Child Advocacy Program
Art of Social Change:
Child Welfare, Education, & Juvenile Justice

Professor Elizabeth Bartholet
Lecturer on Law Jessica Budnitz

ASSIGNMENT PACKET for Session #10
November 17, 2011

Children Dying While Incarcerated:
Approaches to Change

Bryan Stevenson, Executive Director, Equal Justice Initiative

Response Panel:
Naoka Carey, Senior Policy Associate, Citizens for Juvenile Justice
Josh Dohan, Director, Youth Advocacy Department
Session #10
November 17, 2011

Assignment

Speaker Biographies

Session Description

Readings: Pages

Bryan Stevenson:


Note: We have included the electronic version of this report in your packet. Bryan Stevenson would like each of you to have a hard copy of the actual report, which includes vivid photographs. A hard copy of the report can be picked up from the Copy Center in Pound Hall. Bring your ID as the Copy Center will check to make sure you are an enrolled student or auditor in the class.

Noaka Carey and Josh Dohan:

Juvenile Life Without Parole in Massachusetts

Until They Die A Natural Death: Youth Sentenced to Life Without Parole in Massachusetts, Children’s Law Center Of Massachusetts (September 2009) 43-47

Note: Interested students can download the entire report here http://www.clcm.org/untiltheydie.pdf

Anonymous, For the youngest killers, a glimmer of redemption, Boston Globe (October 2, 2009) 48

Scott Harshbarger, Don’t throw away the key on all juvenile killers, Boston Globe (October 3, 2009) 49


Written Statement submitted by forensic psychologist and attorney Robert Kinscherff, Ph.D., Esq.

Testimony Submitted by The Center for Public Representation to the Joint committee on the Judiciary on H. No. 1326 & S. No. 672, An Act Relative to the Sentencing of Children

Statement in support of elimination of juvenile life without parole sentencing, the Campaign for the Fair Sentencing of Youth (2005)

**Broader Juvenile Justice Reform Efforts in Massachusetts**

*Note*: You can skim the following documents, which will give you a sense for some of the juvenile justice reform efforts underway in Massachusetts beyond reforming juvenile life without parole.

H. 419/S.839 – An Act Relative to Certain Civil Infractions Draft

Support Proposed Amendment 140 - Just Facts - Citizens for Juvenile Justice

J.420/S/695 – Parent-Child Privilege

H.445 Fact Sheet – An Act Relative to the Protection of Children (Romeo & Juliet)
Session #10  
November 17, 2011

Speaker Biographies

**Bryan Stevenson** is the founder and Executive Director of the Equal Justice Initiative in Montgomery, Alabama. Mr. Stevenson is a widely acclaimed public interest lawyer who has dedicated his career to helping the poor, the incarcerated and the condemned. Under his leadership, EJI has won major legal challenges eliminating excessive and unfair sentencing, exonerating innocent death row prisoners, confronting abuse of the incarcerated and the mentally ill and aiding children prosecuted as adults. EJI has recently succeeded in winning a ban on life imprisonment without parole sentences imposed on children convicted of most crimes in the U.S. and has initiated major new anti-poverty and anti-discrimination efforts. Mr. Stevenson’s work fighting poverty and challenging racial discrimination in the criminal justice system has won him numerous awards including the ABA Wisdom Award for Public Service, the MacArthur Foundation Fellowship Award Prize, the Olaf Palme International Prize, the ACLU National Medal Of Liberty, the National Public Interest Lawyer of the Year Award, the 2010 NAACP Ming Award for Advocacy and the 2009 Gruber Prize for International Justice. He is a graduate of the Harvard Law School and the Harvard School of Government, has been awarded 12 honorary doctorate degrees and is also a Professor of Law at the New York University School of Law.

**Response Panelists**

**Naoka Carey** is a Senior Policy Associate at Citizens for Juvenile Justice and the former coordinator of the Massachusetts Campaign for the Fair Sentencing of Youth. She also serves as Litigation Specialist and advisor for the National Campaign for the Fair Sentencing of Youth. She is a graduate of Harvard College and New York University School of Law, where she represented youth in the juvenile justice system as part of the Juvenile Rights Clinic. Prior to attending law school, she received a Master's Degree in Education from Harvard, focusing on adolescent risk and prevention. She has worked in private practice as a civil litigator and at a number of organizations serving youth in the juvenile justice and child welfare systems, including the Children's Law Center of Washington, D.C. and the Juvenile Rights Division of the Legal Aid Society in New York. She has also worked as a youth organizer and trainer in Seattle and Boston.

**Joshua Dohan** became a public defender in 1988 and joined the Youth Advocacy Department at its inception, as its first staff attorney in 1992 and assumed the role of Director in 1999. Josh is a returned Peace Corps volunteer, Ghana (1982-84). He is a graduate of Harvard College (1980) and Northeastern University School of Law (1988). He was also the 1998 recipient of the Access to Justice Award from the Massachusetts Bar Association. Josh is on the Board of Directors of Citizens for Juvenile Justice and is President of the Board for the Youth Advocacy Foundation. He is a founding Member of
the Equal Justice Partnership, a member of the LeadBoston class of 2001, a member of the Institutional Review Board of both Children's Hospital and Tufts University, and a member of the Community Advisory Board of the Institute on Race and Justice. In 2001, the Youth Advocacy Department became the first Juvenile Defender organization to win the Clara Shortridge Foltz award for outstanding achievement from the National Legal Aid and Defender Association.
Session #10
November 17, 2011

Session Description

Founder and Executive Director of the Equal Justice Initiative (EJI), Bryan Stevenson has long championed the unpopular cause of protecting the rights of indigent defendants and prisoners. In recent years, EJI has focused its attention on the plight of children in adult prison. In the wake of the 2004 Roper v. Simmons Supreme Court decision (forbidding the death penalty for youthful offenders) many advocacy organizations like EJI have focused on challenging “LWOP” – life without parole for juveniles. Over 2,200 children across the nation have been given LWOP sentences, dooming them to die in prison.

But there is a reason for hope. The 2010 Graham v. Florida Supreme Court decision, which outlawed LWOP sentences for juveniles for non-homicide offenses, is considered a huge success by many advocates. Stevenson will describe his work on the LWOP issues, and explain that although Graham is a “victory,” the struggle is not finished as there must be responsible follow-up. Stevenson will address issues such as providing counsel for the juveniles currently serving LWOP sentences for non-murder offenses. Stevenson will discuss the strategies EJI is employing to effectuate change for this vulnerable, yet overlooked, segment of the population.

Stevenson has won numerous awards in recognition of his effectiveness as a social change agent and his tireless efforts on behalf of the disenfranchised, including the MacArthur Foundation “Genius” Award and the ACLU’s National Medal of Liberty.

Local advocate Naoka Carey will respond to Stevenson describing LWOP for juveniles in Massachusetts, noting that the situation here is among the worst in the country. Long-time juvenile defender Joshua Dohan will place LWOP efforts into a larger context, outlining a broader juvenile justice reform agenda for the state. Both Carey and Dohan will explain their strategies and the difficulties they face finding allies and moving their progressive agenda forward.
“The susceptibility of juveniles to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’ Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment...

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.”

U.S. Supreme Court, Roper v. Simmons (2005)
Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison

Equal Justice Initiative

The Equal Justice Initiative is a non-profit law organization with offices in Montgomery, Alabama and New York City. For more information about this report or EJI, please contact:

Equal Justice Initiative
122 Commerce Street
Montgomery, Alabama 36104
(334) 269-1803
www.eji.org

January 2008
# TABLE OF CONTENTS

Executive Summary .................................................................................................................. 3

Introduction ............................................................................................................................... 4

**Young Children Are Different:**

*Developmental and Legal Distinctions Between Adolescents and Older Teens and Adults* ............................................................... 7

**Cruel and Unusual Punishment:**

*Why Sentencing Children to Death in Prison Violates the Constitution* ...................... 11

**The Global Consensus:**

*Condemning Children to Die in Prison Violates International Law* ......................... 13

**Children in Adult Prisons:**

*Targets for Sexual and Physical Assault* ............................................................................. 14

**Victimizing the Most Vulnerable:**

*Condemned Children Share Childhoods of Neglect and Abuse* ................................. 15

**The Data:**

*Numbers and Demographics of Young Children Sentenced to Death in Prison* .................. 20

**Race:**

*Children of Color Are Disproportionately Sentenced to Die in Prison* ...................... 21

**Poverty:**

*Children from Poor Families Are Unable to Get Legal Help* ..................................... 22

**Non-Homicides:**

*Children Sentenced to Death in Prison for Crimes Without Fatalities* ....................... 24

**The Children:**

*Profiles of Children Condemned to Die in Prison* ......................................................... 25

**Conclusion** ......................................................................................................................... 33

**Notes** .................................................................................................................................. 34

**Acknowledgment** ............................................................................................................. 37
EXECUTIVE SUMMARY

In the United States, dozens of 13- and 14-year-old children have been sentenced to life imprisonment with no possibility of parole after being prosecuted as adults. While the United States Supreme Court recently declared in *Roper v. Simmons* that death by execution is unconstitutional for juveniles, young children continue to be sentenced to imprisonment until death with very little scrutiny or review. A study by the Equal Justice Initiative (EJI) has documented 73 cases where children 13 and 14 years of age have been condemned to death in prison. Almost all of these kids currently lack legal representation and in most of these cases the propriety and constitutionality of their extreme sentences have never been reviewed.

Most of the sentences imposed on these children were mandatory: the court could not give any consideration to the child’s age or life history. Some of the children were charged with crimes that do not involve homicide or even injury; many were convicted for offenses where older teenagers or adults were involved and primarily responsible for the crime; nearly two-thirds are children of color.

Over 2225 juveniles (age 17 or younger) in the United States have been sentenced to life imprisonment without parole. All of these cases raise important legal, penological, and moral issues. However, EJI believes that such a harsh sentence for the youngest offenders – children who are 13 and 14 – is cruel and unusual in violation of the Eighth Amendment to the United States Constitution. These children should be re-sentenced to parole-eligible sentences as soon as possible. Sentences of life imprisonment with no parole also violate international law and the Convention on the Rights of the Child, which has been ratified by every country in the world except the United States and Somalia.

EJI has launched a litigation campaign to challenge death in prison sentences imposed on young children. This report is intended to illuminate this cruel and unusual punishment inflicted on children, particularly for those who have been without legal help for so long that the procedural obstacles to winning relief in court will be formidable. Increased public awareness, coupled with informed activity by advocacy groups, will be necessary to reform policies that reflect a lack of perspective and hope for young children.

