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## Issue Brief

# **A Just Alternative to Sentencing Youth to Life in Prison Without the Possibility of Parole**

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# **A Just Alternative to Sentencing Youth to Life in Prison Without the Possibility of Parole**

**Jody Kent\* and Beth Colgan\*\***

## **I. Introduction**

There are more than 2,500 people in the United States serving life in prison without the possibility of parole for crimes committed under the age of eighteen. In the spring of 2010, the United States Supreme Court is expected to rule on the constitutionality of imposing such sentences on a subset of these juvenile offenders who were convicted of non-homicide crimes. This constitutional challenge was brought before the court in two cases, *Sullivan v. Florida*<sup>1</sup> and *Graham v. Florida*,<sup>2</sup> for which arguments were heard in November 2009. As Chief Justice John Roberts acknowledged in those oral arguments, the Court has previously recognized that “juveniles are different.”<sup>3</sup> Regardless of whether the Court extends that precedent to find the sentencing of youth to life in prison without the possibility of parole unconstitutional in one or both of these cases, advocates for youth have called for reform of extreme sentencing policies, on the basis that they grossly undermine rational, fair, and age-appropriate treatment of youth.

This Issue Brief begins by explaining why the practice of sentencing youth to life in prison without the possibility of parole is deeply flawed public policy. First, we address the long-recognized principle that youth are different from adults, reinforced in recent years by adolescent development brain science, as well as by examples of youth who were successfully rehabilitated. Second, we critique the frequently argued notion that harsh sentencing is necessary to protect public safety, a premise undermined by both the inconsistent and arbitrary application and by the resulting diversion of taxpayer dollars that could be used to increase public safety through prevention programs. Third, we discuss how the sentencing of youth to life in prison without the possibility of parole undermines America’s moral standing in the world, as the only nation in the world that imposes this irrevocable sentence on people under the age of eighteen.

We conclude the Issue Brief with a suggested alternative to the practice of sentencing youth to life in prison without the possibility of parole which balances the need to hold youth who commit serious crimes accountable, while still recognizing their inherent capacity for change. We recommend the creation of a system that would allow for meaningful periodic review of sentences given to youth convicted of serious offenses to determine whether they continue to pose a threat to society or may be

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<sup>1</sup> No. 08-7621, 129 S.Ct. 2157 (May 4, 2009).

<sup>2</sup> No. 08-7412, 130 S.Ct. 357 (Oct. 5, 2009).

<sup>3</sup> Transcript of Oral Argument at 13, *Graham v. Florida*, 130 S.Ct. 357 (2009) (No. 08-7412) *available at* [http://www.supremecourtus.gov/oral\\_arguments/argument\\_transcripts/08-7412.pdf](http://www.supremecourtus.gov/oral_arguments/argument_transcripts/08-7412.pdf).

able to return to our communities as productive citizens. This is a common sense solution to an irrational and grossly misguided policy.

## II. Youth Are Fundamentally Different From Adults

Juvenile justice is founded on the majority view that children, even those convicted of grave crimes, deserve the opportunity for second chances. Behavioral research confirms what is recognized by U.S. and state laws: children are fundamentally different from adults. Youth do not have adult levels of judgment, impulse control, or ability to assess risks. There is widespread agreement among child development researchers that young people who commit crimes are more likely to reform their behavior and have a better chance at rehabilitation than adults. In fact, adolescent brain science shows that youth are different from adults “not only to the observer’s naked eye, but in the very fiber of their brains.”<sup>4</sup> As a result, adolescent character development is in flux, making it likely that most youth will age out of delinquent behavior as they progress toward adulthood.<sup>5</sup> The Supreme Court agrees—in *Roper v. Simmons*, the case outlawing the execution of children, the Court explained, “From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”<sup>6</sup>

