to section 6322) (West 2000 & Supp. 2005).

RHODE ISLAND

Imposes JLWOP (discretionary) Any age.

R.I. Gen. Laws § 12-19.2-4 (LexisNexis 2002) (LWOP discretionary for certain crimes).

R.I. Gen. Laws § 14-1-7(2002) (no age limit for transfer of juvenile for enumerated crimes; discretionary, because hearing required).

R.I. Gen. Laws § 12-19-11 (mandatory LWOP sentence cannot be suspended or allowed parole).

R.I. Gen. Laws §11-23-2 (sentence for murder mandatory life imprisonment).

SOUTH CAROLINA

Imposes JLWOP, (mandatory) Any age.

S.C. Code Ann. § 17-25-45 (2005) (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 imprisonment for life without the possibility of parole only if that person has prior convictions for enumerated crimes).

S.C. Code Ann. § 20-7-7605(6)(Westlaw 2006) (discretionary transfer and there is no age limit for murder or "criminal sexual conduct"); see also *State v. Corey*, 339 S.C. 107, 529 S.E.2d 20, 23 (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 (West 2004) (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 (2004) (mandatory transfer to adult court of juveniles 16 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 ages 10-16).

TENNESSEE

Imposes JLWOP (discretionary) Any age.

Tenn. Code Ann. §§ 39-13-202, 204 (2003)(penalty for murder in first degree is death, LWOP or life imprisonment).

Tenn. Code Ann. § 37-1-134 (a)(1)(2005) (mandatory transfer for enumerated crimes, no age limit).

TEXAS

Imposes JLWOP (mandatory) Minimum age 10.

Tex. Fam. Code Ann. § 54.04(3)(A) (Vernon 2005)(maximum term under juvenile court jurisdiction for enumerated felonies including murder is 40 years).

Tex. Fam. Code Ann. § 54.02: subsection (a)(1)(juvenile can be transferred to adult court at 14 years for capital felony among others).

Tex. Fam. Code Ann. subsection (j)(2)(transfer allowed between ages 10 and 17 for capital offense per §19.02 of Tex. Penal Code); and subsection (m)(mandatory waiver without transfer proceedings if previously transferred and convicted in criminal court).

Tex. Penal Code §8.07 (other means of waiving juveniles under age 15 to adult court jurisdiction).

Tex. Penal Code §12.31(mandatory death or LWOP for capital felony).

UTAH

Imposes JLWOP (discretionary) Minimum age 14.

Utah Code Ann. §76-3-206 (LexisNexis 2003) (LWOP discretionary sentence); Utah Code Ann. § 78-3a-502(3) (2002) (discretionary age limit of 14 for adult court jurisdiction).

VERMONT

Imposes JLWOP (discretionary) Minimum age 10.

Vt. Stat. Ann. tit. 13, § 2303 (Westlaw 2006) (LWOP discretionary).

Vt. Stat. Ann. tit. 33, § 5506 (Westlaw 2006) (discretionary jurisdiction, age limit 10 years old).

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*, 267 Va. 318, 593 S.E.2d 292 (Va. 2004) (life means LWOP).

Va. Code Ann. § 16.1-269.1 (2003 & Supp. 2005) (mandatory transfer of age 14 or over if probable cause for certain felonies). § 16.1-269.4 (juvenile can appeal transfer decision).

Va. Code Ann. § 53.1-151 (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 2005) (mandatory death or LWOP for aggravated murder in first degree).

Wash. Rev. Code Ann. §§ 13.04.030 (Westlaw 2006) (exclusive adult court jurisdiction of 16 years or older accused of committing serious violent offense), § 13.40.110 (Westlaw 2006) (juvenile court to hold waiver hearing if child is 15 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 §§ 61-2-2, 62-3-15 (LWOP discretionary for first degree murder).

W. Va. Code § 49-5-13(e) (Michie Supp. 2005) (notwithstanding any other part of code, court may sentence a child tried and convicted as adult as a juvenile).

W. Va. Code § 49-5-10 (Michie Supp. 2004) (mandatory transfer of juvenile 14 or over for certain felonies; discretionary transfer where child below age 14 accused of committing murder or other enumerated felony (W. Va. Code § 49-5-10(e)).

WISCONSIN

Imposes JLWOP (discretionary) Minimum age 10.

Wis. Stat. Ann. § 973.014 (West 1998) (LWOP discretionary).

Wis. Stat. Ann. §§ 938.18, 938.183 (Westlaw 2006) (exclusive adult court jurisdiction, age limit 10, for first degree murder, first degree reckless murder, second degree intentional homicide; age limited to 14 for other felonies).

WYOMING

Imposes JLWOP (discretionary) Minimum age 13.

Wyo. Stat. Ann. § 6-2-101 (LexisNexis 2005) (LWOP discretionary).