Bryan A. Stevenson
*Executive Director*
INTRODUCTION

In the United States, 13- and 14-year-old children are sentenced to die in prison. Kids too young to drive a car or go to a scary movie by themselves are sentenced to imprisonment until they die, with absolutely no chance of parole or release. In many states, 13- and 14-year-olds are subjected to the harshest possible prison sentence despite widespread acknowledgment by experts, parents, teachers, doctors, and courts that children tend to be incapable of making mature choices, that they are vulnerable to negative influences and peer pressure, and that they are powerless to protect themselves from dysfunctional and dangerous home environments.

In most of these cases, the judges who imposed death in prison sentences on young children had no other legal option. The majority of these children were condemned to die in prison by mandatory sentencing laws that preclude the sentencer from considering the child’s age, maturity, or capacity for change.

Some young children have been involved in tragic, horribly misguided violence and dangerous behavior, and they clearly need intervention and correction. However, imposing death in prison sentences on young children is an irresponsible, thoughtless, and uninformed response to kids in crisis.
Imprisoning a child for the rest of his life violates standards of decency in this country, particularly in light of what we know about the unique vulnerability of young adolescents and about a child’s capacity for growth, change, and redemption. These extreme punishments for children violate international standards which require protection and special consideration for children because they have not fully developed physically, mentally, or emotionally.

Nationwide, at least 2225 people are serving sentences of death in prison for crimes they committed under the age of 18. Death in prison sentences are imposed on juveniles in the United States at a rate at least three times higher today than 15 years ago.1 The proportion of juveniles convicted of serious crimes who are sentenced to life imprisonment without possibility of parole is increasing as states punish these young offenders more severely.

Most critically, dozens of children condemned to die in prisons across the United States were 13 or 14 at the time of the offense. The youngest of these kids facing death in prison share characteristics – distinct from older teens – that highlight the impropriety of imprisoning children until they die.
JOSEPH JONES is imprisoned in North Carolina, where he was condemned to life imprisonment without parole for an offense committed at age 13.
Young Children Are Different

Developmental and Legal Distinctions Between Adolescents and Older Teens and Adults

Unlike older teenagers, 14-year-olds in most states cannot get married without permission or obtain a driver’s license. The law mandates that they must attend school and limits the hours they can work in after-school jobs.

The law treats young adolescents differently because they are different. Using state-of-the-art imaging technology, scientists have revealed that adolescents’ brains are anatomically undeveloped in parts of the cerebrum associated with impulse control, regulation of emotions, risk assessment, and moral reasoning. Accordingly, the neurological development most critical to making good judgments, moral and ethical decision-making, and controlling impulsive behavior is incomplete during adolescence.²

As a result, young teens experience widely fluctuating emotions and vulnerability to stress and peer pressure without the adult ability to resist impulses and risk-taking behavior or the adult capacity to control their emotions.³ At the same time, because a child’s character is not yet fully formed, he will change and reform as he grows up.⁴
While the differences between children and adults are “marked and well understood,” children as young as 13 have found themselves in the adult criminal justice system and subject to its most severe penalties. Because of their low social status in relation to adult interrogators, beliefs about the need to obey authority, greater dependence on adults, and vulnerability to intimidation, juveniles are uniquely susceptible to coercive psychological interrogation techniques designed for adults, leading to false confessions and undermining the reliability of the fact-finding process. Together with their diminished understanding of rights, confusion about trial processes, limited language skills, and inadequate decision-making abilities, young children are at great risk in the adult criminal justice system.

Quantel Lotts was condemned to die in a Missouri prison after a tragic incident that occurred when he was 14. Quantel was always taught that problems were solved by fighting it out. In his family, if the kids misbehaved, the adults made them box each other. When an argument over a toy ended in the death of his stepbrother, Quantel was convicted of murder and sentenced to death in prison, despite pleas from his stepmother that he have a chance for parole.

T.J. Tremble was 14 when officers took him to the police station at 2:30 a.m. They searched him, took his clothes, put a jail uniform on him, and handcuffed him behind his back for six hours. He was not allowed to eat, sleep, use the bathroom, or see his parents. He asked for a lawyer but none was provided. T.J. ended up giving a statement so he could see his parents and stop his interrogators from harassing him. Prosecutors used that statement to convict T.J. and he was sentenced to die in a Michigan prison.
The Supreme Court recently acknowledged the differences between juvenile and adult offenders and concluded that children have “insufficient culpability” to merit the most severe punishment:

“[J]uvenile offenders cannot with reliability be classified among the worst offenders.”

8
JOE SULLIVAN has spent 18 years in prison in Florida, where he was sentenced to imprisonment until death for a non-homicide that occurred when he was just 13 years old. He is mentally disabled and, while in prison, has developed serious medical problems that require him to use a wheelchair.
Cruel and Unusual Punishment

Why Sentencing Children to Death in Prison Violates the Constitution

The Eighth Amendment to the United States Constitution prohibits “cruel and unusual punishments.” To determine which punishments are cruel and unusual, courts look to “the evolving standards of decency that mark the progress of a maturing society.” The analysis includes measuring the blameworthiness of children against the harshness of the penalty and looking at how frequently the penalty is imposed.

A sentence of imprisonment until death is a different and harsher punishment when inflicted on a young child. In striking down a life without parole sentence imposed on a 13-year-old, the Nevada Supreme Court characterized it as a “denial of hope” and said that “it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the defendant], he will remain in prison for the rest of his days.”

The United States Supreme Court has held:

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.

A sentence to die in prison – whether by execution or other means – extinguishes that potential and offends the Constitution.

EJI contacted the department of corrections in every state, reviewed all published decisions and news articles available in electronic databases, and consulted with juvenile justice scholars and practitioners around the country. This research uncovered children 14 years old or younger who were sentenced to die in prison in 19 states.
EJI has identified 73 cases nationwide in which a sentence of life without parole has been imposed on a child who was 13 or 14 years old at the time of the offense. Those cases represent just a tiny fraction of cases in which kids 14 or under have been arrested for homicide. A small handful of these young children have been sentenced to die in prison for non-homicide offenses.

**IAN MANUEL** was sentenced to die in prison for a non-homicide that occurred when he was 13. When he arrived at prison processing in Central Florida, he was so small that no prison uniform fit him. “He was scared of everything and acting like a tough guy as a defense mechanism,” said Ron McAndrew, then the assistant warden. “He didn’t stand a chance in an adult prison.” Within months, Ian was sent to one of the toughest adult prisons in the state, where minor nonviolent infractions landed him in solitary confinement. Now 29, he has spent half his life in a closet-size concrete box, getting his food through a slot in the door, never seeing another inmate, not allowed to read anything but legal and religious materials, so bored that he cuts himself with fragments of a toothpaste tube or a tiny piece of glass. In the past year, he has attempted suicide five times.
The Global Consensus

Condemning Children to Die in Prison Violates International Law

International law prohibits sentencing children to death in prison. The United States is the only country in the world where a 13-year-old is known to be sentenced to life in prison without the possibility of parole. The Convention on the Rights of the Child, ratified by every country except the United States and Somalia, forbids this practice\(^\text{16}\) and at least 132 countries have rejected the sentence altogether.\(^\text{17}\)

The International Covenant on Civil and Political Rights, to which the United States became a party in 1992, prohibits life without parole sentencing for juveniles.\(^\text{18}\) The official implementation body for the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment recently commented that life imprisonment for children “could constitute cruel, inhuman or degrading treatment or punishment” in violation of the Convention.\(^\text{19}\) Further, the United Nations General Assembly passed by a 185-1 vote (the United States voted against) a resolution calling upon all nations to “abolish by law, as soon as possible, the death penalty and life imprisonment without possibility for release for those under the age of 18 years at the time of the commission of the offence.”\(^\text{20}\)
Children in Adult Prisons

Targets for Sexual and Physical Assault

Juveniles placed in adult prisons are at heightened risk of physical and sexual assault by older, more mature prisoners. Many adolescents suffer horrific abuse for years when sentenced to die in prison.21 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.”22 Children are five times more likely to be sexually assaulted in adult prisons than in juvenile facilities.23
EJI attorneys interviewed one Alabama inmate who is serving a sentence of life imprisonment without the possibility of parole for an offense that occurred when he was 15. Since being incarcerated in an adult prison, this boy has been repeatedly raped. He was forced to prostitute himself in exchange for protection from physical beatings and sexual assault by other inmates. His ‘protectors’ forced him to have their names tattooed on his body to signify their ownership of him. Prison guards target him for beatings and harassment because of the sexual relationships into which he has been forced. His nickname, “Brown Sugar,” is one of the prison tattoos that brand him as a victim of repeated and ongoing sexual abuse.

This boy’s story is not unusual. One of our clients attempted suicide three times after being repeatedly raped by older inmates. After his third suicide attempt, he was moved to another prison. While children in adult prisons often are reluctant to talk about the sexual assaults they have experienced, many EJI clients have been victims of prison rape, sexual assault, and physical violence and abuse while incarcerated.

Victimizing the Most Vulnerable

Condemned Children Share Childhoods of Neglect and Abuse

Most of the children who have been sentenced to die in prison for crimes at 13 or 14 come from violent and dysfunctional backgrounds. 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.
“[Y]outh is more than a chronological fact . . . It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.”24 During 2005, approximately 899,000 children in the 50 states, the District of Columbia, and Puerto Rico were determined to be victims of abuse or neglect. More than 60% of victims suffered neglect, 15% suffered physical abuse, 10% suffered sexual abuse, and 7% were victims of emotional maltreatment. An estimated 1460 children died due to child abuse or neglect in 2005 – a rate of 1.96 deaths per 100,000 children. More than 40% of child fatalities were attributed to neglect, while physical abuse also was a major contributor to child deaths. Nearly 80% of perpetrators of child maltreatment were parents, and another 6.8% were other relatives of the child victim.25

Children sentenced to die in prison have in common the disturbing failure of police, family courts, child protection agencies, foster systems, and health care providers to treat and protect them. Their crimes occur in the midst of crisis, often resulting from desperate, misguided attempts to protect themselves.

The experiences of EJI’s clients exemplify the extremely deprived and difficult backgrounds of children sentenced to die in prison. Many of these children have been victimized by physical violence and sexual abuse inflicted on them by their parents and other family members. Several of these children endured years of sexual abuse and rape: one was repeatedly sexually assaulted beginning when he was just four years old; another boy was raped by a family member.

Ashley Jones was repeatedly threatened at gunpoint by her parents, sexually assaulted by her stepfather, forced into crack houses by an addicted mother, physically abused by family members, and abducted by a gang shortly before her crime.
Severe neglect is also common among children in this group. Joseph Jones grew up in Newark public housing, where his crack-addicted parents left him to cook, clean, and take care of his six younger siblings. At 13, Joseph’s parents took him to North Carolina and abandoned him with relatives.

Quantel Lotts saw his uncle gunned down in his front yard in a poor St. Louis neighborhood, where his mother used and sold crack cocaine out of their house. Quantel was removed from his mother’s custody at age eight; he smelled of urine, his teeth were rotting, and his legs, arms, and head bore scars from being punched and beaten with curtain rods and broom handles.

