

# Fighting to End Juvenile Life Without Parole

The 25th Anniversary of the U.N.  
Convention of the Rights of the Child

# Our Presenters

- Xavier McElrath-Bey
  - Campaign for the Fair Sentencing of Youth
- Josh Rovner
  - The Sentencing Project
- James Dold
  - Campaign for the Fair Sentencing of Youth
- Betsy Clarke
  - Juvenile Justice Initiative
  - Member of the National Juvenile Justice Network*

# Fighting to End Juvenile Life Without Parole

Xavier McElrath-Bey

*Campaign for the Fair Sentencing of Youth  
Incarcerated Children's Advocacy Network*

REPORT DATE	OFFENSE	DIST. OF OFF.	YOUTH OFFICER/STAR NO.	DISPOSITION		DOCKET NUMBER	DATE
				POLICE	COURT		
				CA	REP DET DIS PRE DOC YEAR	NUMBER	
14 Mar 85	Shoplifting	9	G093774 Novak 15014	X			
17 Mar 85	Disorderly	9	R492508 Lux 8027	X			
3 Nov 86	Theft from Parking M.	18	Robinson 16166	X			
10 Nov 86	Att.Theft from Parking	12	H503640 Grove 3782	X			
6 May 87	Armed Robb. W/Boyle	8	J188265 O'Shaughnessy 12659	X			
14 May 87	Armed Robbery	9	J200732 McDonough 6130		X		
REPORT DATE	OFFENSE	DIST. OF OFF.	YOUTH OFFICER/STAR NO.	DISPOSITION		DOCKET NUMBER	DATE
				POLICE	COURT		
				CA	REP DET DIS PRE DOC YEAR	NUMBER	
23 Jun 87	D/C	9	Kos 16478 J 210917		X		
27 Jun 87	Victim Of Shooting	9	Sullivan 16459	X			
17 Jul 87	Disorderly	9	McAvey J270977 9405	X			
27 Jul 87	Armed Robb.W/Gun	9	M. kaitis J200732 17102	X			
2 Sep 87	CITP	9	J377643 H. kaitas 17102	X			
26 Mar 88	UUW Rifle	09	K 116983 Glynn 7563	X			
14 May 88	C.D.T.P. Priv.	9	K193035 Danaher 13820	X			
20 May 88	D/C	9	K-201780 Lux 8027	X			
30 Jun 88	Agg. Assault	9	K271643 Kw's 16437	X			
4 Sep 89	D/C	9	Cox 6908	X			
11 Oct 89	Agg. Battery, W/Stick	10	Rickman M. 4996 469018	X			
1 Nov 89	CITP	9	M 505293 Pulia 16550	X			
REPORT DATE	OFFENSE	DIST. OF OFF.	YOUTH OFFICER/STAR NO.	DISPOSITION		DOCKET NUMBER	DATE
				POLICE	COURT		
				CA	REP DET DIS PRE DOC YEAR	NUMBER	
11 Nov 89	WEIT 89-19757/ Unlaw Poss Weapon	09	M522 632 Egan 9615	X			
13 Nov 89	Murder	12	M500087 O'Shaughnessy 12659	X			

## Xavier's arrest record

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## Xavier's childhood pictures



## Fighting to End Juvenile Life Without Parole

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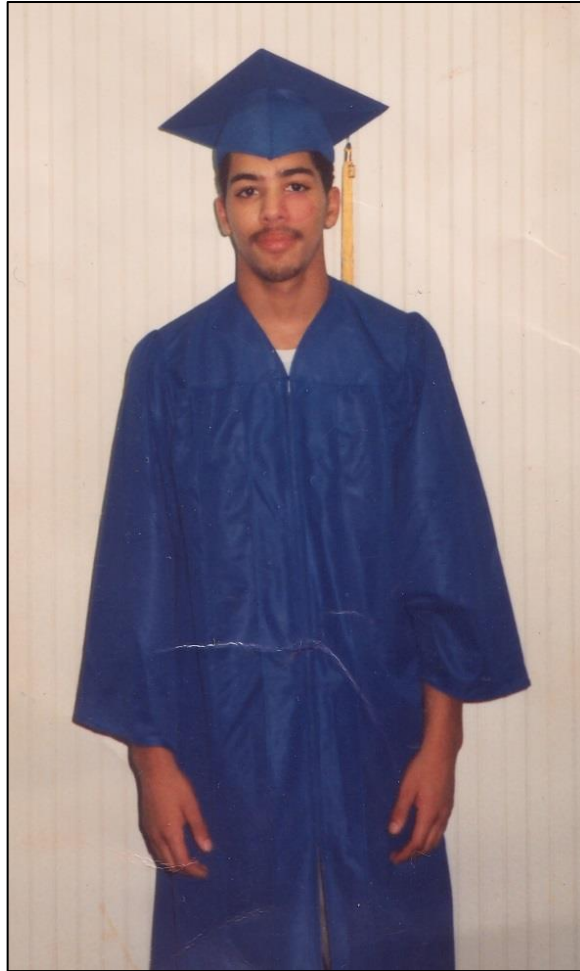