Wyo. Stat. Ann. §§ 14-6-203 (d) (juvenile court has exclusive jurisdiction in cases involving minor under age 13 for felony or misdemeanor punishable by over six months in prison).

Wyo. Stat. Ann. §§ 14-6-203(f)(iv) (Westlaw 2006) (concurrent adult and juvenile court jurisdiction, age limit 14, for enumerated felonies).

§ 14-6-237 (2005) (discretionary transfer between adult and juvenile court).

DISTRICT OF COLUMBIA

Does not Impose JLWOP

D.C. Code. § 22-2104(a) (2005) (no LWOP for juveniles).

END NOTES

¹ U.N. Convention on Rights of the Child (“CRC”) 44 U.N. GAOR Supp (No. 49) 167; U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.

² Streib, V. and Schrempp, B., “Life Without Parole for Children,” at 4, Criminal Justice (Winter 2007).

³ MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, Issue Briefs # 3 and 4 (see http://www.adjj.org/content/page.php?cat_id=2&content_id=28).

⁴ *Id.*; see also, *Roper v. Simmons*, 543 U.S. 551, at 572-73; 125 S.Ct. 1183 (March 1, 2005).

⁵ Equal Justice Initiative, “Cruel and Unusual: Sentencing 13- and 14- Year Old Children to Die in Prison,” at 14 (EJI, Montgomery, Alabama Nov. 2007, available at: www.eji.org (last visited Nov. 1, 2007) citing reports of the National Institute of Justice (2006) and findings of the U.S. Congress, 42 U.S.C.A. 15601 (2003)).

⁶ Equal Justice Initiative, *Id.* at 15.

⁷ Christopher Hartney, “Youth Under Age 18 in Adult Criminal Justice System,” at 3, NCCD Fact Sheet, (NCCD, 2006).

⁸ The Committee Against Torture, oversight authority for the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (U.N.Doc A/39/51 (1984), *entered into force* June 26, 1987) made this observation in reviewing the United States practice of sentencing children to life without parole in 2006 (see discussion Section III of this Report for citations).

⁹ Tanzania has one child offender serving a life sentence that was reported to be ineligible for parole but the government has submitted written documentation to the authors confirming it allows parole for all children and is in process of undertaking reforms in the sentencing code so that the child in question as well as any child cannot be sentenced to a term that prohibits parole review. (See Section II discussion on Tanzania in this Report).

¹⁰ See discussion and citations in this Report below.

¹¹ As discussed below, there is only one Act under which an LWOP sentence could apply in Israel relating to political or security crimes.

¹² Australia’s circumstance is discussed in Section II of this Report. Argentina may also 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 report.

¹³ *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005). The U.S. Supreme Court stated, “[a]s 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.

¹⁴ Krisberg, B. and Marchionna, S., “Attitudes of U.S. Voters toward Youth Crime and the Justice System,” Summary of National Poll undertaken by National Council on Crime and Delinquency (Focus, NCCD Feb. 2007).

¹⁵ Only 10 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. See, Amnesty International and Human Rights Watch released their report, “The Rest of Their Lives: Life Without Parole for Child Offenders in the United States,” (www.hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf) identifying that 14 countries out of 145 surveyed in CRC reports (the survey included 154 countries but for 9 the information was inconclusive) had laws potentially allowing LWOP for juveniles but since that time the authors have clarified additional law and practice for Belize.

¹⁶ U.N. General Assembly resolution 61/146 (Dec. 2006), *supra* note 107. A new resolution has been tabled at the United Nations including language similar to the 2006 G.A. resolution on prohibition of LWOP for juveniles (see U.N. Doc. A/C3/62/L.24 (23 Oct. 2007)).

¹⁷ Amnesty International and Human Rights Watch, *supra* note 15 (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. For Cuba, it has been suggested that it is technically possible under the law to sentence a child 16 years of age to life without parole but there are no known cases. Cuban officials with whom the authors of this report met also deny there are any child offenders serving such sentence. The authors have also now confirmed that South Africa, Burkina Faso and Kenya now prohibit this practice. Kenya clarified to the CRC in 2007 that these sentences were now prohibited; Burkina Faso has confirmed it applies directly the CRC prohibitions in domestic law, including sentencing; and 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 sentence 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 CRC that four juvenile offenders were serving the sentence).

¹⁸ See analysis of the U.S. and Israel, *infra* in this Report.