Fatal violence is all too common in the impoverished areas where many of these kids spent their childhoods. Antonio Nuñez lived with his family in a brutally violent South Central Los Angeles neighborhood. When he was 13, he was shot while riding a bicycle just down the street from his house. His 14-year-old brother responded to Antonio’s cries for help and was shot in the head and killed. Antonio would have died but for emergency surgery to repair his intestines.

These adolescents suffer from drug and alcohol dependence that typically began in the womb and can be traced back through their family trees. Omer Ninham is the child of alcoholic parents and, by age ten, was drinking alcohol daily – even in the classroom, where his teachers looked the other way. Omer got his first toothbrush at age 14, when he was removed from his parents and sent to a youth home.
Tragically, these children received no effective or long-term services, even where their cries for help were early, frequent, and unmistakable. Evan Miller suffered physical and emotional abuse so severe that he tried to kill himself when he was just seven years old. By age eight, he had attempted suicide several times.

Research has shown that juveniles subjected to trauma, abuse, and neglect suffer from cognitive underdevelopment, lack of maturity, decreased ability to restrain impulses, and susceptibility to outside influences greater even than those suffered by normal teenagers.\textsuperscript{26}

Normal adolescents cannot be expected to transcend their own psychological or biological capacities in order to operate with the level of maturity, judgment, risk aversion, or impulse control of an adult. A 14-year-old who has suffered brain trauma, a dysfunctional family life, violence, or abuse cannot be presumed to function even at standard levels for adolescents.

Children overwhelmed by dysfunction and without resources to flee or seek help are not provided treatment or safe haven. Instead, in the adult criminal justice system, they are subjected to mandatory sentencing that ignores the child’s circumstances and those of the offense in imposing the harshest available sentence.

\textbf{EVAN MILLER} was condemned to die in an Alabama prison for an offense when he was 14 years old.
The State of Florida condemned DOMINIC CULPEPPER to death in prison for a crime that occurred when he was 14.
The Data
Numbers and Demographics of Young Children Sentenced to Death in Prison

EJI conducted a nationwide investigation to determine how many people in the United States are serving sentences of life imprisonment with no possibility of parole for crimes committed when they were 13 or 14 years old. By reviewing court decisions, searching media reports, and collecting information from state departments of corrections and from prisoners directly, we have identified 73 people who are serving sentences to die in prison for crimes they committed at age 13 or 14.

These 73 children sentenced to death in prison are serving their sentences in just 19 states: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Illinois, Iowa, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Pennsylvania, South Dakota, Tennessee, Washington, and Wisconsin.

Pennsylvania is the worst state in the country when it comes to sentencing 13- and 14-year-old children to die in prison. Of the 73 children sentenced to die in prison nationwide, 18 were sentenced by Pennsylvania. Florida is second, with 15 young children sentenced to die in prison. In six states – Florida, Illinois, Nebraska, North Carolina, Pennsylvania, and Washington – 13-year-old children have been condemned to death in prison.
Race

Children of Color Are Disproportionately Sentenced to Die in Prison

Of the 73 children we identified, nearly half (36, or 49%) are African American. Seven (9.6%) are Latino. Twenty-two (30%) are white. One is Native American; one is Asian American.

All of the children condemned to death in prison for non-homicide offenses are children of color. All but one of the children sentenced to life without parole for offenses committed at age 13 are children of color.

In cases involving children sentenced to die in prison, race, vulnerability, and family dysfunction are predominant factors. Of the 15 cases EJI has investigated in connection with its litigation campaign for young children, 12 are children of color. In nine of these cases, the victim is white. Two cases involve intra-family offenses; three are non-homicide offenses. Three of these children were 13 years old at the time of the offense. All but five death in prison sentences were mandatory.
Most of our clients are from poor families and did not receive adequate legal assistance to challenge their convictions and sentences. Most had no lawyer when EJI contacted them. Many had never filed postconviction appeals.

In many of these cases, appointed trial and appellate lawyers failed to challenge the death in prison sentences imposed on their adolescent clients, or worse, filed briefs stating that they could find no issue in the case worth challenging on appeal. Indeed, when contacted by EJI, a number of these lawyers did not realize or remember that their clients were just 13 or 14 at the time of the offense.

Ian Manuel’s appointed trial lawyer persuaded him to plead guilty and told him he would receive a 15-year sentence. Ian pleaded guilty and was sentenced to life imprisonment with no parole. His lawyer never appealed or withdrew the plea.

Phillip Shaw’s appointed trial lawyer failed to object to the prosecution’s discriminatory exclusion of women from his jury. As a result of the lawyer’s failure to object, the appellate court refused to review the claim on appeal. Phillip was tried in a joint trial with his older co-defendant. The co-defendant’s lawyer objected to the illegal exclusion of jurors, and the co-defendant won a new trial on appeal. (He pleaded guilty, was sentenced to ten years, and is now out of prison.)

Joe Sullivan’s trial lawyer has been suspended from the practice of law after being convicted of felony assault.

These examples illustrate that kids who cannot afford competent counsel face a dramatically escalated risk of being sentenced to die in prison and of losing any chance to challenge their convictions or sentences.
KEN-TAY LEE was sentenced to die in a North Carolina prison for a crime committed at age 14.
Non-Homicides

Children Sentenced to Death in Prison for Crimes Without Fatalities

Of the 73 children sentenced to die in prison, six were sentenced to die in prison for crimes in which no one was killed. All of these kids are children of color.

Only two people in the nation are known to have been sentenced to life without parole for a non-homicide offense at age 13. One is Joe Sullivan, who was blamed by an older co-defendant for a sexual battery that was allegedly committed when they broke into a home together. No physical evidence (like DNA) proved that Joe, and not the older teen, committed this offense.

The second is Ian Manuel, who was 13 years old when he was directed by gang members to commit a robbery. During the botched robbery attempt, the subject of the robbery suffered a nonfatal gunshot wound and a remorseful Ian turned himself in to the police. Although the victim of the robbery supports parole for Ian, he remains condemned to die in prison.

In one of these non-homicide cases, a 14-year-old was sentenced to die in prison in California for an offense in which no one was injured. Fourteen-year-old Antonio Nuñez got into a car with two men nearly twice his age who picked him up at a party. One of the men later claimed to be a kidnap victim. When their car was chased by the police and shots were fired, Antonio was arrested and charged, along with the 27-year-old driver, with aggravated kidnapping.

Photo by Glen Paul

Joe Sullivan
The Children

Profiles of Children Condemned to Die in Prison

EJI has filed legal challenges on behalf of 13- and 14-year-old children sentenced to die in prison in eight states. Our clients’ stories illustrate what all children sentenced to death in prison have in common: lack of competent legal help, offenses characterized by an inability to make mature judgments, impulsiveness, and the influence of older people, and brutal and traumatic childhood experiences.

Ashley Jones – Alabama

Ashley Jones is the only girl in Alabama sentenced to death in prison for an offense when she was 14 years old. From the time she was an infant, Ashley was terrorized by abusive and violent adults. Her addicted mother abandoned Ashley in crack houses while she was still in diapers and on several occasions threatened her at gunpoint. Her father assaulted her, resulting in a hospitalization. Her stepfather sexually assaulted her when she was 11. Relentless violence in her home left Ashley depressed, traumatized, and suicidal. At 14, Ashley tried to escape the violence and abuse by running away with an older boyfriend who shot and killed her grandfather and aunt. Her grandmother and sister, who were injured during the offense, want Ashley to come home. But Alabama’s mandatory sentencing law does not recognize mitigation, mercy, or the abusive dysfunction that lead to her crime. Instead, it condemns Ashley to die in prison despite the fact that today, at 22, she has matured into a remarkable young woman who is incredibly bright and promising.

Ashley Jones, 14, after being sentenced to die in prison in Alabama.
Copyright, The Birmingham News, 2007. All rights reserved. Reprinted with permission.
Evan Miller – Alabama

From the time Evan Miller was a toddler, his father severely beat him whenever he got angry. Because of this abuse, Evan tried to hang himself with a belt when he was seven. His impoverished family lived in neighborhoods where Evan was exposed to alcohol, drugs, and violence. His parents used drugs and drank heavily. At age ten, Evan was removed from his home and placed in foster care for two years. When he was returned to his mother, he returned to a life of poverty and neglect. Evan began using drugs and alcohol and was hospitalized twice for depression and anger management. On the night of the crime, a middle-aged man gave Evan and an older boy drugs and alcohol. The two intoxicated kids got into a physical altercation with the older man, who was hit with a baseball bat and his trailer set on fire. Evan was sentenced to die in prison without any consideration of his age or the abuse and neglect he suffered throughout his short life.

Kuntrell Jackson – Arkansas

At 14, Kuntrell Jackson was arrested and accused of robbery-murder in a video store robbery and shooting that the prosecution acknowledges was carried out by someone else. Kuntrell was with several other teens when the crime allegedly was committed. Before Kuntrell entered the store, another teen shot and killed the clerk. The State of Arkansas sentenced 14-year-old Kuntrell to die in prison despite its concession that he did not kill the clerk. Kuntrell’s life at home had been seriously disrupted when his father abandoned the family three years prior to this incident. Kuntrell’s time in jail as a young child has been horrific. He attempted to escape on two occasions and now is confined in a maximum security prison.
Antonio Nuñez – California

The month after his 13th birthday, Antonio Nuñez was riding a bicycle near his home in South Central L.A. when he was shot multiple times. His brother, just 14 years old, ran to help him and was shot in the head and killed. Antonio left his neighborhood to escape the violence that claimed his brother’s life, but a probation officer threatened his mother if he did not return to South Central. Antonio returned to L.A. with his family and, two weeks later, got into a car with two men nearly twice his age who picked him up at a party. One of the men later claimed to be a kidnap victim. When their car was chased by the police and shots were fired, Antonio was arrested and charged, along with the 27-year-old driver, with aggravated kidnaping. No one was injured, but 14-year-old Antonio was sentenced to die in prison. He is the only child in the country known to be serving a death in prison sentence for his involvement, at age 14, in a single incident where no one was injured.