Yet, the sentence of life in prison without parole rejects that possibility of reform and ignores the fact that an assessment of whether a particular juvenile is irredeemable is impossible at sentencing. The crux of this scenario was set out in an *amicus* brief in the *Sullivan* and *Graham* cases by corrections groups—including the Juvenile Correctional Administrators, National Association for Juvenile Correctional Agencies, National Juvenile Detention Association, National Partnership for Juvenile Services, American Probation and Parole Association, and International Community Corrections Association—which highlights the recognition that youth may change drastically during the course of incarceration in ways that are impossible to predict at sentencing. These *amici* stated:

While we strongly believe that juveniles must be held accountable for their actions, condemning a juvenile to prison for the rest of his life at a point where his true character and potential cannot be accurately assessed is deeply troubling. In our professional capacities, we have experienced great successes with juveniles who others believed could not succeed. We believe the critical question for this Court is not “whether” but “when”—when is the proper and humane time to decide if a juvenile deserves to spend the rest of his life in prison. Empirical data, medical science and practical experience overwhelmingly show that juvenile offenders are distinct from adult offenders and that these distinctions evince a unique potential for rehabilitation. We submit, therefore,

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<sup>4</sup> Brief of the Am. Med. Ass’n, et al. as Amici Curiae Supporting Respondent at 10, *Roper v. Simmons*, 125 S.Ct. 1183 (2005). *See also, generally*, Brief of the Am. Med. Ass’n, et al. as Amici Curiae Supporting Neither Party, *Graham v. Florida*, 130 S.Ct. 357 (2009) (No. 08-7412) and *Sullivan v. Florida*, 129 S.Ct. 2157 (2009) (No. 08-7621); Brief of Am. Psychological Ass’n, et al. Supporting Petitioners, *Graham v. Florida*, 130 S.Ct. 357 (2009) (No. 08-7412) and *Sullivan v. Florida*, 129 S.Ct. 2157 (2009) (No. 08-7621).

<sup>5</sup> 543 U.S. 551, 569-570 (2005).

<sup>6</sup> *Id.*

that this determination can be made only in a post-adolescence review of the development and treatment progress of a juvenile offender.<sup>7</sup>

Another *amicus* brief, submitted by former juvenile offenders in support of petitioners in *Sullivan* and *Graham*, illustrates the dubiousness of the assumption that culpability can accurately be assessed when sentencing a juvenile. The brief includes narratives about their life stories, including those of former United States Senator Alan Simpson (R-WY) and former Assistant United States Attorney Terry Ray, which clearly demonstrate the unique capacity of children to become rehabilitated. Both Alan Simpson and Terry Ray engaged in serious criminal conduct as juveniles, conduct that, with different outcomes, might have condemned them to death in prison.

When describing himself as a teenager, Simpson says, “I was a monster.”<sup>8</sup> Among other offenses, a youthful Simpson was convicted of committing arson on federal property, an act punishable by life in prison if someone dies as a result of the arson.<sup>9</sup> Fortunately for Simpson, no one was killed in the fire and he was given an opportunity to redeem himself. Simpson went on to obtain a law degree, serve in the United States Army, act as United States Commissioner, direct Harvard University’s Institute of Politics, and hold several terms as Wyoming’s U.S. Senator.

Terry Ray also admits that he was a violent youth, likely as a result of the abuse he endured at home. By age eleven, Ray had stabbed a classmate and a teacher and was already entrenched in the juvenile justice system.<sup>10</sup> Finally exiting juvenile detention, Ray managed to enroll in a junior college and went on to obtain his law degree from Northwestern University. In his career, Ray has served as an Assistant United States Attorney and later led the Tax Fraud Prosecution Unit in the United States Attorney’s Office in Dallas, Texas. When reflecting on his journey from youthful offender to Assistant U.S. Attorney, Ray is thankful he got a second chance at life. He says, “Sometimes we don’t take the time to look at someone as an individual . . . We look at something a person did on one second, five seconds, or ten minutes and say that the person has no possibility of ever overcoming that moment. But those people who make it out—they have an extra gear, and they can do remarkable things.”<sup>11</sup>