¹⁹ In 2002, Human Rights Advocates reported that 2,225 persons were serving this sentence in our report “Administration of Justice Agenda Item 13: Life Imprisonment Without Possibility of Release for Youth Offenders Who Were under the Age of 18 at the Time of

Committing the Offense,” Report to the 60th Session of the UN Commission on Human Rights (citing to Victor Streib, “Execution and Life without Parole for Kids Who Kill,” December, 2002 at 11). 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 reported in 2005. The California Department of Corrections and Rehabilitation (“CDCR”) figures coupled with field investigation by Human Rights Watch indicate 47 more juveniles serving this sentence in California since a count in 2005, bringing the total in California up to 227 juvenile offenders serving the sentence and 7 more serving in Mississippi and 1 more in Idaho (email to authors from Elizabeth Calvin and Alison Parker, Human Rights Watch, Nov. 1, 2007). See also, Victor Streib, in his article writes, “A reasonable estimate would be that the total number of juvenile offenders currently serving LWOP sentences is several thousand people.” See also, Human Rights Watch World Report 2006, sec. IV. Data compiled by Amnesty International and Human Rights Watch. Available at <http://hrw.org/wr2k6/wr2006.pdf>.

²⁰ Amnesty, *supra* note 15, text accompanying footnotes 61-62 in the Amnesty report. Since that report, Colorado passed a law abolishing the sentencing practice in 2006. See Appendix in this Report.

²¹ This analysis has updated earlier statements by NGOs and advocates. See, Appendix in this Report for more detail. Note, no national data is officially collected specifically on juvenile LWOP sentences by the U.S. government.

²² Patrick Griffin, Patricia Torbet, and Linda Szymanski, “Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions” 1998 National Center for Juvenile, NCJ 172836.

²³ *Id.*

²⁴ Cruz, J., “Juvenile Waivers and the Effects of Proposition 21,” 1 Law and Society Review 29, at 38 (UCSB 2002).

²⁵ Males, M. and Macallair, D. “The Color of Justice: An Analysis of Juvenile Adult Transfers in California,” at www.buildingblocks-foryouth.org/colorofjustice/coj.html.

²⁶ Hubner, John. “Discarded Lives, Children Sentenced to Life Without Parole,” Amnesty International Magazine (Spring 2006).

²⁷ See e.g., Equal Justice Initiative, “Cruel and Unusual: Sentencing 13- and 14- Year Old Children to Die in Prison,” *supra* note 5.

²⁸ Christopher Hartney, “Youth Under Age 18 in Adult Criminal Justice System,” NCCD Fact Sheet, (NCCD, 2006).

²⁹ *Id.* at 3.

³⁰ The Concluding Observations of the Human Rights Committee on the United States of America, 87th Session held on 27 July 2006, (CCCPR/C/SR.2395), para. 34 (see discussion in Section III, *infra*).

³¹ Note that crime levels reached their peak in 1994 and have been declining since. See Jeffrey Fraser, *Facts v. Perceptions: “Super-predator” theory belies crime data*, 32 Children, Youth & Family Background (Newsletter to University of Pittsburgh Office of Child Development) (June 2000), available at <http://www.education.pitt.edu/oecd/publications/backgrounds/32.pdf>.

³² Amnesty, *supra* note 15 at 2.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* (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)).

³⁶ Email correspondence with E. Calvin, and A. Parker, Human Rights Watch, September 2007; and see for an earlier set of estimates, Amnesty International Magazine, *supra* note 26, at 43.

³⁷ Juvenile Offenders and Victims: 2006 National Report, at 3, *infra* note 50.

³⁸ Equal Justice Initiative, “Cruel and Unusual: Sentencing Children to Die in Prison” *supra* note 5.

³⁹ *Id.*

⁴⁰ Human Rights Watch Report, “Thrown Away Children Sentenced to Life Without Parole in Colorado,” February 2005.

⁴¹ See note 37, *supra*, for 0-17 years of age.

⁴² Deborah LaBelle, Esq., Michigan, findings from local investigation (2007).

⁴³ D. Labelle, *supra* note 41.

⁴⁴ *Id.* See *infra* note 50.

⁴⁵ Mississippi Department of Corrections, data released via Freedom of Information Act request and updated with the Office of Capital Defense Counsel in Mississippi, H. Thomas, NAACP, 2007.

⁴⁶ National Council on Crime and Delinquency, “And Justice for Some,” pp. 21-22 (Jan. 2007)(hereinafter “NCCD 2007”).

⁴⁷ The custody rate in the index is the number of juvenile offenders in detention in 2003 per 100,000 juveniles aged 10 and over to age 18 generally.

⁴⁸ NCCD, 2007, *supra* note 46 at 24 (citing Census of Juveniles in Residential Placement 1997, 1999, 2001, and 2003. OJJDP (2005); Online analysis package OJJDP (2006)).

⁴⁹ See NCCD 2007, *supra* note 46.

⁵⁰ Snyder and Melissa, *Juvenile Offenders and Victims: 2006 National Report*, at 2. Washington, D.C. U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

⁵¹ See B. Krisberg and S. Marchionna, “Attitudes of Voters toward Youth Crime and the Justice System,” on a national survey commissioned by NCCD (Feb. 2007, http://www.nccd-crc.org/nccd/pubs/zogby_feb07.pdf).