Early gang involvement at 11 years old

## **Fighting to End Juvenile Life Without Parole**

The 25th Anniversary of the U.N. Convention of the Rights of the Child



8<sup>th</sup> grade graduation  
Cook County Detention Center

**Fighting to End Juvenile Life Without Parole**

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Xavier McElrath-Bey and his daughter, Sophia

## **Fighting to End Juvenile Life Without Parole**

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# Fighting to End Juvenile Life Without Parole

Josh Rovner

*The Sentencing Project*

# Juveniles and Harsh Sentences

- Roper v. Simmons (2005)
  - Banned the death penalty for juveniles
  - “The United States now stands alone in a world that has turned its face against the juvenile death penalty.”
- Graham v. Florida (2010)
  - Banned life without parole except for homicide
  - “Global consensus against the sentencing practice in question.”

# Miller v. Alabama (2012)

- At least 2500 people serving LWOP at the time of the decision
  - ❖ Two-thirds of JLWOP sentences occurred in just five states: Pennsylvania, Michigan, Florida, California, and Louisiana
- Bans *mandatory* life without parole for juveniles
  - ❖ “Evolving standards of decency”
  - ❖ “Appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon”
- Remaining question: Retroactivity
  - ❖ State courts have been divided on whether Miller applied to the currently incarcerated

# The Lives of Juvenile Lifers

- 79% witnessed violence in their homes
- 47% were physically abused
- Fewer than half were attending school at the time of their offense
- Racial disparities

## **The Lives of Juvenile Lifers:**

Findings from a National Survey

Ashley Nellis, Ph.D.