### III. The Public Safety Red Herring

Public policy regarding the treatment of youth in the criminal justice system shifted dramatically in the 1980s and 1990s, largely in response to erroneous predictions of an impending youth crime wave.<sup>12</sup> As a result, many states and the federal government enacted laws that increased the number of youth who

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<sup>7</sup> Brief of Council of Juvenile Correctional Administrators, et al. as Amici Curiae Supporting Petitioners at 3, *Graham v. Florida*, 130 S.Ct. 357 (2009) (No. 08-7412) and *Sullivan v. Florida*, 129 S.Ct. 2157 (2009) (No. 08-7621). *See also id.* at 31 (“[C]onfidently predicting that a juvenile offender’s criminal behavior will persist is almost impossible. Jurists are unable to predict serious criminal behavior in juveniles.”). *See also* Brief of Disability Rights Legal Center as Amici Curiae Supporting Petitioner at 8-19, *Graham v. Florida*, 130 S.Ct. 357 (2009) (No. 08-7412) and *Sullivan v. Florida*, 129 S.Ct. 2157 (2009) (No. 08-7621).

<sup>8</sup> Brief of Former Juvenile Offenders, Charles S. Dutton, et al. as Amici Curiae Supporting Petitioner at 11, *Graham v. Florida*, 130 S.Ct. 357 (2009) (No. 08-7412) and *Sullivan v. Florida*, 129 S.Ct. 2157 (2009) (No. 08-7621).

<sup>9</sup> Brief of Former Juvenile Offenders, Charles S. Dutton, et al. as Amici Curiae Supporting Petitioner at 12.

<sup>10</sup> *Id.* at 22.

<sup>11</sup> *Id.* at 23.

<sup>12</sup> Larry Steinberg & Ron Haskins, *Keeping Adolescents Out of Prison*, The Future of Children (Fall 2008) at 2, available at [http://futureofchildren.org/futureofchildren/publications/docs/18\\_02\\_PolicyBrief.pdf](http://futureofchildren.org/futureofchildren/publications/docs/18_02_PolicyBrief.pdf).

were tried, sentenced, and incarcerated in the same manner as adults, including the sentencing of youth to life in prison without the possibility of parole.

The predicted youth crime wave never materialized—rather, juvenile arrest rates have continued to fall in recent years. Between 1999 and 2008, juvenile arrest rates for violent crimes have decreased by 8.6 percent and total juvenile arrest rates have fallen by 15.7 percent in the past decade.<sup>13</sup> Yet, proponents of harsh sentencing of youth continue to claim that sentencing youth to life in prison without the possibility of parole is necessary to protect public safety. This claim is not credible when the following factors are considered: (1) sentences are being arbitrarily and inconsistently applied, and (2) the staggering costs associated with juvenile life sentences divert funds from critical public safety initiatives.

#### A. The Sentence Is Applied Inconsistently and Arbitrarily

The inconsistent and seemingly arbitrary use of juvenile life sentences raises questions about whether the policy is needed for public safety reasons. In many cases, youth who are sentenced to life in prison without the possibility of parole have a co-defendant who is accused of the same acts but receives a significantly lesser sentence, often as part of a plea bargain in exchange for testimony.<sup>14</sup> Surprisingly, this is true even where the co-defendant is an adult. Human Rights Watch has reported that “[i]n 11 of the 17 years between 1985 and 2001, youth convicted of murder in the United States were more likely to enter prison with a life without parole sentence than were adults convicted of the same crime.”<sup>15</sup> If the public can be kept sufficiently safe by a lesser sentence for one person that commits a crime, certainly the same is true for the juvenile co-defendant.