⁵² U.N. Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969, and ratified by the United States, Oct. 21, 1994, *see* <http://www.ohchr.org/english/bodies/ratification/2.htm>.

⁵³ NCCD 2007, *supra* note 46 at 4.

⁵⁴ *Id.*

⁵⁵ Correspondence between Connie de la Vega and the Legal Adviser, Human Rights and Humanitarian Affairs, Permanent Mission of Israel to the United Nations, Geneva, Switzerland, May 30-31, 2007, reporting on discussion with the Israeli Ministry of Justice. 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 a Israel State Party report to the CRC, CRC/C/8/Add.44, February 27, 2002 at para. 1372, but Human Rights Watch identified three others: Shadi Ghawadreh, Youssef Qandil, and Anas Mussallmeh (see Amnesty, *supra* note 15, at 106).

⁵⁶ Israel’s Report to the CRC, CRC/E/8/Add. 44 (2002), available at: <http://www.ohchr.org/english/bodies/crc/past.htm#31>.

⁵⁷ *Supra* note 55. The cases in question are reported as Shadi Ghawadreh, Youssef Qandil, and Anas Mussallmeh (see Amnesty, *supra* note 15, at 106).

⁵⁸ *Id.* at 106, fn. 322 (citing Huk Shihror, Al Tnai Mimasar, and Hatashsa, 2001, Article 29).

⁵⁹ *Id.*

⁶⁰ The authors are seeking to further clarify the status with country officials. *See also*, correspondence between Connie de la Vega and the Legal Adviser, Human Rights and Humanitarian Affairs, Permanent Mission of Israel to the United Nations, Geneva, Switzerland, May 30-31, 2007, reporting on discussion with the Israeli Ministry of Justice. The authors also met with officials on the subject during the March 2007 session of the U.N. Human Rights Council.

⁶¹ *See e.g.*, Author’s “Special Report on Human Rights Violations in Sentencing: Imprisoning Children for Life without Possibility of Release” (March 2007), submitted to the 4th Session, Human Rights Council, March 2007.

⁶² Email to Michelle Leighton from Joyce Kafanabo, Minister Plenipotentiary, Permanent Mission of the United Republic of Tanzania, October 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.”

⁶³ Two children were released recently and one is receiving a parole hearing at the time of writing. Email and telephone correspondence with Tanzanian Embassy officials, written documentation and correspondence on file with the authors from September 28-October 15, 2007.

⁶⁴ *See* written communication from the Permanent Mission of the United Republic of Tanzania to the United Nations to the Center for Law and Global Justice, USF School of Law, October 15, 2007; a series of meetings and telephone discussions occurred between the Permanent Representative Augustine Mahiga, other Tanzanian officials and Ms. Leighton, initiated by Nick Imparato of the USF 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 Human Rights Watch and Amnesty International in 2005 (*see* Amnesty, *supra* note 9, at 106 citing email correspondence to HRW from Erasmina Masawe, attorney, Legal and Human Rights Centre in Dar es Salaam, Tanzania, in July 2004, regarding the high profile case of a 17-year-old convicted of rape).

⁶⁵ *Id.*

⁶⁶ *See*, written communication from the Permanent Mission of the United Republic of Tanzania to the United Nations to the Center for Law and Global Justice, USF School of Law, *supra* note 64.

⁶⁷ For example, a child committing murder in Tanzania is subject to 10 years imprisonment before a request for probation can be made but under the SOSPA, courts apply less discretionary and harsher sentences.

⁶⁸ SOSPA, Section 6 (2) and (3). Interpretation of the Act provided by Tanzanian officials and lawyers in meeting of Michelle Leighton with Permanent Representative Augustine Mahiga, Ministers Plenipotentiare Joyce Kafanabo and Modest Mero, and Second Secretary Tully Waipopo, September 28, 2007, Embassy of the Republic of Tanzania New York, N.Y.

⁶⁹ A copy of the proposed bill on file with the authors.

⁷⁰ *Id.* The Minister of Justice introduced an interim act which passed the Parliament at the time of writing this Report. Email correspondence between M. Leighton and Minister Plenipotentiare Kafanabo, Nov. 22-26, 2007.

⁷¹ South Africa State Party report to the CRC, CRC/C/51/Add.2, May, 22, 1999 at 514 (reporting four child offenders serving the sentence).

⁷² Telephone interview with official representatives of the Office on the Rights of the Child, Office of the Presidency, Government of South Africa, May and June 2007, notes on file with the authors; *see* “2nd Children’s Rights Country Report to: The United Nations Committee on the Rights of the Child, August 2006, The Presidency of Republic of South Africa.