March, 2012

# Fighting to End Juvenile Life Without Parole

James Dold

*Campaign for the Fair  
Sentencing of Youth*

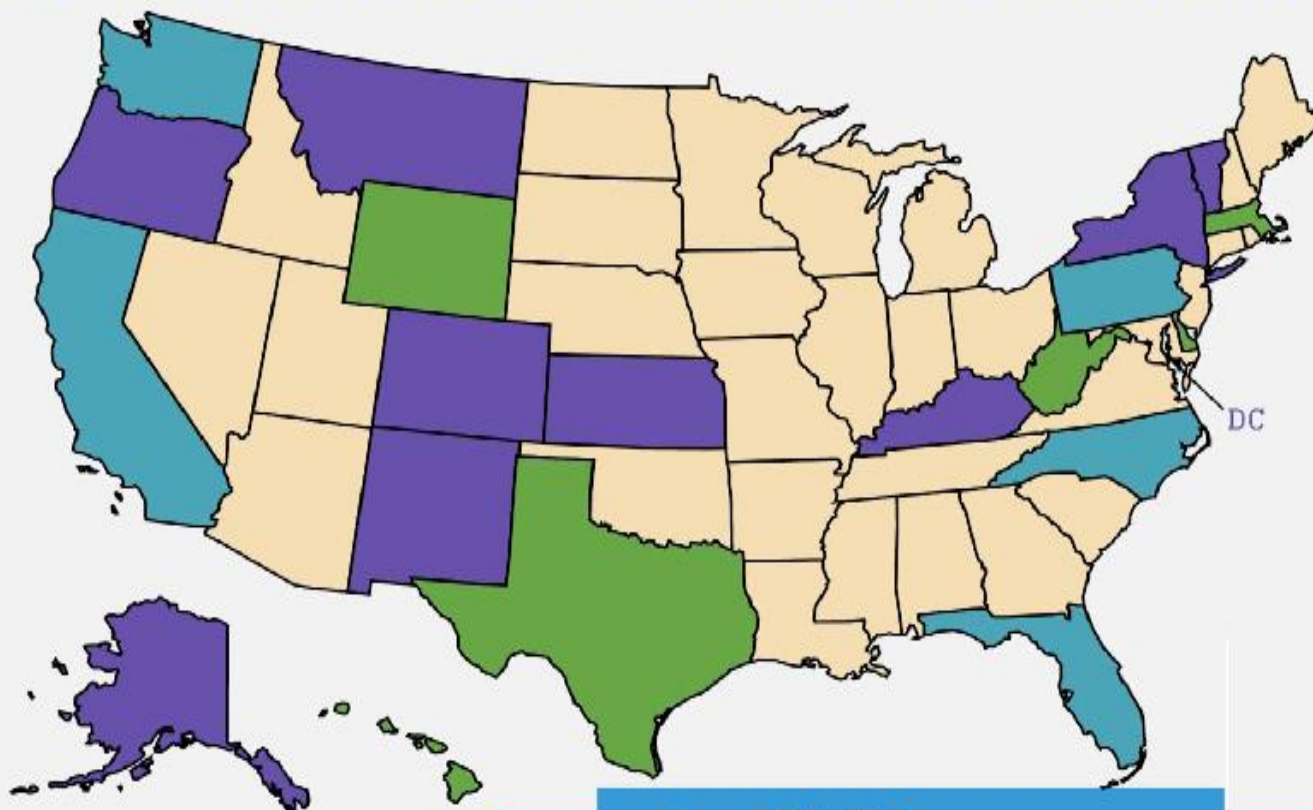
# Recent Legislative Successes







## Two-Year Snapshot



- Abolished JLWOP
- Abolished JLWOP for some categories
- Didn't have or use JLWOP pre-Miller

In TWO years:

SIX states have  
**ABOLISHED**  
JLWOP

# States that Have Abolished or Prohibit the Use of JLWOP

- 
- Texas
  - Wyoming
  - Hawaii
  - Montana
  - Kentucky
  - Massachusetts
  - West Virginia
  - Delaware
  - Alaska
  - Colorado
  - Kansas

# Other Significant Legislative Reforms

- California (SB 9 and SB 260)



- Created retroactive sentencing reviews at 15, 20, and 25 years for most children in California – 1 review every 5 years up to a total of 3 reviews. Only a few exceptions for specific homicide cases.

- Florida (HB 7035)



- Created sentencing reviews for most children in Florida – 2 for non-homicide offenses and 1 for homicide offenses. Only exception is where a child is the actual person who killed in a first degree murder case and has previously been convicted of a predicated crime of violence.

- Washington (HB 5064)



- Abolished JLWOP for kids under 16; prescribed Miller factors to be considered for 16 and 17 year olds.

# 2014 State Highlights

## • **West Virginia House Bill 4210**

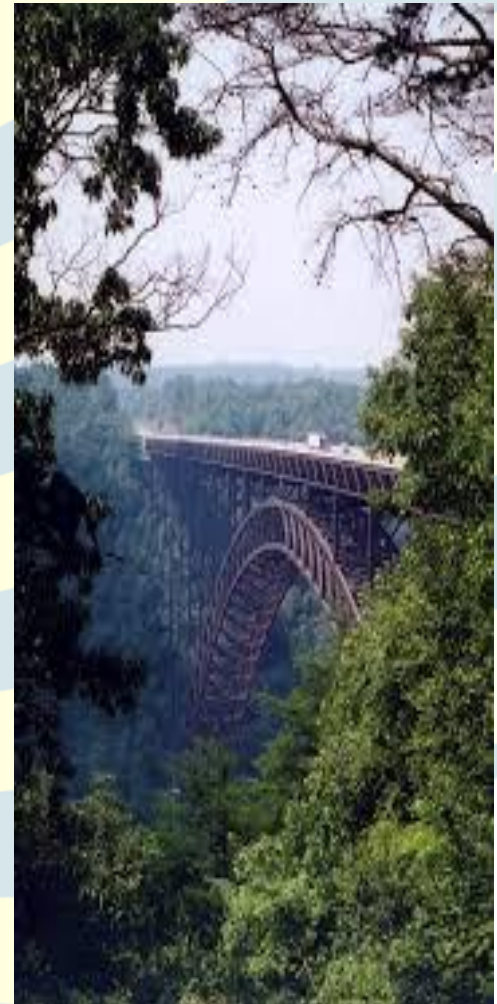
- Abolishes juvenile life without parole
- Eligibility for parole no later than 15 years after incarceration