The inconsistency of the sentence’s application is also evident from the large number of youth who receive the sentence despite having no previous criminal history. In fact, nearly 60 percent of people serving life in prison without the possibility of parole for offenses committed as youth were first time offenders.<sup>16</sup> As such, youth are treated as “irredeemable” often without ever having an opportunity to receive treatment or rehabilitative services. The imposition of the sentence on first time offenders may be explained in many cases by the fact that a court’s hands are often tied by the mandatory nature of the sentence. A youth first becomes eligible for a life sentence when he or she is transferred to adult court. There is often little discretion or oversight of this very significant change in a youth’s status from a “juvenile” to an “adult.” For example, 15 states grant prosecutors, rather than judges, the discretion to have a youth's case tried in the adult criminal court, 15 states require juvenile court judges to automatically transfer a youth's case to adult criminal court for certain offenses or because of the age or prior record of the offender, and 29 states automatically require a youth's case to be tried in the adult court

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<sup>13</sup> U.S. DEP’T OF JUSTICE, FEDERAL BUREAU OF INVESTIGATIONS, CRIME IN THE UNITED STATES 2008: TEN YEAR ARREST TRENDS, TABLE 32, available at [http://www.fbi.gov/ucr/cius2008/data/table\\_32.html](http://www.fbi.gov/ucr/cius2008/data/table_32.html).

<sup>14</sup> See, e.g., HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR YOUTH OFFENDERS IN THE UNITED STATES IN 2008: EXECUTIVE SUMMARY 2, 5 (2008) [hereinafter HUMAN RIGHTS WATCH].

<sup>15</sup> HUMAN RIGHTS WATCH, *supra* note 14 at 2. Youth who are sentenced to life in prison without the possibility of parole are subjected to harsher sentences than adults who receive the same sentence. By the very nature of their young age, adolescents will typically end up serving a longer sentence than an adult sentenced to life without parole. See, e.g., Brief of Am. Bar Ass’n as Amici Curiae Supporting Petitioner at 7-10, *Graham v. Florida*, 130 S.Ct. 357 (2009) (No. 08-7412) and *Sullivan v. Florida*, 129 S.Ct. 2157 (2009) (No. 08-7621).

<sup>16</sup> HUMAN RIGHTS WATCH, *supra* note 14 at 4.

based on the age of the youth or the alleged crime or both.<sup>17</sup> Once a youth is convicted of a crime in adult court, he or she often becomes subject to a mandatory minimum adult sentence, again limiting judicial discretion. In 29 states, a young person must receive a sentence of life without the possibility of parole for certain convictions.<sup>18</sup> Regardless of mitigating circumstances—including factors directly related to public safety, such as a youth’s amenability to treatment—neither a judge nor a jury has discretion to consider a less extreme sentence.

The arbitrary nature by which the sentence is imposed is also evident on a broader level. Five states—California, Florida, Louisiana, Pennsylvania and Michigan—imprison two-thirds of all individuals serving life without parole for crimes committed in their youth. In order for the public safety argument to stand, we must assume that kids in Pennsylvania, for example, are dramatically more violent than those in New York where there are *no* juvenile offenders serving the sentence. The two cases before the court, *Sullivan v. Florida* and *Graham v. Florida*, also shed light on this point. In both cases, the defendants were sentenced to life without the possibility of parole for offenses where no death occurred. There are 109 people serving juvenile life without parole for non-homicide offenses in the United States. Seventy-six of them, or 70%, are in Florida. However, just next door in Georgia there has never been a single juvenile sentenced to life in prison without the possibility of parole, for a similar offense.<sup>19</sup> A glimpse at the national landscape of where these extreme sentences are imposed provides evidence that it is often done arbitrarily, and undermines the argument that it is necessary to keep our communities safe.

The extraordinary degree to which the sentence is imposed upon youth of color also reveals the arbitrary nature of its application. African American youth constitute 60% of the juvenile offenders sentenced to life without parole nationwide and whites constitute 29%. On average across the country, black youth are serving life without parole at a per capita rate that is 10 times that of white youth. Many states have racial disparities that are far greater. Among the 26 states with five or more youth offenders serving juvenile life without parole, the highest black to white ratios are in Connecticut, Pennsylvania, and California, where black youth are between 18 and 48 times more likely to be serving a sentence of life without parole than white youth. More than 10% of the people serving juvenile life without the possibility of parole in the Federal Bureau of Prisons are Native American, and more than two-thirds of them are people of color. Importantly, the disproportionate sentencing of youth of color cannot be explained by higher arrest rates or the crimes for which the youth were arrested. In a 2008 report, Human Rights Watch analyzed data from 25 states and determined that black youth arrested for murder were sentenced to life in prison without the possibility of parole “at a rate 1.59 times that of white youth arrested for murder.”<sup>20</sup>

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<sup>17</sup> CAMPAIGN FOR YOUTH JUSTICE, FACTSHEET: TRYING YOUTH AS ADULTS, *available at* <http://www.campaign4youthjustice.org/fact-sheets.html>.