⁷³ Written correspondence between the Head of the South African President’s Office on Rights of the Child and Michelle Leighton,

August 1-2, 2007, and telephone conferences with officials in the Department of Justice and Foreign Ministry on file with the authors.

⁷⁴ See Draft Child Justice Bill, Republic of South Africa para. 72 “(1) No sentence of life imprisonment may be imposed on a child.” Available at <http://www.pmg.org.za/bills/020808childjusticebill.htm>.

⁷⁵ “Do minimum sentences apply to juveniles?” Article 40, vol. 7, no. 1 5/2005, available at http://www.communitylawcentre.org.za/Projects/Childrens-Rights/Article-40/article-40-archives/article_40_2005_05_vol7_1.pdf

⁷⁶ Sapa, “IFP slams release of former death-row inmates,” Mail and Guardian Online, 4 Jan. 2007.

⁷⁷ Meetings and correspondence between officials of Kenya (Deputy Permanent Representative to the U.N., Geneva, Switzerland) and official delegates of Burkina Faso; also in follow-up correspondence with Michelle Leighton March 23-28, 2007.

⁷⁸ See, *infra*, note 100.

⁷⁹ Correspondence between Michelle Leighton and Burkina Faso official representative in the Mission in Geneva, Switzerland March 23-28, 2007, confirming statements of officials in meetings at the U.N. Human Rights Council session, March 2007.

⁸⁰ Meeting between Michelle Leighton and other HRA delegates and Kenyan delegation head during March 2007 Human Rights Council meeting, identifying its official statements to the CRC.

⁸¹ This is found in Kenya’s section 18(2) of the Children’s Act. See also, Report to the Committee on Rights of the Child, “Second Periodic Report of State Parties, April 4, 2006 (CRC/C/KEN/2) at 38, para 146 provided at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.KEN.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.KEN.2.En?OpenDocument).

⁸² 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 Report, and added Belize to this list. Australia’s circumstance is discussed in Section II of this Report. In addition, Argentina may also 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 report. For an earlier list of countries with reported laws on LWOP for juveniles, see Amnesty, *supra* note 15, at 106, footnote 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.

⁸³ With respect to Cuba, a reform bill is pending that which 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.

⁸⁴ Second and Third report to the CRC by Government of Australia, September 2003, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.129.Add.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.129.Add.4.En?OpenDocument).

⁸⁵ Correspondence between Michelle Leighton and officials in the Australian Government Institute of Criminology (AIC), Canberra, Australia, September 18-30, 2007. According the AIC, “under section 20C(1) of the *Crimes Act 1914* a child or young person who is charged with or convicted of a Commonwealth offence **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 15 years of age) or 1 year (if the juvenile is less than 15). The NT legislation also says a non-parole period must be set if the sentence is over 12 months. In Victoria, the *Children, Youth and Families Act 2005* provides that a maximum term of 1 years detention can be imposed on a juvenile between the age of 10 and 15, and a maximum of 2 years for juveniles over 15 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 charged it is unlikely that it would be possible for the juvenile to receive a sentence of life imprisonment without parole.” However, section 20C of the Crimes Act does not preclude a juvenile federal offender being sentenced under Part 1B of the Crimes Act (i.e. a juvenile federal offender can be sentenced as an adult under the Crimes Act). In such circumstance it would be possible (although unlikely) for a child charged with a Commonwealth offence with a maximum sentence of life imprisonment to be sentenced to life imprisonment without parole. 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 recognisance release order (release on a good behaviour bond). However, the court may decide not to fix a non-parole period or make a recognisance release order if the court considers it is inappropriate to do so in the circumstances (subsection 19AB(3)). If the court decides not to fix a non-parole period or make a recognisance release order then the court must give its reasons for doing so and cause these reasons to be entered into the court records (subsection 19AB(4)).

⁸⁶ Committee on Rights of the Child Concluding Remarks to 3rd Report submitted by Australia to the Committee, CRC/C/15/Add. 268, para 17 (2005). It urged Australia to make reforms to this law before its next report due January 15, 2008. *Id.* at para 18.

⁸⁷ Concluding Observations of Committee on Rights of the Child on Australia’s report to the Committee regarding its compliance with the treaty, paras 9,10, and see para 73, CRC/C/15/Add.268, 20 October 2005.

⁸⁸ *Elliott v The Queen* (S218/2007). These cases concern the New South Wales Crimes (*Sentencing Procedure*) Act of 1999. 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 at: <http://www.austlii.edu.au/au/other/HCATrans/2007/538.html>.

⁸⁹ *Id.* *Blessington v The Queen*(S218/2007).

⁹⁰ *Id.* The High Court heard oral argument in September, 2007 and has now reserved the cases for decision (See High Court of Australia Bulletin 2007, No. 10, 31 Oct. 2007 (<http://www.austlii.edu.au/other/hca/bulletin/hcab0710.html#internal50>). The transcript of the High Court hearing is at: <http://www.austlii.edu.au/au/other/HCATrans/2007/538.html>.