# West Virginia House Bill 4210

- Judges must consider 15 mitigating factors at sentencing for any juvenile in the adult system.
- Parole board must provide a meaningful opportunity to obtain release



# Hawaii

## House Bill 2116 C.D. 1



Abolishes  
juvenile life  
without parole



# Hawaii

## House Bill 2116 C.D. 1

“The legislature further acknowledges that the United States is the **only nation in the world** that allows children to be sentenced to life imprisonment without parole, in violation of **Article 37 of the United Nations Convention on the Rights of the Child**, which categorically bars the imposition of ‘capital punishment [or] life imprisonment without the possibility of release . . . - for offenses committed by persons below eighteen years of age.’”

(emphasis added)

# Legislative Findings

- CRC can be used as an advocacy tool and incorporated into legislative findings, as was done in Hawaii and the original bill draft in West Virginia.
- Importance
  - Legislative findings are used to determine legislative intent when legislation is being interpreted by Administrative Bodies or the Courts.
  - Shows uniformity and consensus with international human rights norms.
  - Helps bolster case for the United States to ratify the CRC by showing national consensus

# Fighting to End Juvenile Life Without Parole

Betsy Clarke

*Juvenile Justice Initiative*

# Children's Rights: Summary

While the U.S. has not yet ratified the CRC, movement is rapidly underway to come into compliance with key protections for youth in conflict with the law:

- Elimination of the death penalty for juveniles
- Elimination of life without parole for non-homicides
- Elimination of mandatory life without parole
- Raising the age to 18
- Eliminating and reducing trial of youth in adult court.
- Expanding access to counsel
- Increased protections for youth questioned by police.
- Ensuring proportionality of sentencing.
- Reforming conditions in juvenile facilities
- Closing juvenile prisons and shifting savings to community-based alternatives

# US advocates urge ratification of CRC

- Sign on letter to urge President to send CRC to Senate for ratification
  - Campaign for U.S. Ratification of the CRC  
<http://www.childrightscampaign.org>
- State and local resolutions urge US to ratify CRC.

# Opposition to Ratification of CRC

Opponents argue ratification would:

- radically encroach on our sovereignty;
- subject us to an independent UN committee of “experts” in Geneva;
- allow the government in all cases to determine what is in a child’s best interest;
- intrude on parents’ rights to teach values and faith;
- grant to children autonomous rights, which many believe would include access to controversial sexual information and even abortion.



# The President Supports CRC

- “It is embarrassing to find ourselves in the company of Somalia.” -- President Obama
- The CRC is “a very important treaty and a noble cause.... There can be no doubt that [President Obama] and Secretary Clinton and I share a commitment to the objectives of this treaty and will take it up as an early question to ensure that the United States is playing and resumes its global leadership role in human rights.”  
-- U.S. Ambassador to the United Nations Susan Rice (during Senate confirmation)

## Global support

- More nations participated in signing ceremony than any previous UN human rights treaty.
- Went into force more quickly and received more ratifying votes than any other treaty.
- More nearly replicates the wide range of human rights envisioned in the 1948 Universal Declaration of Human Rights than any other treaty.
- Ratified today by all but 3 nations (U.S., Somalia and South Sudan).
- Pres. Clinton signed; needs Senate ratification

# The U.S. was active in drafting

- Initiated seven articles including
  - Article 10 – Family reunification
  - Article 19 – Protection from Abuse
  - Article 25 – Review of Placement
- And proposed
  - Article 13 – Freedom of expression
  - Article 14 – Freedom of religion
  - Article 15 – Freedom of association and assembly
  - Article 16 – Right to privacy.