<sup>18</sup> HUMAN RIGHTS WATCH, *supra* note 14 at 3.

<sup>19</sup> PAOLO G. ANNINO, ET AL., PUBLIC INTEREST LAW CENTER, JUVENILE LIFE WITHOUT PAROLE FOR NON-HOMICIDE OFFENSES: FLORIDA COMPARED TO THE NATION 2, 9 (2009), *available at* [http://www.law.fsu.edu/faculty/profiles/annino/Report\\_juvenile\\_lwop\\_092009.pdf](http://www.law.fsu.edu/faculty/profiles/annino/Report_juvenile_lwop_092009.pdf).

<sup>20</sup> HUMAN RIGHTS WATCH, *supra* note 14 at 7.

## B. The Costs Associated with Sentencing Youth to Life in Prison Without the Possibility of Parole May Undermine Public Safety

There are enormous costs associated with incarcerating youth for life without the possibility of parole. In 2007, the fifty states spent over \$49 billion dollars in corrections costs for adult prisons,<sup>21</sup> which also house people sentenced as youth to life in prison without the possibility of parole. When a person has been rehabilitated—which science shows us is more likely in the case of adolescents—the use of taxpayer dollars to continue that incarceration is arguably wasteful. Those funds could better be spent on further rehabilitative programming and prevention efforts that have been shown to be more effective at reducing crime and improving public safety. The Washington State Institute for Public Policy, a highly respected, non-partisan research unit that analyzes issues important to Washington’s citizens, found that community intervention programs are a cost-effective means of reducing crime. For example, multidimensional treatment foster care was found to reduce recidivism rates by nearly 18 percent with a cost-benefit to tax-payers of nearly \$90,000 per participant. Functional Family Therapy during probation was found to reduce recidivism by over 18 percent, with a cost-benefit to tax payers of nearly \$50,000 per participant.<sup>22</sup> One need only heed the lesson learned by one of the foremost proponents of the notion that laws should be passed making it easier to incarcerate young people, John J. DiIulio, Jr. In a 2001 interview during his service as Director of the White House Office of Faith-Based and Community Initiatives during the Bush administration, Mr. DiIulio reflected on the push in the 1980s and 1990s to subject youth to harsh sentences and stated, “If I knew then what I know now, I would have shouted for prevention of crimes.”<sup>23</sup>

## IV. Undermining America’s Moral Standing

When considering America’s moral standing in the world, most would assume that we are a world leader in protecting our children, a markedly vulnerable population. In many instances, however, our sentencing practices grossly undermine moral authority. Our nation’s treatment of youth convicted of crimes is misguided and out of step with the rest of the world. Our sentencing policies are rooted in irrational fear, rather than based on facts and fairness. As a world leader in protecting the rights of children, we must ensure that young people, who are still growing and changing, have the opportunity of rehabilitation.

International human rights law prohibits life without parole sentences for those who commit their crimes before the age of eighteen, a prohibition that is universally applied outside of the United States.<sup>24</sup> Sentencing youth to life in prison without the possibility of parole violates or drastically undermines at least three international treaties to which the United States is a party: the International Covenant on Civil and Political Rights; the United Nations Convention Against Torture and Other Cruel, Inhuman or

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<sup>21</sup> THE PEW CENTER ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008 11 (2009), *available at* [http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS\\_Prison08\\_FINAL\\_2-1-1\\_FORWEB.pdf](http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf).