⁹¹ U.N.Doc A/44/49 (1989), *entered into force* September 2, 1990, ratified by Australia Dec. 17, 1990 (<http://www.ohchr.org/english/bodies/ratification/11.htm>).

⁹² Concluding Observations Committee on Rights of the Child on Australia's report to the Committee regarding its compliance with the treaty, paras 9,10, and see para 73. CRC/C/15/Add.268, 20 October 2005.

⁹³ International Covenant on Civil and Political Rights ("ICCPR"), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976; Australia ratified the treaty Aug. 13, 1980 (<http://www.ohchr.org/english/bodies/ratification/4.htm>).

⁹⁴ Also problematic is that many states integrate youthful violent offenders with adult state prison populations beginning at age 16. See "Profile of State Prisoners under Age 18, 1985-1997," 2000 US Bureau of Justice Statistics, Doc no. NCJ 176989. The youths are at increased risk for sexual assault, violent assault and suicide. See Amnesty, *supra* note 15, at 1.

⁹⁵ The United States, a number of the Caribbean Islands and formerly Tanzania referred to in this report as having the possibility of LWOP were colonies inheriting the English common law tradition. It is noted in this report that the sentence of LWOP is *not* a tradition of common law but a recent phenomenon adopted in the past decade and half in addressing juvenile crime rates.

⁹⁶ See Amicus Brief in support of Respondent, submitted to the U.S. Supreme Court in *Roper v. Simmons*, 543 U.S. 551 (2005) for the Committee of the Bar of England and Wales, Human Rights Advocates, Human Rights Watch, and the World Organization for Human Rights USA, by lead attorney Prof. Connie de la Vega, at 9-11 (July 2004)(brief cited twice by the U.S. Supreme Court in its decision).

⁹⁷ *Id.* at 10 citing *R. v Secretary of State for the Home Department Ex parte Venables* (1998) A.C. 407 HL at 521 and 532, referring to Lord Steyn and Lord Hope of Craighead.

⁹⁸ See discussion earlier in text of both the U.S. and Tanzania where LWOP sentences for children evolved rapidly in the 1990s as laws emerged to allow children to be tried in court as adults.

⁹⁹ Art. 37, Convention on the Rights of the Child, U.N. G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167 Convention, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.

¹⁰⁰ Committee on the Rights of the Child, "General Comment No. 10: Children's Rights in Juvenile Justice," at para.4(c), UN Doc. No. CRC/C/GC/10 (9 February 2007)(*unedited version*).

¹⁰¹ *Id.* at para. 21.

¹⁰² International Covenant on Civil and Political Rights ("ICCPR"), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976.

¹⁰³ U.S. ratified the ICCPR in June 8, 1992 (<http://www.ohchr.org/english/bodies/ratification/4.htm>). In its ratification of the ICCPR the U.S. stated, "...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." See, http://www.ohchr.org/english/bodies/ratification/4_1.htm.

¹⁰⁴ The Committee Concluding Observations of the Human Rights Committee on the United States of America, 87th Sess. Held on 27 July 2006, (CCCPR/C/SR.2395), para. 34.

¹⁰⁵ International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (U.N.Doc A/39/51 (1984), *entered into force* June 26, 1987)(ratified by the U.S. Oct. 21, 1994, <http://www.ohchr.org/english/bodies/ratification/9.htm>. See, Committee Against Torture, 36th Session, "Conclusions and Recommendations of the Committee Against Torture: United States of America," at para. 35, UN Doc. No. CAT/C/USA/CO/2, 25 July 2006.

¹⁰⁶ See discussion of U.S. practice, *supra*, text accompanying notes 18-32, Section II; see also Amnesty report, *supra* note 15.

¹⁰⁷ General Assembly Resolution 61/146, "Promotion and protection of the rights of children," Para. 31(a), UN Doc. No. A/Res/61/146. (19 Dec. 2006), passed by the Third Committee November 22, 2006, 176 to 1 opposed, the United States.

¹⁰⁸ Resolution tabled at the U.N. General Assembly, Third Committee, para. 34, U.N. Doc. A/C.3/62/L.24 (23 Oct. 2007).

¹⁰⁹ *Roper v. Simmons*, 543 U.S. 551 (2005), 125 S.Ct. 1183 (2005).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² 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.

¹¹³ *North Sea Continental Shelf* cases (FRG v. Denmark; FRG v. Netherlands) 1969 I.C.J. 3, paragraphs. 73-4 (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.”)