# US failure to ratify the CRC

- Places it outside the world community on issues of children's rights
- Because the U.S. has not ratified the CRC it cannot be a member of the Committee on the Rights of the Child that reviews nations' reports on compliance.
- *Among other international ramifications, U.S. ability to argue that another country has not lived up to its obligations under the CRC is seriously compromised. This is a concrete problem in light of the US. Inclusion of the shortcomings of States Parties to the Convention with regard to children's rights in its annual survey of human rights abuses. (Cynthia Price Cohen)*

## Adoption: Nov. 20, 1989

- 25 years ago today, the CRC was adopted
- Adopted along with Millennium Goals to:
  - Eradicate extreme poverty and hunger
  - Achieve universal primary education
  - Promote gender equality and empower women
  - Reduce child mortality
  - Improve maternal health
  - Combat HIV/AIDS, malaria and other diseases
  - Ensure environmental sustainability
  - Develop a global partnership for development

# Article 1

...a child means every human being below the age of eighteen years ....

- No trial of children under 18 in adult court.
- 10 state still set age of jurisdiction below 18 – but reforms are underway in all of these ten states.
- Illinois in compliance with age of jurisdiction, but out of compliance due to transfer to adult court.



## Article 37(a)

States Parties shall ensure that ... no child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age.

- US has overturned juvenile death penalty.
- US has overturned mandatory life without parole for juveniles, but any JLWOP is prohibited.
- Solitary confinement violates CRC.

## Article 37(b)

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a **measure of last resort** and for the **shortest appropriate period of time**.

- **Last resort** – difficult to argue incarceration is last resort for low level property/drug offenses and misdemeanors.
- **Shortest period** – indeterminate commitments to age 21 violate this requirement.

# Last Resort for as Short a Time as Possible

- Consistent with US research on what works.
- Pathways research – longitudinal research on range of juveniles incarcerated for full range of offenses from violent to lowest level non-violent.
  - Results indicated most children age out of criminal behavior.
  - Results indicated incarceration resulted in MORE, not less, repeat offending
  - Results indicated most effective dispositions are community-based

# U.S. stands alone

- Policymakers are increasingly aware:
  - That US stands outside the world community in its excessive use of incarceration
  - That U.S. incarcerates at five times the rate of next closest nation
  - That mass incarceration is too expensive to continue
  - That mass incarceration – especially of low level offenders – is a failed policy

# A National Call to Action to END Mass Incarceration

NEWS

NATIONAL ACADEMY OF SCIENCES  
NATIONAL ACADEMY OF ENGINEERING  
INSTITUTE OF MEDICINE  
NATIONAL RESEARCH COUNCIL

F R O M   T H E   N A T I O N A L   A C A D E M I E S

Date: April 30, 2014

FOR IMMEDIATE RELEASE

## **U.S. Should Significantly Reduce Rate of Incarceration; Unprecedented Rise in Prison Population 'Not Serving the Country Well,' Says New Report**

WASHINGTON -- Given the minimal impact of long prison sentences on crime prevention and the negative social consequences and burdensome financial costs of U.S. incarceration rates, which have more than quadrupled in the last four decades, the nation should revise current criminal justice policies to significantly reduce imprisonment rates, says a new [report](#) from the National Research Council.