<sup>22</sup> ELIZABETH K. DRAKE, ET AL., WASH. ST. INST. FOR PUB POL’Y, EVIDENCE-BASED PUBLIC POLICY OPTIONS TO REDUCE CRIME AND CRIMINAL JUSTICE COSTS: IMPLICATIONS IN WASHINGTON STATE 186, Table 1 (2006), *available at* <http://www.wsipp.wa.gov/rptfiles/09-00-1201.pdf>.

<sup>23</sup> Elizabeth Becker, *As Ex-Theorist on Young “Superpredators,” Bush Aid Has Regrets*, N.Y. TIMES, Feb. 9, 2001, at A19.

<sup>24</sup> Brief of Amnesty Int’l, et al. as Amici Curiae Supporting Petitioner at 1-2, *Graham v. Florida*, 130 S.Ct. 357 (2009) (No. 08-7412) and *Sullivan v. Florida*, 129 S.Ct. 2157 (2009) (No. 08-7621).

Degrading Treatment or Punishment; and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>25</sup> The international committees responsible for monitoring compliance with these treaties have criticized the United States for its continued use of the sentence as a form of punishing youth.<sup>26</sup> For example, in 2008, the Committee on the Elimination of Racial Discrimination found:

In light of the disproportionate imposition of life imprisonment without parole on young offenders—including children—belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5(a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.<sup>27</sup>

Likewise, the Committee Against Torture, responsible for overseeing compliance with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, reviewed U.S. policies in 2006. At that time, the committee commented that juvenile life sentences “could constitute cruel, inhuman or degrading treatment or punishment.”<sup>28</sup> This would be a violation of the treaty to which the United States is a legal party.

The practice of sentencing youth to life in prison without the possibility of parole also violates the United Nations Convention for the Rights of the Child (CRC), which details the special needs of youth, and therefore the special protections they require, and explicitly prohibits the practice of sentencing youth to life in prison without the possibility of parole.<sup>29</sup> Since its passage 20 years ago, the United States has declined to ratify the treaty.<sup>30</sup> In so doing, the United States stands almost alone; the only other country that has yet to ratify is Somalia, which has recently announced plans to ratify the CRC.<sup>31</sup>

It is also critical to look beyond the internationally recognized prohibition of the sentence to see how other nations punish youth convicted of serious offenses and the effect of such punishment. In the United Kingdom, for example, youth convicted of murder receive a presumptive sentence of 12 years, which may be adjusted upward or downward depending upon aggravating or mitigating factors. No youth convicted of murder has been sentenced to more than 30 years.<sup>32</sup> These lesser, but still severe, sentences certainly are sufficient to protect public safety, given the lower overall youth crime rates in the United

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<sup>25</sup> International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (Dec. 16, 1996); United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 113 (entered into force, June 26, 1987 and ratified by the United States, Oct. 21, 1994); Convention on the Elimination of Racial Discrimination, 660 U.N.T.S. 195 (entered into force, Jan. 4, 1969 and ratified by the United States, Oct. 21, 1994).

<sup>26</sup> Brief of Amnesty Int’l, *supra* note 26 at 24-30.

<sup>27</sup> *Id.* at 28-29.

<sup>28</sup> Conclusions and Recommendations of the Committee Against Torture: United States of America, at para. 35, U.N. Doc. CAT/USA/CO/2 (July 25, 2006). See also MICHELLE LEIGHTON, ET AL., UNIV. OF SAN FRANCISCO SCHOOL OF LAW, SENTENCING OUR CHILDREN TO DIE IN PRISON: GLOBAL LAW & PRACTICE 14 (Nov. 2007), available at [http://www.usfca.edu/law/home/CenterforLawandGlobalJustice/LWOP\\_Final\\_Nov\\_20-new.pdf](http://www.usfca.edu/law/home/CenterforLawandGlobalJustice/LWOP_Final_Nov_20-new.pdf).

<sup>29</sup> United Nations Convention on the Rights of the Child, G.A. res. 44/25, annex. 44, U.N. GAOR Supp. (No. 49) (entered into force, Sept 2, 1990 at art. 37).