¹¹⁴ United Nations, *Treaty Series*, vol. 1155 at 331; 1155 U.N.T.S. 331, 352 (1969) [emphasis added]. The

¹¹⁵ See, e.g., The Restatement (Third) of Foreign Relations Law, Section n102 (1986); Sean Murphy, *Principles of International Law* at 82 (Thompson/West, St. Paul, Minn., 2006).

¹¹⁶ See, e.g., U.S. Supreme Court decision in *The Paquete Habana*, 175 U.S. 677, 699 (1900).

¹¹⁷ See Art. 40, and the Commentary, Draft Articles on Responsibility of States for Internationally Wrongful Acts, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

¹¹⁸ *Id.*, see ILC Commentary, para. 3 to Art. 40.

¹¹⁹ See, Rosalyn Higgins, *Problems and Process*, at 22 (Oxford University Press, 1994).

¹²⁰ *Id.* at 23.

¹²¹ Note that crime levels reached their peak in 1994 and have been declining since. See Jeffrey Fraser, *Facts v. Perceptions: “Super-predator” theory belies crime data*, 32 Children, Youth & Family Background (Newsletter to University of Pittsburgh Office of Child Development) (June 2000), available at <http://www.education.pitt.edu/ocd/publications/backgrounds/32.pdf>.

¹²² *Id.*

¹²³ From 1962 until 1981, an average of 2 youth offenders in the US entered prison each year with life without parole sentences. See Amnesty, *supra* note 15, at 31.

¹²⁴ Concluding Observations of the Human Rights Committee on the United States of America, 87th Session held on 27 July 2006, (CCCPR/C/SR.2395), para. 34.

¹²⁵ “United Nations Standard Minimum Rules for the Administration of Juvenile Justice,” G.A. Resolution 40/33, 29 November 1985 at para. 17.1(b).

¹²⁶ *Id.*, Beijing Rules Commentary to Rule 17.1(d).

¹²⁷ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Resolution 45/113, 14 December 1990,

¹²⁸ Riyadh Guidelines, G.A. Resolution 45/112, 1990, at para. 46.

¹²⁹ *Id.* at article 54.

¹³⁰ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, *supra* note 125, at articles 1 & 2.

¹³¹ “Human rights in the administration of justice, in particular of children and juveniles in detention,” Commission on Human Rights Resolution 1996/32, 52nd Session, E/CN.4/RES/1996/32; “Human rights in the administration of justice, in particular of children and juveniles in detention,” Commission on Human Rights Resolution 1998/39, 54th Session, E/CN.4/RES/1998/39; “Rights of the Child,” Commission on Human Rights Resolution 1999/80, 55th Session, E/CN.4/RES/1999/80; “Rights of the Child,” Commission on Human Rights Resolution 2000/85, 56th Session, E/CN.4/RES/2000/85; “Rights of the Child,” Commission on Human Rights Resolution 2001/75, 57th Session, E/CN.4/RES/2001/75; “Rights of the Child,” Commission on Human Rights Resolution 2002/92, 58th Session, E/CN.4/RES/2002/92; “Rights of the Child,” Commission on Human Rights Resolution 2003/86, 59th Session, E/CN.4/RES/2003/86; “Rights of the Child,” Commission on Human Rights Resolution 2004/48, 60th Session, E/CN.4/RES/2004/48. The Commission was replaced thereafter by the Human Rights Council which has only in 2007-08 has begun to adopt thematic resolutions again.

¹³² *Id.* See, “Rights of the Child,” Commission on Human Rights Resolution 2005/44, 61st Session, E/CN.4/RES/2005/44.

¹³³ “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 125 at para. 46.

¹³⁴ Based on the presentation of Dr. Christian Pfeiffer to the National Institute of Justice, “Alternative Sanctions in Germany: An Overview of Germany’s Sentencing Practices.” Published February 1996, at <http://www.ncjrs.org/txtfiles/germany.txt>.

¹³⁵ Lars Horst, “Rehabilitation of Juvenile Offenders in South Africa and Germany, A Comparison,” 2005, page 9. Available at <http://lawspace.law.uct.ac.za:8080/dspace/bitstream/2165/52/1/HorstL+2005.pdf>; see also JJA §9, 13, 21, and 27.

¹³⁶ Prof. Dr. Frieder Dünkel, “Juvenile Justice in Germany: Between Welfare and Justice,” March 2004, *citing* Juvenile Justice Act § 45 (1) and (2). Available at http://www.esc-eurocrim.org/files/juvjusticegermany_betw_welfar_justice.doc.

¹³⁷ *Id.*

¹³⁸ Prof. Dr. Frieder Dünkel, “Juvenile Justice in Germany: Between Welfare and Justice,” March 2004, “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. crimes with a minimum prison sentence provided by law of one year) are excluded.” Available at http://www.esc-eurocrim.org/files/juvjusticegermany_betw_welfar_justice.doc.