Dominic Culpepper – Florida

Dominic Culpepper suffered constant emotional and physical abuse from his mother, who beat him severely and told him she wished he was dead. Dominic’s parents divorced and his father moved out, leaving him with his unstable and violent mother. Dominic was befriended by older men in the neighborhood who used him to deal drugs for them. When he was 14, a drug dealer who had threatened and stolen from Dominic came into his home. Dominic attacked him with a baseball bat. Afraid and confused, 14-year-old Dominic moved the injured drug dealer out of the house and contacted emergency services. Emergency services personnel were unable to save the young man’s life and Dominic was arrested for murder. Although Dominic was only 14 and had used the bat against an intruder in his own home, the State of Florida sentenced him to die in prison.
Ian Manuel was raised in gruesome violence and extreme poverty. At age four, Ian was raped by a sibling. Violence and despair defined Ian’s childhood and neighborhood and he was quickly pushed into destructive gang violence. When Ian was 13, he was directed by gang members to commit a robbery. During the botched robbery attempt, a woman suffered a nonfatal gunshot wound and a remorseful Ian turned himself in to the police. Ian’s attorney instructed him to plead guilty and told him he would receive a 15-year sentence. Ian, accepting responsibility for his actions, pleaded guilty but was sentenced to life imprisonment without possibility of parole. Ian’s lawyer never appealed or withdrew the plea. In prison, Ian has spent years in solitary confinement and repeatedly attempted suicide. The victim has forgiven Ian and petitioned for his release but the State of Florida demands that Ian remain in prison from the age of 13 until he is dead.
Joe Sullivan – Florida

Joe Sullivan is one of only two people in the nation known to have been sentenced to die in prison for a non-homicide offense at age 13. A severely mentally disabled boy, Joe was blamed by an older co-defendant for a sexual battery that was allegedly committed when they broke into a home together. Despite Joe’s young age and disabilities, his father dropped him off at police headquarters to face questioning alone after hearing about the allegations. At trial, Joe was represented by an attorney who has since been suspended from the practice of law. Joe, who continues to assert his innocence, is 31 and confined to a wheelchair.

T.J. Tremble – Michigan

T.J. Tremble was arrested just four months after Michigan enacted harsh new laws permitting 14-year-old children to be tried as adults. As police held and interrogated him overnight, they refused to permit his worried parents to see him and denied requests for an attorney. T.J. was convicted of first-degree murder and automatically sentenced to death in prison with no consideration of his age or background. He was sent to Baldwin Correctional Facility, a privately-run maximum security prison that closed after a federal lawsuit alleged that youths in the prison were illegally subjected to extreme isolation and forced to spend weeks in small concrete cells. T.J., who has been moved to another prison located hours from home, sends the money that he earns at his prison job to his ailing parents. He is one of only two 14-year-old kids in Michigan sentenced to die in prison.
Quantel Lotts – Missouri

Quantel Lotts spent the first seven years of his life in a turbulent, violent St. Louis neighborhood. His mother sold and used crack in their house. He saw his uncle shot by drug dealers in his front yard. Quantel, who is African American, was removed from his mother’s home and lived in three different foster homes before moving with his father to rural, predominately white St. Francois County. Quantel’s father moved his three children into the home of a white woman, with whom he developed a relationship, and her children from a prior marriage. The step-siblings became very close. Quantel loved his stepbrother Michael and spent a lot of time with him. On the day of the crime, however, the two boys got into an argument. Michael was stabbed with a knife and died. Despite objections from the victim’s mother, Quantel was tried and convicted as an adult. Without any consideration of his age, psychological state, or family background, and against Michael’s mother’s wishes, Quantel was sentenced to die in prison.

Phillip Shaw – Missouri

Phillip Shaw was sentenced to die in prison for a robbery-shooting that took place when he was 14 years old. Phillip was with a group of older boys in an abandoned building when one of them was shot by two masked gunmen. Phillip immediately ran home and called the police. The police came and arrested Phillip for the shooting, along with a 21-year-old man. On appeal, Phillip’s older co-defendant won a new trial because women were illegally excluded from the jury that convicted him and Phillip. Phillip’s attorney failed to object and his conviction was affirmed. At the co-defendant’s retrial, the co-defendant got a reduced sentence and now has been released from prison. Phillip, who has matured into a thoughtful young man, remains condemned to die in prison.
Joseph Jones – North Carolina

Joseph Jones is one of eight 13-year-olds nationwide sentenced to die in prison. Growing up in Newark public housing, Joseph raised his six younger siblings practically by himself. His crack-addicted parents left the children alone for days on end, leaving Joseph to cook, clean, and make sure his brothers and sisters went to school. He always did well at school and often made the honor roll. When he was 13, Joseph’s parents took him and his brother to North Carolina and left them there with Joseph’s aunt and 16-year-old uncle. One afternoon, while 13-year-old Joseph, who is black, was riding his bike, his uncle and an 18-year-old friend told him to invite home a white girl they knew from the neighborhood. Thinking nothing of it, Joseph complied. When the older teens began beating and sexually assaulting the girl, Joseph turned to run. His older and bigger uncle forced him to participate. After Joseph left, the girl was killed by the older teens, who threatened Joseph not to tell anyone. Despite the glaring conflict of interest, Joseph’s aunt acted as his ‘guardian’ during his 12-hour-long interrogation. He was convicted of murder and sentenced to die in prison.

Ken-Tay Lee – North Carolina

Ken-Tay Lee grew up in a poor neighborhood in Charlotte, North Carolina. His parents divorced when he was young, and his mother held down numerous jobs to maintain the home for Ken-Tay and his brother. With his mother at work and absent from the home, Ken-Tay fell in with the wrong crowd. He smoked marijuana on a daily basis and spent days breaking into cars. Ken-Tay was 14 years old when he and an older teenager were invited to a New Year’s Eve party by a 30-year-old man. After being served numerous drinks, smoking marijuana, and after aggressive maneuvers by the older man, Ken-Tay and the older teenager responded violently and fatally injured the man. Despite his older co-defendant receiving a parole date of 2017 for his part in the man’s death, Ken-Tay was sentenced to die in prison.
Omer Ninham – Wisconsin

Omer Ninham is the only 14-year-old sentenced to die in prison in Wisconsin. His mother drank heavily while pregnant with him and Omer was drinking alcohol daily from the time he was ten. His parents, both violent alcoholics, allowed Omer’s older brothers to beat him routinely. The police were a regular presence at the family’s numerous addresses. By the time Omer was 13 he had run away too many times to count. Omer struggled in school, but did well when he spent a short time on a reservation with a program for Native American children. One evening Omer and a group of five friends began picking on a kid from school and it quickly escalated to tragic violence and the young man was killed. Despite the powerful evidence of Omer’s dysfunctional and abusive childhood, the judge sentenced him to die in prison.
CONCLUSION

Many young children in America are imperiled by abuse, neglect, domestic and community violence, and poverty. Without effective intervention and help, these children suffer, struggle, and fall into despair and hopelessness. Some young teens cannot manage the emotional, social, and psychological challenges of adolescence and eventually engage in destructive and violent behavior. Sadly, many states have ignored the crisis and dysfunction that creates child delinquency and instead have subjected kids to further victimization and abuse in the adult criminal justice system.

The imposition of life imprisonment without parole sentences on the 13- and 14-year-olds documented in this report reveals the misguided consequences of thoughtlessly surrendering children to the adult criminal justice system. Condemning young children to die in prison is cruel and incompatible with fundamental standards of decency that require protection for children. These sentences undermine the efforts of parents, teachers, lawyers, activists, legislators, policymakers, judges, child advocates, clergy, students, and ordinary citizens to ensure the well-being of young children in our society and they feed the despair and violence that traumatizes too many of our communities and young people. The denial of all hope to a child whose brain - much less his character or personality - is not yet developed cannot be reconciled with society’s commitment to help, guide, and nurture our children.

Life imprisonment without parole for young children should be abolished. States that impose death in prison sentences on young children should immediately eliminate the practice and provide opportunities for parole to people who are currently sentenced to imprisonment until death for crimes committed at 13 or 14. Recent legal developments, international law, and medical insights on child development provide powerful support for ending life without parole sentences for young children. There is an urgent need to change current criminal justice policy and institute reforms that protect young children from death in prison sentences. The plight of the condemned children in this report is not disconnected from the fate of all children, who frequently need correction, guidance, and direction, but always need hope.
NOTES


4. Roper v. Simmons, 543 U.S. 551, 570 (2005) (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.”).

5. Id. at 572-73.


8. Roper, 543 U.S. at 569.


10. In Furman v. Georgia, 408 U.S. 238 (1972), the Court struck down Georgia’s statute “under which the death penalty was ‘infrequently imposed’ upon ‘a capriciously selected random handful.”’ Godfrey v. Georgia, 446 U.S. 420, 438 (1980) (Marshall, J., concurring) (citing Furman, 408 U.S. at 309-10 (Stewart, J.,
concurring)); see also id. at 439 n.9 (noting that, in Furman, Justices Stewart and
White “concurred in the judgment largely on the ground that the death penalty
had been so infrequently imposed that it made no contribution to the goals of
punishment.”). In Coker v. Georgia, 433 U.S. 584, 596-97 (1977), the Court
looked to the rarity of death sentences for rape of an adult woman in concluding
that the death penalty is an unconstitutionally cruel and unusual punishment
plurality of the Court determined that contemporary standards of decency did
not permit the execution of offenders under the age of 16 at the time of the
crime, noting that the death penalty was imposed on offenders under 16 with
exceeding rarity. Id. at 832-33. When Atkins v. Virginia, 536 U.S. 304 (2002),
was decided, only a minority of states permitted the execution of persons with
mental retardation, “and even in those States it was rare. On the basis of these
indicia the Court determined that executing mentally retarded offenders ‘has
become truly unusual, and it is fair to say that a national consensus has developed
against it.’” Roper, 543 U.S. at 563 (citations omitted); see also id. at 564 (“Atkins
emphasized that even in the 20 States without formal prohibition, the practice
of executing the mentally retarded was infrequent. Since Penry, only five States
had executed offenders known to have an IQ under 70.”).

11. Hampton v. Kentucky, 666 S.W.2d 737, 741 (Ky. 1984) (“life without parole
for a juvenile, like death, is a sentence different in quality and character from a
sentence to a term of years subject to parole.”).


13. Roper, 543 U.S. at 573-574.

14. For example, in just the 10-year period between 1995 and 2004, 1343 children
aged 14 or under were arrested for murder or non-negligent manslaughter
States 290 (2004), available at http://www.fbi.gov/ucr/ucr.htm; id. at p. 280
(2003); id. at p. 244 (2002); id. at p. 244 (2001); id. at p. 226 (2000); id. at p.
222 (1999); id. at p. 220 (1998); id. at p. 232 (1997); id. at p. 224 (1996); id. at

15. Meg Laughlin, Does separation equal suffering?, St. Petersburg Times, Dec. 17,
2006, 1A.

The Committee on the Rights of the Child, which is the implementation authority
for the treaty, recently made clear in a General Comment: “The death penalty
and a life sentence without the possibility of parole are explicitly prohibited in


ACKNOWLEDGMENT

This report was researched, written, and produced by the Equal Justice Initiative. EJI would like to thank Steve Liss, John Earle, Gigi Cohen, Glenn Paul, and Sean Gallagher for their wonderful photography and generous contributions to this report. Special thanks to EJI senior attorney Aaryn Urell for research, writing, and production coordination. Thanks also to Rebecca Kiley, Alicia D’Addario, Rachel Germany, Irene Joe, Robert Singagliese, Randy Susskind, Marc Shapiro, Cathleen Price, and Lee Eaton at EJI for their research, writing, and production assistance. We are also grateful to Al and Diane Kaneb for their support.
Until They Die A Natural Death:
Youth Sentenced to Life Without Parole in Massachusetts
The photographs that appear in this report of youth sentenced to life without parole in Massachusetts are used with their permission. The remaining photographs—of juveniles in detention—are by Steve Liss, a photojournalist and Co-Founder of In Our Own Backyard, a non-profit organization of photographers dedicated to achieving social justice in the United States through their work. Donations may be made at www.inourownbackyard.us.