<sup>30</sup> See Brief of Amnesty Int’l, *supra* note 26 at 15.

<sup>31</sup> *Id.* at 15 n.6.

<sup>32</sup> *Id.* at 36.



Kingdom.<sup>33</sup> Therefore, unless one is to believe that youth who commit murder in the United States are deserving of stricter punishment than youth who commit murder in other similar western nations, the sentencing of American youth in this manner undermines our credibility and our values.

## V. A Just Alternative

There is a better, and age-appropriate, way to hold youth accountable than to sentence them to die in prison. We recommend careful, periodic review of sentences for youth who have been convicted of serious offenses to determine if they continue to pose a threat to the community.<sup>34</sup> We refer to this policy option as “periodic review.” Under this proposal, youth will spend a significant period of time—a decade or more—away from their homes and families, and only those who have demonstrated remorse and a record of rehabilitation would be granted a reduction in sentence. This modest reform: (1) is based on scientific research that youth are still forming human beings; (2) keeps our communities safe; and (3) reflects American values.

### A. Supported by Science and Specific Examples of Reform

As described in this article previously, there is a vast body of scientific research that explains the fundamental differences between youth and adults. Children are not simply adults in smaller form, and meaningful periodic review of lengthy sentences given to people under the age of eighteen ensures that they are not treated as such. Likewise, the numerous examples of youth who have gone on to lead successful and productive lives in their communities, evidences the possibility of reform that brain development science predicts. Given this scientific evidence, the imposition of an irrevocable sentence on someone who may still grow and mature into a very different person than he or she was at the time of the crime is not supportable. Instead, periodic review later in life is essential to identifying those individuals who are fit to return to our communities.

### B. Ensures Safe Communities

Periodic review will provide young people convicted of serious crimes with the opportunity to come before a review board to determine whether they continue to pose a threat to their community or have been rehabilitated. This is no guarantee of release; unless they can prove significant progress, they will remain in prison. In-depth, detailed reviews of this nature are done by professionals every day and have historically been undertaken by parole boards. We recommend that these reviews be robust, and include review of the crime facts, input from victims, details of the youth’s life both before and after the crime, and evidence of rehabilitation in order to have a full picture of how each individual has progressed toward reformation.

This type of periodic review would have the benefit of remedying some inconsistencies and arbitrariness created by sentencing policies that allow youth to be tried and sentenced with little or no consideration of mitigating factors. For example, a review board could consider whether the individual was a first time offender, the comparable sentences of co-defendants, and whether the existence of

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<sup>33</sup> WORLD HEALTH ORGANIZATION, WORLD REPORT ON VIOLENCE AND HEALTH 25, 27 (2002), available at [http://whqlibdoc.who.int/publications/2002/9241545615\\_chap2\\_eng.pdf](http://whqlibdoc.who.int/publications/2002/9241545615_chap2_eng.pdf).

<sup>34</sup> See, e.g., Brief of Am. Bar Ass’n, *supra* note 15 at 15-19.

pervasive disproportionate minority involvement in the criminal justice system in a particular jurisdiction undermines the fairness of an individual's sentence.

Periodic review may also create new opportunities to directly improve public safety. Redirecting funds currently used for life-long incarceration toward rehabilitative services and prevention programs offers a chance to prevent the trial and extreme sentencing of youth in the best possible way—by preventing crimes in the first place.

#### C. Reflects our Values and Human Rights

Periodic review is grounded in fairness and rewards those young people who make positive changes in their lives, instead of declaring them irredeemable because of their actions during a period in life when their characters were still forming. It provides an incentive for young people to come to terms with their mistakes and improve themselves so that they may, one day, return to their loved ones and become productive members of their communities. As a nation that should be a leader in protecting children's rights, and one that values potential for growth and redemption, our policies should focus on rehabilitating young people who commit serious crimes. We all benefit from living in a society that upholds our values and human rights, rather than one that asserts that our young people may be deemed worthless. Periodic review is the just alternative to sentencing youth to life in prison without the possibility of parole.