¹³⁹ See JJA §§ 5 (2), 17 (2), *supra* note 135; see also Beijing Rules, para. 17.1 (*supra* note 125) which restricts youth imprisonment to cases of serious violent crimes or repeated violent or other crimes if there seems to be no other appropriate solution.

¹⁴⁰ Prof. Dr. Frieder Dinkel, “Juvenile Justice in Germany: Between Welfare and Justice,” March 2004. Available at http://www.esc-eurocrim.org/files/juvjusticegermany_betw_welfar_justice.doc.

¹⁴¹ *Id.*

¹⁴² Available at

http://www.legislation.govt.nz/libraries/contents/om_isapi.dll?clientID=2287950539&infobase=pal_statutes.nfo&jump=a1989-024&softpage=DOC).

¹⁴³ New Zealand Ministry of Justice, available at <http://www.justice.govt.nz/youth/fgc.html>).

¹⁴⁴ Morris, Allison and Gabrielle Maxwell, “Restorative Justice in New Zealand: Family Group Conferences as a Case Study.” *Western Criminology Review* 1 (1) 1998, available at <http://wcr.sonoma.edu/v1n1/morris.htm>).

¹⁴⁵ *Id.*

¹⁴⁶ Children, Young Persons, and Their Families Act 1989 § 35.

¹⁴⁷ Morris, Allison and Gabrielle Maxwell, “Restorative Justice in New Zealand: Family Group Conferences as a Case Study.” *Western Criminology Review* 1 (1) 1998, available at, <http://wcr.sonoma.edu/v1n1/morris.htm>).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Becroft, Judge AJ, “Youth Justice Family Group Conferences: A Quick “Nip and Tuck” or Transplant Surgery - What Would the Doctor Order in 2006?,” 2006, page 8, available at http://www.cyf.govt.nz/documents/becroft_paper.pdf).

¹⁵³ *Id.*

¹⁵⁴ Georgia Justice Project, available at <http://www.gjp.org/programs>. Note, however, this statistic includes juvenile and adult clients.

¹⁵⁵ *Id.*

¹⁵⁶ See, Juvenile Detention Alternatives website, at <http://www.aecf.org/initiatives/jdai/>.

¹⁵⁷ Letter to Louisiana Governor, Mike Foster from Deval Patrick, Assistant Attorney General, Civil Rights Division:

<http://www.usdoj.gov/crt/split/documents/lajuvfind3.htm> .

¹⁵⁸ The American Prospect: “Bayou Betterment: In Louisiana, a New Juvenile Justice System Is Emerging, with the Governor’s Strong Support”, (September 1, 2005): http://goliath.ecnext.com/coms2/gi_0199-4770606/Bayou-betterment-in-Louisiana-a.html.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Governor of Louisiana’s Website. News Report: Gov. Kathleen Blanco: Bridge City Dedication (July 14, 2005):

<http://gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=857>.

¹⁶² The Juvenile Justice Project, Annual Report 2005-2006: <http://www.jjpl.org/ar06.pdf>.

¹⁶³ Statistics from the State of Louisiana’s Office of Youth Development Website: Profile of Recidivism in Office of Youth Development, <http://www.oyd.louisiana.gov/statistics-05-oyd/1f.pdf>.



School of Law

SENTENCING OUR CHILDREN TO DIE IN PRISON
GLOBAL LAW AND PRACTICE

International human rights laws clearly prohibit sentencing juveniles to life in prison without the possibility of parole, yet thousands of youths—primarily in the United States—are condemned to die in prison for crimes committed when they were under 18. “Sentencing Our Children to Die in Prison,” a report by Michelle Leighton and Connie de la Vega of the University of San Francisco School of Law’s Center for Law and Global Justice, is the most comprehensive study of the issue to date. According to the report, the United States and Israel are the only nations continuing to violate international human rights law by condemning children to die in prison. With at least 2,381 individuals serving life sentences for crimes committed as juveniles, the United States accounts for more than 99.9% of such sentences worldwide. In Israel, there are seven such cases.

The study also reveals the racial disparity of the juvenile life without parole sentence in the United States, where African American children are 10 times as likely as white children to receive the sentence.

The Center for Law and Global Justice at the University of San Francisco School of Law promotes the rule of law with justice internationally.

The Center’s work focuses on migration and forced displacement, human rights protection, peace and democracy building, and economic development, with an emphasis on corporate responsibility. The Center has worked in Cambodia, China, the Dominican Republic, India, Vietnam, the United States, and elsewhere.

The University of San Francisco School of Law, established in 1912 by the Jesuit Fathers, educates students to be effective lawyers with a social conscience, high ethical standards, and a global perspective. The School blends a tradition of excellence in training students to be skilled and effective lawyers with innovative programming that reflects our changing society and laws. The USF School of Law sustains an intense commitment to social justice and to providing access to justice for the marginalized around the world.

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