The original paintings and drawings that appear in this report are used with the permission of young artists from RAW Art Works in Lynn, Massachusetts. Since 1988, RAW has passionately pursued its mission to ignite the desire to create and the confidence to succeed in underserved youth, using the power of the arts to transform young lives, one artist at a time. RAW’s free art therapy-based programs are designed to create a continuum of service to kids age 6 to 19.

RAW launched its programming when it won a contract with the Massachusetts Department of Youth Services to develop the first statewide art program for incarcerated youth. In 1994, RAW established RAW Space, in downtown Lynn, to serve at-risk youth and prevent them from entering lock up in the first place.

The artists whose work is shown in this publication have never been involved with the juvenile justice system. While many have been pressured to join gangs or become involved in illegal activities, they found a sense of belonging and identity at RAW instead.
Until They Die A Natural Death:

Youth Sentenced to Life Without Parole in Massachusetts

SEPTMBER 2009

Children’s Law Center of Massachusetts, Inc.
298 Union Street
Lynn, MA 01901
(781) 581-1977
www.clcm.org

Founded in 1977, the Children’s Law Center is a private, not-for-profit legal advocacy and resource center for indigent children of the Commonwealth. Its mission is to promote and secure equal justice and to maximize opportunity for low-income children and youth by providing quality advocacy and legal services. The Law Center provides individual legal representation in the areas of child welfare, education, and juvenile justice; offers trainings and technical assistance to parents, attorneys and helping professionals; and, engages in a myriad of systems reform efforts including research, appellate and legislative advocacy, impact litigation, and committee and task force work.

Copyright © 2009 Children’s Law Center of Massachusetts, Inc.
Youth sentenced to serve life without the possibility of parole in Massachusetts will grow up, become adults, and remain in prison until they die a natural death. It is the harshest punishment available for a person of any age in Massachusetts, imposed on youth in an exceptionally severe manner: children ages 14, 15 and 16 charged with first degree murder are automatically tried as adults and, if convicted, receive a mandatory life without parole sentence—no exceptions. The juvenile court has no jurisdiction over the case, so the effect is more absolute than in other states where “reverse transfer” to juvenile court is often available or a prosecutor can choose where to file a case. In Massachusetts, the adult court has exclusive jurisdiction and can give no consideration to the youth’s age or life circumstances. For offenders this young, very few states go this far in ignoring the fundamental differences between children and adults before imposing a life without parole sentence. Although many states expose young children to life without parole sentences, only two states—Massachusetts and Connecticut—allow children as young as 14 to receive life without parole in this absolute manner.

Youth in Massachusetts who are too young to vote, be drafted, serve on juries, or even drive have been sentenced to life without parole. The Children’s Law Center identified and reviewed 46 of 57 such cases reported by the Massachusetts Department of Correction. These cases are an anomaly in the Northeast—neither New York nor New Jersey have any youth serving life without parole. The cases in Massachusetts and around the country (almost 2,500 total) also depart starkly from the global consensus against the sentence, which international law prohibits. Outside the United States, there are no youth incarcerated with no hope of release anywhere in the rest of the world.

Enactment of the current law in Massachusetts was a sweeping reaction to a national and local spate of juvenile homicides and faulty predictions about a coming wave of violence driven by juvenile “super-predators.” The widespread predictions turned out to be false and alarmist, and the underlying research discredited, but not before they propelled passage of the current law in 1996. The law was also a response to the insufficient juvenile court sentences of the 1980s, when the harshest punishment for a juvenile who was not transferred to adult court—even for murder—was incarceration to the age of 21. The juvenile court could not impose a lengthier sentence. And if the juvenile was transferred, the adult court—then as now—could impose no shorter sentence than incarceration for the rest of the child’s life. The old law failed to hold juveniles accountable and the new law abandoned all hope for the redemption of young lives.

After the spike in crime rates in the early 1990s, the state’s homicide rates—particularly among youth under age 18—followed the national trend back downward. Violent crime among Massachusetts youth has declined markedly since the 1990s. Homicide rates for Massachusetts youth under age 18 peaked in 1992 and have not exceeded half the peak numbers since 1997. Since 1998, the homicide rate in this age group has been lower than it was 30 years ago. But the decisions made under the rushed and misinformed conditions of the 1990s remain.

Life without parole sentences may be an appropriate response to some adult crimes, especially in a state like Massachusetts that does not impose the death penalty. But the current law treats youth as young as 14 exactly like adults, regardless of their age, past conduct, level of participation in the crime, personal background and potential for rehabilitation.

This practice must be re-examined, especially in light of the recent advances in brain research that reveal dramatic anatomical differences between adolescent and adult brains—differences that are particularly relevant to the rehabilitation of youth. Juveniles are still developing cognitively, socially and neurologically. Teenagers
do not yet have adult decision-making capabilities, they are more vulnerable to outside pressures than adults, and their characters still are not fully formed. For these reasons, the United States Supreme Court, in striking down the juvenile death penalty, explained that juvenile offenders, no matter what the crime, are “categorically less culpable” than adult offenders. Most importantly, because adolescents still have relatively unformed characters, they have a substantially greater potential for change and rehabilitation than adults who commit a comparable offense. As a result of this inherent capacity to change, most juvenile offenders—even those who commit serious offenses—desist from crime as they grow into late adolescence and early adulthood. Youth who are sentenced to life without parole in Massachusetts are not the adults they will become, and change is inherent to their development.

Yet, in Massachusetts, there are people who have served 25 years or more for childhood crimes. The fiscal costs of their lifetime incarceration are significant—Massachusetts taxpayers pay roughly $2.5 million dollars to incarcerate a youth for the rest of his or her life in state prison.

The Law Center identified and reviewed the cases of 46 people serving such sentences in Massachusetts. We were able to interview 42 of this group. In 41 percent of the cases we reviewed, the youth sentenced to life without parole were first-time offenders, meaning they had no prior record. Because the sentence is mandatory in every case, however, the sentencing judge was not allowed to consider the youth’s prior conduct or any other factor usually important when determining punishment. In a substantial proportion of the crimes—40 percent—juveniles acted alongside at least one adult co-defendant. Juvenile criminal conduct typically occurs with others and the cases we reviewed revealed that when juveniles acted with co-defendants, they were almost always with adults. The adult co-defendants, however, are frequently serving less severe sentences or have already been released.

Across the cases, youth were sentenced to life without parole for varying levels of participation in the crime and even if they were not the principal actor. Twenty percent of the people we spoke with are serving juvenile life without parole for felony murder. This means that the juvenile participated in a felony, but the prosecutor did not need to prove that the juvenile actually committed the murder. In one such case, an unarmed youth participated in a robbery and is now serving life without parole because of a murder committed by one of his co-defendants.

Recurring throughout the records and personal accounts of the children sentenced to life without parole were endemic experiences of violence that sometimes originated in a child’s home, sometimes in the community. As young children and in their early teenage years, before their arrests, many of the youth were themselves victims of serious physical abuse or lost close family members to homicide.

The records also reveal that life without parole sentences are disproportionately imposed on African American youth in Massachusetts. Black youth make up only 6.5 percent of the state population of all children under age 18, but are 47 percent of those sentenced to serve life terms without the possibility of parole for a childhood offense.

There is no question that young people can commit horrible crimes. Murder is a brutal and devastating act that causes permanent pain and anguish for survivors of the victim. The devastation is the same regardless of the age of the offender. That is why youth who commit such crimes must be held accountable and receive a substantial punishment. The question we must consider—whether such youth are completely unredeemable—cannot be answered when someone is 14, 15 or 16 years old.

We know that some youth are capable of changing and benefiting from second chances. This report shares two such examples of youth who were sentenced before Massachusetts enacted the mandatory juvenile life without parole sentence. One example is David D. After David served 15 years, the Parole Board concluded unanimously that he had rehabilitated himself. Today, he returns to lock-up only as a guest, invited by the Massachusetts Department of Youth Services to talk with young people about how to make better decisions, how to think before they act violently and do harm to others. Not every case is like David’s. But his case shows the importance of establishing a meaningful opportunity for review of juvenile life sentences. Periodic review after a lengthy sentence restores to youth in Massachusetts a fair opportunity to prove rehabilitation. It also brings the state in line with international practice and human rights standards.

Fair sentencing for youth does not mean that we return to the plainly inadequate juvenile court sentences for homicides in the 1980s. But it does mean that we stop imposing the state’s harshest adult punishment on children. If, as we recommend here, life sentences for juveniles mirrored the life sentences imposed on adults for second degree murder, the sentence would be reviewed by the Massachusetts Parole Board after a minimum of 15 years, but could continue for a maximum of lifetime incarceration. The Parole Board would conduct a careful review to determine whether, years later, youth offenders continue to pose a threat to the community. There would be no right to parole or release. Each individual would simply be given a chance to prove that they have earned the right to release through rehabilitation, that growing up has changed them.
THE MASSACHUSETTS criminal justice system has lurched between extreme leniency and draconian punishment in cases of children ages 14 to 16 who commit murder. Lawmakers and courts must find a way to protect the public while also offering the possibility of redemption for a child who takes a life. A new report from the Children's Law Center of Massachusetts shows how to restore the balance.

Before 1996, the harshest punishment for a juvenile murderer who was not transferred to adult court was incarceration until the age of 21. That policy seemed absurdly lenient to legislators at a time when leading sociologists warned of the coming of youthful "superpredators." Those fears would prove overblown. But the law, like the public's attitude, hardened. Today, a child as young as 14 charged with first-degree murder is automatically tried as an adult and, if convicted, receives a mandatory life sentence without parole.

Wisely, the report calls for treating juveniles convicted of first-degree murder like adults convicted of second-degree murder. That opens the possibility of parole after 15 years or in subsequent reviews. The Legislature should make this change.

Neither a bleeding heart nor a throw-away-the-key solution is the right response to murders by children. Some of the state's 57 juvenile murderers serving life sentences won't be rehabilitated as they mature. But some will. Medical experts point out that the adolescent brain differs profoundly from that of an adult, especially in decision-making and assessing risks. States with fair laws recognize the difference between youth and adulthood. They leave some possibility of redemption for young murderers. Massachusetts, however, is an outlier with its insistence on life without parole.