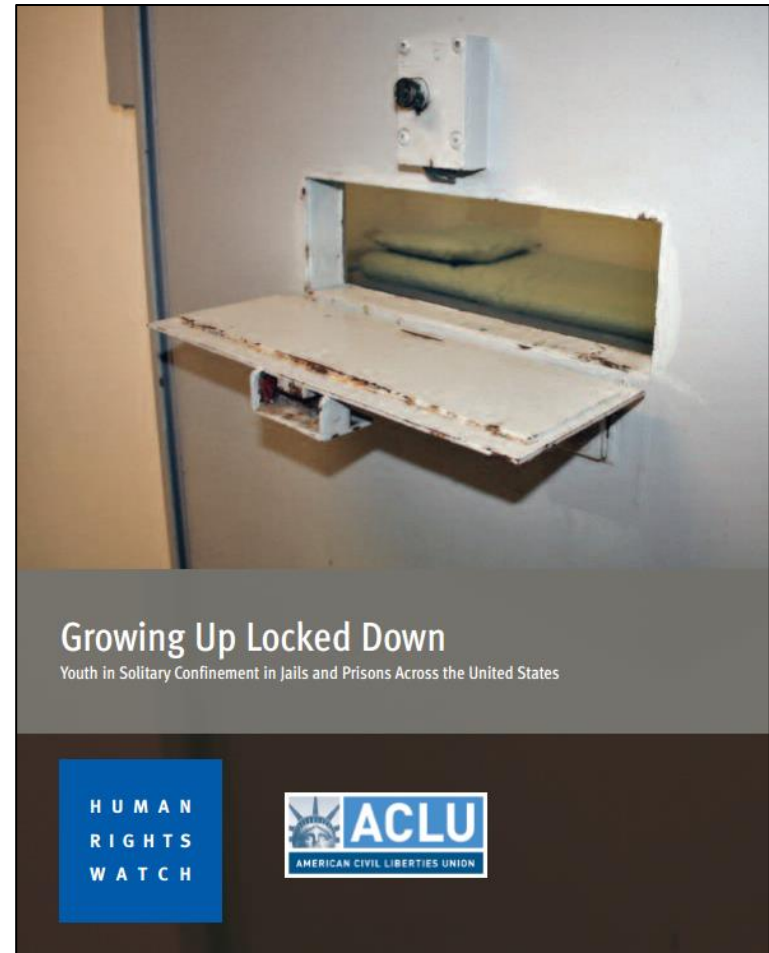
A comprehensive review of data led the committee that wrote the report to conclude that the costs of the current rate of incarceration outweigh the benefits. The committee recommended that federal and state policymakers re-examine policies requiring mandatory and long sentences, as well as take steps to improve prison conditions and to reduce unnecessary harm to the families and communities of those incarcerated. In addition, it recommended a reconsideration of drug crime policy, given the apparently low effectiveness of a heightened enforcement strategy that resulted in a tenfold increase in the incarceration rate for drug offenses from 1980 to 2010 — twice the rate for other crimes.

## Article 37

- Every child deprived of liberty shall be treated with **humanity and respect** for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

# Solitary Confinement

- Youth are subjected to solitary confinement nationwide, often for weeks or months at a time.
- While in solitary confinement, youth are often denied access to adequate treatment, services and programming.
- The authors note that “using solitary confinement harms young people in ways that are different, and more profound, than if they were adults.”





## Article 37(d)

- Every child deprived of his or her liberty shall have the right to **prompt access to legal** and other appropriate assistance, as well as the **right to challenge** the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

## Article 40

- Children who are accused of breaking the law have the right to legal help and fair treatment
- Governments are required to set a minimum age below which children cannot be held criminally responsible
- Governments are required to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.

# Lack of Counsel and Guilty Pleas

- European movement to provide counsel at stationhouse
- US reliance on uncounseled statements has led directly to astronomically high rate of guilty pleas
- System that relies nearly exclusively on pleas is no longer a system of justice

## Article 42

- States Parties undertake to make the principles and provisions of the Convention **widely known**, by appropriate and active means, to adults and children alike.

# Making the CRC “Widely Known”

- Advocate for universities and law schools to include CRC and other international human rights instruments in their curriculum
- Advocate for elementary and high schools to teach students about their human rights under the CRC
- Include references to CRC in court pleadings and advocacy materials

# Illinois House Resolution 1143

HR1143

LRB096 21971 GRL

1

## HOUSE RESOLUTION

2

3

4

WHEREAS, The State of Illinois developed the world's first  
juvenile court in 1899, and has consistently been a leader in  
protecting children and promoting their rights; and

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WHEREAS, The State of Illinois is committed to the health,  
safety, education, and growth of its children and children  
everywhere; and

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WHEREAS, The United States, based on its history and  
tradition of human rights and responsibilities, must  
demonstrate its dedication to provide all children with a  
better today and a better tomorrow; and

# What You Can Do Today

- Sign on letter to urge President to send CRC to Senate for ratification
  - Campaign for U.S. Ratification of the CRC
  - <http://www.childrightscampaign.org>




## Children's Statement 2002

- ...because the children of the world are misunderstood.

We are not the sources of problems; we are the resources that are needed to solve them.

## For more information

### Our websites

- [sentencingproject.org](http://sentencingproject.org)
- [fairsentencingofyouth.org](http://fairsentencingofyouth.org)
- [jjustice.org](http://jjustice.org)
- [njjn.org](http://njjn.org)
-  /groups/ican.nochildbornbad

### On twitter

- @SentencingProj
- @TheCFSY
- @jjinitiative
- @NJJNetwork

## Contact us

- Xavier McElrath-Bey, Campaign for the Fair Sentencing of Youth
  - [info@fairsentencingofyouth.org](mailto:info@fairsentencingofyouth.org)
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