Thomas Grisso, a psychologist at the University of Massachusetts Medical School, says it is difficult to categorize youthful murderers. They range from the impulsive to the cold-blooded. Grisso says he knows juvenile murderers who go on to lead law-abiding and productive lives. While it is difficult for him to predict early on who will desist from violence, it becomes clearer after a period of incarceration. "The system could provide a satisfactory and safe review," he says.

Changing the law to allow such a review wouldn't give a pass to youthful killers - just a long route home.

Reproduced with permission of the copyright owner. Further reproduction or distribution is prohibited without permission.
Don't throw away the key on all juvenile killers

By Scott Harshbarger

In Massachusetts, life without parole is the mandatory sentence for a person convicted of murder. But no other state in the nation expressly sets the minimum age of this mandatory sentence as young as Massachusetts does at age 14. Indeed, no other country in the world is known to impose life without parole on children under age 18. Sometimes, being unique can be a point of pride; this is not one of those times.

Of course, the best and cheapest form of protection is prevention. Elsewhere on the continuum is accountability — people must be held accountable for their acts, especially one as egregious and tragic as murder, regardless of whether the murder is committed by a teenager or adult.

But sentencing children to life without parole ignores the realities of youth development: Kids change. Kids grow up. Brain development is responsible for fundamental differences between children and adults.

Does this mean all kids deserve parole? Absolutely not. It means they should have the right to have their case periodically reviewed by a parole board. Life without parole is reserved for the worst of the worst in Massachusetts. It is not appropriate for kids whose personalities are still developing.

When I was attorney general in the 1990s, the state faced a spate of murders committed by teenagers. Many predicted a coming storm of violent juvenile crime. Some warned that without drastic changes to the juvenile justice system, teenagers of the future would be the most violence-prone in history. As it turned out, thankfully, the predictions about teenage "super-predators" were wrong.

But the sentencing laws at that time were inadequate, causing understandable anger and fear. Until 1991, the maximum juvenile court sentence for murder was commitment to the Department of Youth Services until the age of 21. This was dangerous, misguided, and a failure to honor the victim's loss of life.

In 1996, before we all could analyze the impact, Massachusetts lawmakers took the extreme step of removing all murder cases against those 14 and older from juvenile court. Since then, children convicted of first-degree murder have automatically received life without parole.

Nationally, teenage homicide rates peaked in 1994. By 2002, those rates were lower than they were in 1976. In Massachusetts, the peak came in 1992 and, since 1998, the Commonwealth's teenage homicide rate has never exceeded what it was 30 years ago.

For some youths, serving a life term without parole is an unfortunate necessity. For others, they may become different people — they may grow into adults who have faced the horror of their actions, who search for ways to make positive contributions. Teenage children change. It's in their nature.

That's why the Legislature should replace the current law with one that allows for a review of juvenile life sentences. Under the reform recently proposed by juvenile justice advocates, the Parole Board would review juvenile life sentences after 15 years.

The cost of failure 'don't a don't a

ix weeks ago, a spokesman for the Defense Secretary reexamining the 1993 "tell" law that bans open an soldier from military service. Merely said, "I can't have anything with me."

He does now.

In an essay in the current Quarterly, and first report Globe's Bryan Bender, A Om Prakash called for h soldiers to be allowed to open. Prakash wrote the as a student at the National University, and it won the defense's national securi Prakash now wor the Pentagon.

The fact that the Pentagon essay is a sign understand that the law bias, is too antiquated military — especially the military in the world. Pr is no basis for the centra

Quotes of note

"I think it's very important to say that this supports the long-held idea that we did not evolve from things that look like modern apes."

DONALD JOHNSON, founding director of the Institute of Human Origins at Arizona State University,

NOT EXACTLY WHAT CHAIRMAN MAO HAD IN MIND NO...BUT AT LEAST WE...
The Youth Fair Sentencing Act ensures that teens sentenced to life in prison have the opportunity to have their sentence reviewed to determine whether their continued incarceration is necessary or appropriate.

What you need to know about H.1346 and S.672 - An Act Relative to the Sentencing of Children

What are the key provisions?
The legislation amends sections of Chapters 119 and 127 MGL to make all teens who were sentenced to life without the possibility of parole for offenses committed when they were under 18 eligible to seek parole after serving at least 15 years of their sentence; it also eliminates future life without parole sentences for juveniles.

The legislation helps to assure that science and experience drive parole board decisions by requiring that the Governor’s parole board nominee list include an expert in adolescent development.

The legislation ensures that family members of victims have an opportunity to be heard at parole hearings.

What will it cost?
Nothing! In fact, it could save money. It currently costs Massachusetts $2.5 million each year to incarcerate those who have been sentenced to life without parole for crimes committed when they were under 18; this amount will increase rapidly as these individuals age and require expensive geriatric care. Even if a few are safely returned to society, millions can be saved.

Why is it necessary?
Massachusetts has more children sentenced to die in prison than most other states: 59. New York and New Jersey have none; and Texas recently abolished the practice.

Massachusetts is one of only a few jurisdictions in the U.S. and the World that sentences children as young as 14 to mandatory life without parole. Under current law, children are sentenced to die in prison without any opportunity for a judge or jury to consider the fact of their age at the time of the offense. There is no opportunity – ever – for a young person to demonstrate that he or she has changed or been rehabilitated.

Research shows that teens are uniquely capable of change and growth, and that the vast majority “age out” of criminal activity – including violent crime. It makes more sense to evaluate whether kids are capable of rehabilitation after they have had a chance to grow up, rather than at the time of sentencing or before.

The following statewide and local organizations support the bill to end life without parole sentences for juveniles:

American Civil Liberties Union (ACLU/CLUM)
Amnesty International, USA
Center for Public Representation
Children’s Law Center of Mass (CLCM)
Citizens for Juvenile Justice (CfJJ)
Lawyers Committee for Civil Rights
Louis D. Brown Peach Institute, Boston
Mass Association of Criminal Defense Lawyers (MACDL)
Mass Association of Court Appointed Attorneys (MACAA)
Mass Bar Association (MBA)
Mass Office of the Child Advocate
Mass Psychological Association
National Association of Social Workers, MA Chapter (NASW)
Parent/Professional Advocacy League (PPAL)
Prisoners’ Legal Services of Mass
The Home for Little Wanderers (The HOME)
The Real Cost of Prisons Project
United Teen Equity Center (UTECC), Lowell
Youth Advocacy Department/CPCS

Legislative Sponsors
Lead Sponsors: Senator Harriette Chandler and Rep. Elizabeth Malia
TESTIMONY SUBMITTED BY CITIZENS FOR JUVENILE JUSTICE
TO THE JOINT COMMITTEE ON THE JUDICIARY ON HOUSE NO. 1326,
AN RELATIVE TO THE SENTENCING OF CHILDREN

The Honorable Cynthia Stone Creem, Senate Chairperson
The Honorable Eugene O’Flaherty, House Chairperson
Joint Committee on the Judiciary
State House
Boston, MA 02133

September 20, 2011

Dear Chairs and Members of the Joint Committee on the Judiciary:

Citizens for Juvenile Justice (CfJJ) wishes to express its support of House Bill No 1326, an Act Relative to the Sentencing of Children:

CfJJ is an independent, statewide non-profit organization that strives to improve the Commonwealth’s juvenile justice system through advocacy, research and public education. CfJJ’s board includes many leading professionals working in the juvenile justice system, including representatives from academia, child advocates, mental health clinicians, and service providers, and its membership includes more than 30 organizations working with and on behalf of at-risk children. We believe that both youth and public safety are best served by a juvenile justice system that is fair and effective. Since our founding in 1994, we have worked on many issues in the juvenile justice system, and in all areas we have pressed for the collection of reliable, comprehensive data as the essential foundation for understanding complex problems and informing the design and implementation of effective solutions.

Massachusetts is one of only a handful of places in the world that permits mandatory life without parole sentences to be imposed on teens as young as 14. Under our current law, young people are sentenced to die in prison without any opportunity for a judge or jury to consider the fact that they were a teen at the time of the offense. There is no opportunity to present mitigating circumstances that might warrant a lesser sentence, including the influence of adult co-defendants or the presence of mental illness or disability. And there is no opportunity – ever – for a young person to demonstrate that they have changed or been rehabilitated. Perhaps as a result of our extremely harsh law, Massachusetts has sentenced more children to die in prison – 59 as of this hearing – than most other states in the country, a number that is particularly high when considered in light of the size our youth population and relatively low crime rate.

No other state in the country has such an extreme sentencing scheme, with both mandatory adult court jurisdiction and mandatory sentences of life without parole applied to children as young as 14 in all first-degree homicide cases, regardless of the particular circumstances of the
crime or the young person. New York does not have a single individual serving a juvenile life without parole sentence, nor do New Jersey, Maine, or Vermont. Both Texas and Colorado have recently outlawed the practice altogether. No other country in the world sentences children under eighteen to life without parole sentences and the practice is prohibited or strongly discouraged under multiple international treaties, including three that the United States has signed and ratified.

The teens sentenced to life without parole in Massachusetts are not necessarily the individuals that people believe them to be. Over 40% of the young people sentenced to die in prison in Massachusetts were first-time offenders with no prior record, not even a shoplifting conviction. In many of the cases, teens acted with codefendants, many of whom were adults. Nearly every one of these adult co-defendants received a lesser sentence than the teen and, in at least one case, a teen rejected a plea to a lesser sentence because he was afraid of his adult codefendant. Other cases involve “felony murder” or “joint venture” convictions, meaning that the young person sentenced to die in prison did not directly cause or even intend to cause the death of the victim. Perhaps less surprisingly, many of the youth have histories of abuse and neglect, trauma and undiagnosed or inadequately treated mental illness.

Over 60% of the individuals serving sentences of life without parole in Massachusetts are minorities, raising deep concerns about unfair racial disparities. While they make up only 6.5% of the under 18 years of age population, African Americans make up 47% of the people serving JLWOP sentences for crimes committed when under 18. Indeed, since our law was changed in 1996, it appears that only one non-Latino white youth has been sentenced to life without parole in Massachusetts. This is in spite of the fact that, during the same time period, more white youth were arrested for murder than youth of color.¹

The current law is inconsistent with what we know about teens and adolescent development. Science and common sense tell us that teens are still developing and changing—not just emotionally and physically—but biologically. Because their brains are not fully developed, adolescents are less able to control their own emotional responses and more likely to make impulsive decisions or to inadequately consider the long-term consequences of decisions. Teens are also more susceptible than adults to negative influences and outside pressures, including peer pressure. For all these reasons, the U.S. Supreme Court has recognized that adolescents are “categorically less culpable” than adults in the context of the criminal law. Indeed, the U.S. Supreme Court has recently called into question any sentencing scheme that, like ours in Massachusetts, fails to take into account a teen’s youthfulness at any stage in the proceeding and fails to allow for the possibility of parole.

Incarcerating kids for the rest of their lives is costly and ineffective. It costs at least $2.5 million dollars to incarcerate a teen in Massachusetts for the rest of his or her natural life. Over their life spans, we will spend well over $130 million on just the 59 individuals who are currently serving these sentences. The average amount spent to date on each individual currently serving a juvenile life without parole sentence in Massachusetts is over $40 million. Even if

---

¹ Source: FBI Supplementary Homicide data.
only a few of these individuals are eventually found to be appropriate for parole, millions could be saved, money that could go a long way toward addressing and preventing the root causes of violence in our communities.

Research demonstrates that imposing adult sentences like life without parole on teens does not deter youth crime. The vast majority of youth desist from criminal behavior as they grow up, even those who have committed serious or violent offenses. Individuals paroled under Massachusetts' prior law have successfully graduated from school, raised families, and acted as mentors to current prisoners seeking to rehabilitate themselves.

Everyone agrees that teens must be held accountable for their crimes. But their sentences must also take into account teens' unique capacity for change and growth. This bill is a modest proposal that would still provide for lifetime incarceration, but would give teens a chance to seek parole after they had served at least fifteen years of their sentence. Cases would still be tried in adult court, and youth would have to show that they were worthy of a second chance. While continuing incarceration may be necessary or appropriate in some cases, a number of individuals currently serving life without parole sentences have impressive stories of change, rehabilitation, and remorse. The parole board is the appropriate entity to decide if these individuals should have the opportunity to return to society.

Sentencing children to die in prison is cruel, costly, and ineffective. Massachusetts has historically been a leader in juvenile justice, implementing sane, evidence-driven policies and practices. Our current law is out of step with this history of clear thinking, as well as laws around the country and the world. The current proposal would address this failure in a way that appropriately balances public safety with the recognition that teens are uniquely capable of change and growth.

We urge you to report this bill favorably from committee.

Respectfully submitted,

Lael E. H. Chester
Executive Director
Citizens for Juvenile Justice

---

2 Under the prior law, individuals who were under 17 at the time of their offense were potentially eligible to remain in the juvenile court system and receive a lesser sentence.
Robert T. Kinscherff, Ph.D., Esq.

To: The Honorable Cynthia Stone Creem
      Senate Chairperson
      Joint Committee on the Judiciary

Re: Senate 672

An Act relative to the sentencing of children

Written Statement Submitted by Robert Kinscherff, Ph.D., Esq.

Thank you for the opportunity to submit a written statement regarding this important legislation amending Section 72B of Chapter 119 of the General Law to preclude the sentencing of youth aged fourteen through seventeen to Life Without Possibility of Parole.

I write from the perspective of a forensic psychologist and attorney who has been involved in behavioral research, clinical and forensic practice, and policy development regarding serious or chronic delinquency for almost thirty years. During that period of time, I have conducted many forensic examinations of both juveniles and adults charged with Murder and other crimes of significant violence against persons, and consultations to state court, juvenile justice, and forensic mental health systems in Massachusetts and nationally. I have been and remain closely involved in Massachusetts and nationally with juvenile forensic mental health practice, legal and policy dimensions of juvenile delinquency and youth violence, and applications of behavioral research to juvenile justice issues. I currently serve as the Director of Forensic Studies at the Massachusetts School of Professional Psychology and as Senior Associate for the National Center for Mental Health and Juvenile Justice. I have previously served as Assistant Commissioner for Forensic Services at the Massachusetts Department of Mental Health, Director of Juvenile Court Clinic Services for the Administrative Office of the Juvenile Court Department (Massachusetts Trial Court), and Associate Director for Forensic Services at the Children and the Law Program of Massachusetts General Hospital. I maintained academic affiliation with Harvard Medical School for many years and taught forensic mental health law for over a decade at the Boston University School of Law. I also had the privilege of being a co-author of the “science” amicus brief submitted to the United States Supreme Court by the American Psychological Association and cited by the majority in the 2005 landmark Roper v. Simmons finding unconstitutional the execution of youth for capital offenses committed under age eighteen.

I submit this testimony from the perspective of a behavioral scientist with broad experience with youth who have committed or attempted homicide, from individual cases and administrative oversight of forensic mental health systems to broad policy responses to youth violence. Of
course, my remarks are entirely my own and do not necessarily reflect the views of any organizations with which I have had past or current professional associations.

In consideration of your already considerable familiarity with the issues and research surrounding the proposed amendments precluding a sentence of Life Without Possibility of Parole for juveniles, as well as the substantial demands on your time, I will bullet-point the key research-based points I would propose for your consideration. I would be pleased to submit the underlying research or policy analysis upon request.

- One rationale for Life Without Possibility of Parole is that the severity of the sentence creates a general deterrent effect that deters other adolescents from committing similar serious criminal acts. From a research perspective, there is little to suggest that this sentence results in significant general deterrence any more than research supported the notion that the death penalty resulted in robust general deterrence among adolescents prior to the abolition of the death penalty for juveniles by the US Supreme Court in 2005.

- Both established and emerging adolescent brain research indicates that adolescents are still immature and in the process of neurological development. Parents, teachers, coaches, youth workers and others familiar with adolescents know what the psychological developmental and neurodevelopmental research increasingly reflects: Adolescents tend to be more impulsive, risk-taking, more vulnerable to peer influence, more responsive to immediate circumstances, and less likely to identify or consider possible longer-term consequences of immediate decisions than they will be even a few years later in young adulthood. The U.S. Supreme Court in _Roper v. Simmons_, while reserving judgment on life imprisonment without possibility of parole, drew upon existing science in recognizing that adolescents are less morally culpable than are adults by virtue of their developmental immaturity. In the 2010 case of _Graham v. Florida_, the U.S. Supreme Court extended this recognition to bar life without possibility of parole for juveniles guilty of committing or participating in serious crimes in which no person is killed.

- Adolescents are capable of significant changes as they mature. Indeed, research indicates that most adolescents who commit delinquent acts, even those who commit serious and/or repeated delinquent acts, will desist from criminal misconduct as they mature and enter adulthood. This is particularly relevant since over forty percent of the approximately fifty-nine persons currently serving Life Without Possibility of Parole in Massachusetts for acts committed in adolescents were first-time offenders with no prior record. Many of them were “felony murder” or “joint venture” in which the youth did not engage directly in the conduct resulting in the death of a victim. In approximately eighty percent of cases in which the youth was a co-defendant they were involved with an adult in the crime for which they were convicted.

- The existing behavioral science does not currently permit reliable identification of which adolescents who have committed lethal acts will mature and be capable of effective rehabilitation, and which will persist in lives characterized by crimes that risk the safety
or even the lives of others. However, by automatically precluding the possibility of parole for all adolescents who commit capital offenses, the opportunity is lost to balance punishment and personal accountability against rehabilitation and the contributions that an adolescent offender can make to society.

Moving beyond a research-based approach to more anecdotal and personal points, I offer the following observations:

First, it is important to recognize that the sentence of life without possibility of parole for adolescents is, in reality, a sentence to inevitably die in prison for what is often a tragically impulsive, poorly considered, devastatingly immature and even often breathtakingly stupid act committed as a teenager. I have also spent a great deal of my professional life attentive to victims of violent crime and so I do not in any way wish to minimize the excruciating pain that has been inflicted upon victims and those who knew and loved them.

I appreciate that sheer punishment—aside from general deterrence, specific deterrence or rehabilitation—is a legitimate goal of incarceration. That being said, life without possibility of parole effectively brings a youthful life to a conclusion even if that youth subsequently matures and demonstrates the ability to be a safe and contributing member of society. In a way, although the U.S. Supreme Court has now barred execution of youth for capital crimes committed under age eighteen, execution is at least a more intellectually direct and honest approach to sheer punishment than the prolonged trajectory towards death in prison that occurs under the rubric of Life Without Possibility of Parole. Slower and quieter death in less dramatic circumstances after many memories have faded may be easier to ignore than an execution but it is nonetheless a sentence to die in prison.

Secondly, I am proud to be a citizen of this Commonwealth. It disturbs me that juvenile Life Without Possibility of Parole is barred by international law and opposed by voices as diverse as the Boston Globe, the Massachusetts Office of the Child Advocate, Amnesty International and the American Bar Association. It disturbs me that the United States is the only nation which still formally embraces law permitting the sentencing of youth to life sentences without possibility of parole, and the only nation to oppose a 2006 United Nations resolution calling for a universal ban upon this sentence. I am proud to have been born a native Texan—but would be even prouder if my adopted home of Massachusetts would follow Texas (not generally thought to be a jurisdiction “soft on crime”) in amending Section 72B of Chapter 119 to eliminate Life Without Possibility of Parole for juveniles.

Thank you for the opportunity to submit this statement. More importantly, thank you for your consideration of this important issue and for your leadership in amending Section 72B of Chapter 119.
Respectfully submitted,

Robert Kinscherff, Ph.D., Esq.
Director of Forensic Studies
Massachusetts School of Professional Psychology, and
Senior Associate
National Center for Mental Health and Juvenile Justice
TESTIMONY SUBMITTED BY
THE CENTER FOR PUBLIC REPRESENTATION TO
THE JOINT COMMITTEE ON THE JUDICIARY ON H. NO. 1326 &
S. NO. 672, AN ACT RELATIVE TO THE SENTENCING OF CHILDREN

Dear Senator Creem, Representative O’Flaherty, and Members of the Committee,

Thank you for the opportunity to submit testimony on House Bill No. 1326 & Senate Bill No. 672, An Act Relative to the Sentencing of Children. The Center for Public Representation is a public interest law firm centered in Northampton, Massachusetts which focuses on the rights of individuals with disabilities. Current data indicates in excess of seventy percent of the juveniles incarcerated in the United States have disabilities. The notion that any child, but particularly a child with a disability, could be locked up for the remainder of her or his life without any possibility for parole is simply contrary to what we know about the treatment and habilitation potential of these children, basic notions of morality, and the legal relationship between culpability and punishment.

I. THE CURRENT MASSACHUSETTS LAW.

In 1996 in response to false predictions of a juvenile crime wave of unprecedented proportions, fueled by the now-retracted prophesy that a generation of young “super-predators” was about to terrorize society, and triggered by one highly-publicized violent crime, the General Court amended the law to mandate that any child over the age of thirteen who is accused of first degree murder must be tried in the
Superior Court and, if convicted, sentenced to life without parole. M.G.L. c. 119, §§ 72B, 74; c. 265, § 2. Of course, the predictions of a tidal wave of youth crime of unprecedented scope and brutality never materialized. In fact, the temporary spike in the youth homicide rate had reached its apex three years earlier and was already on the decline. And it has continued on its downward trajectory. As of 2008, the juvenile arrest rate for murder had declined by 74% (from over 14/100,000 in 1993 to fewer than 4/100,000 in 2008), and was well below the rate during any year between 1980 and 1993.¹ The underlying reasons that motivated the General Court to abandon its century-old rehabilitation-based approach to juvenile offenders proved not to be true. Nevertheless, the law remains on the books, condemning children each year to spend the rest of their life in prison.

Massachusetts now has one of the harshest juvenile sentencing laws in the country. It has resulted in the Commonwealth ranking tenth among the fifty states and the District of Columbia in the number of juveniles sentenced to spend the rest of their lives behind bars.² Among the New England states, Massachusetts has four times more juveniles serving life without the opportunity for parole sentences than the other four states combined. New York, our neighbor to the west, has no juveniles who have been sentenced to life without parole.³

² Center for Law and Global Justice, Univ. of San Francisco Law School, State-By-State Legal Resource Guide (available online at http://www.usfca.edu/law/jwop/resource_guide/). For purposes of this comparison, juveniles are individuals under 19 years of age. Unlike many other states which include anyone under age 19 as a juvenile, Massachusetts defines a juvenile as an individual under 18 years of age.
³ See State-By-State Legal Resource Guide.
II. JUVENILE LIFE WITHOUT PAROLE (JLWOP) IS NOT CONSISTENT WITH OUR CURRENT KNOWLEDGE OF ADOLESCENT DEVELOPMENT.

JLWOP in Massachusetts is a very blunt instrument. It captures children whose level of participation in the homicide was quite limited. Through the use of felony murder and joint venture prosecutions, persons who did not intend to commit a homicide and did not themselves commit the homicide can and are convicted of first degree murder if an accomplice, during the commission of a felony, kills someone. Forty percent of the individuals in Massachusetts who are serving JLWOP sentences did not act alone, but had one or more adult co-defendants. Forty-one percent of those receiving JLWOP sentences were convicted of their first offense. To suggest that these children are categorically incorrigible and incapable of rehabilitation simply makes no sense. Indeed, current scientific evidence suggests that even children who were directly involved in the commission of the crime are both less blameworthy and more susceptible to rehabilitation than their adult counterparts.

All of us who are parents know that teenagers are impulsive and often act without much forethought regarding the potential consequences of their actions. That is why we as a society impose restrictions on when they are able to consume alcohol, purchase cigarettes, vote, drive a car, and engage in innumerable other activities which are either potentially dangerous or require careful and considered judgment. Now science has been able to confirm that there are physiological reasons why teenagers behave the way they do. Neuroscientists have discovered that certain areas of the brain that are involved in

---

4 Children's Law Center of Massachusetts, Until They Die a Natural Death: Youth Sentenced to Life Without Parole in Massachusetts at 17 (Sept. 2009) (copy available online at http://www.clem.org/untiltheydie.pdf) (hereafter Until They Die).
impulse control, decision-making, and judgment do not fully develop until people reach their early twenties. These physiological findings comport with and confirm psychological research that has long identified such characteristics in adolescents.

Indeed, this science has formed the foundation for two seminal decisions from the United States Supreme Court: the first invalidating the death penalty for juveniles, *Roper v. Simmons*, 543 U.S. 551 (2005); the second striking down JLWOP sentences for non-homicide crimes, *Graham v. Florida*, 130 S.Ct. 2011 (2010). The Court struck down these sentences, recognizing that “because juveniles have lessened culpability they are less deserving of the most severe punishments... Accordingly, juvenile offenders cannot with reliability be classified among the worst offenders. A juvenile is not absolved of responsibility for his actions, but his transgression is not as morally reprehensible as that of an adult.” *Graham*, 130 S.Ct. at 2026. The Court, in reliance on the recent scientific evidence regarding adolescent brain development, went on to state: “Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.... It remains true that 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.” *Graham*, 130 S.Ct. at 2026-27. These observations are equally true with respect to the application of the JLWOP sentence in Massachusetts, for it is the “most severe punishment” meted out in the Commonwealth. It is also critically important to remember that this bill does not provide the juvenile offender with a right to return to

---


society after serving a term of years, but merely an opportunity to petition for parole.

The juvenile offender’s ability to be granted parole will be dependent upon his ability to
demonstrate that he is rehabilitated.

III. A SUBSTANTIAL NUMBER OF JUVENILE OFFENDERS HAVE
DISABILITIES, PROVIDING FURTHER REASON FOR ABOLITION OF
JLWOP.

Further compounding the ability of judges or juries to assess the culpability of
juvenile offenders is the high prevalence of disabilities among this group. The
prevalence of mental and behavioral health disorders among incarcerated children is
approximately 70%. In addition, approximately 40% of incarcerated youth have
learning disabilities, and a high proportion have experienced trauma and exhibit post-
traumatic stress order. Each of these conditions has an adverse impact on the child’s
ability to conform their behavior to societal norms. In combination and in conjunction
with their psychological and physiological immaturity, these conditions operate to render
juveniles as a class less culpable for their conduct than adults and much more amenable
to rehabilitation.

Not only are juveniles as a group less culpable for their conduct because of their
immaturity and high rate of disability, they are also less able to assist counsel in their
defense for the same reasons. Indeed it is striking to note that children convicted of
murder are more likely to be sentenced to life without parole than adults convicted of the

---

7 Jennie Shufelt and Joseph Cocozza, National Center for Mental Health and Juvenile Justice, Youth with
Mental Health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study (June

8 Deborah Shelton, A Study of Young Offenders with Learning Disabilities, 12 J. Crim. Health Care 36
(Jan. 2006) (finding prevalence rate of 38%).

9 Marty Beyer, Behind Behavior: The Effect of Disabilities, Trauma and Immaturity on Juvenile Intent and
Ability to Assist Counsel (available online at http://www.martybeyer.com/page/44/100/).
same crime.\textsuperscript{10} At least part of the explanation for such an upside down result is the inability of children to realistically assess their options and make rational choices during plea bargaining. One individual in Massachusetts who is serving a JWLOP sentence rejected a plea bargain offering a nineteen to twenty year sentence if he would testify against his older co-defendant. He refused the plea bargain because he feared retaliation in prison if he did so. The older co-defendant, on the other hand, took the deal, pleading guilty to only manslaughter.\textsuperscript{11} Other children reject deals offering terms of fifteen to twenty years because, from their perspective, that is the same as a lifetime.

Neither age nor disability excuses a youth’s criminal conduct. Certainly the bill under consideration does not do so. It mandates that youth who are convicted of murder in the first degree must serve a minimum term of imprisonment of fifteen years. Whether they will be released on parole at that or some later time will depend upon whether they are able to demonstrate that they have been rehabilitated and do not pose a threat to society.

All too often the emotional and learning disabilities of these children have gone undetected and/or untreated while they were growing up. Many have been the victims of abuse or neglect or have witnessed serious abusive and violent conduct in their homes or neighborhoods. While growing up in a dysfunctional home or a poverty-stricken, violence-prone neighborhood does not excuse a child’s criminal conduct, neither does this bill. However, these children, who have been dealt a bad hand from birth, deserve a

\textsuperscript{10} Amnesty Int’l & Human Rights Watch, The Rest of Their Lives: Life Without Parole for Child Offenders in the United States, 32-34 (2005) (available online at [http://www.amnestyusa.org/countries/usa/clwop/report.pdf]). Even when the death sentence is included in the calculus, children in the United States remain about equally likely to get sentenced to life without parole as similarly-convicted adults are to be sentence to life without parole or death.

\textsuperscript{11} Until They Die, supra n.4 at 19.
chance at redemption. That is all that this bill provides—a chance at redemption. It will be up to the individual to prove that he or she has turned the corner and can be safely returned to society.

Current therapies have proven very successful at treating a panoply of emotional disorders in both children and adults. Techniques are available to address the deficits of both children and adults with learning disabilities. Treatment, coupled with maturation, can resolve the conditions that led to a child’s commission of a violent felony. To simply lock the child up and throw away the key disregards the current knowledge about the rehabilitation potential of children. Not only is it cruel for the child, but it is costly for the taxpayers of the Commonwealth. Each year of incarceration costs the taxpayers of the Commonwealth $41,706.29. If the individual has grown and has been rehabilitated during the course of his lengthy prison sentence, his continued confinement costs the taxpayers of the Commonwealth funds that could be better utilized for other pressing needs.

IV. JLWOP IS CONTRARY TO INTERNATIONAL LAW.

The Article 37 of the United Nations Convention on the Rights of the Child (CRC) specifically provides that “[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.” While the United States has signed the CRC, it has not ratified it. The only other country which has not adopted the CRC is Somalia. However, the United

---

12 Until They Die, supra n.4 at 28 (based on 2009 data from the Mass. Dep’t of Corrections for medium security prison).
States is currently the only country in the world which is actually incarcerating children for life without the opportunity for parole.\textsuperscript{13}

JLWOP also violates the International Covenant on Civil and Political Rights (ICCPR), a treaty which the United States has ratified. Article 7 of the ICCPR prohibits punishments which are “cruel, unusual and degrading,” and the imposition of life without parole sentences on juveniles has been determined to violate this treaty obligation.\textsuperscript{14} Similarly, the Committee Against Torture, the official oversight body for the United Nations Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment has indicated that JLWOP would appear to violate the treaty.\textsuperscript{15} The United States has ratified this treaty. The pervasive racial disparity in the imposition of JLWOP sentences violates yet another international treaty to which the United States is a party, the Convention on the Elimination of Racial Discrimination.\textsuperscript{16}

The universal international rejection of JLWOP as a legitimate sentence is compelling evidence that it is neither humane nor essential to public safety. It is certainly not compatible with the Commonwealth’s longstanding commitment to treating children with compassion. It is time to recognize that the legislative imposition of this harsh


\textsuperscript{14} U.N. Human Rights Committee, Concluding Observations on the 2\textsuperscript{nd} and 3\textsuperscript{rd} U.S. Reports to the Committee at ¶ 34 (2006) (copy available online at http://www1.umn.edu/humanrts/usdocs/hruscomments2.html). The Human Rights Committee specifically found that, despite the United States reservation when ratifying the Treaty concerning its right to treat juveniles as adults “in exceptional circumstances,” the practice of “sentencing children to life sentence without parole is of itself not in compliance with article 24(1) of the Covenant.”


sentence in 1996 was a mistake and that we here in Massachusetts can address the need for public safety without condemning children to die in prison. This legislation provides an appropriate balance between the interest in public safety and the rehabilitative potential of young offenders. It should be enacted into law.

V. CONCLUSION.

Kids are different. Their punishments should be different, too. This legislation does not give them a free pass or a lenient sentence. It simply allows for a review of their continued incarceration after they have served many years behind bars. Doing so recognizes what we all know and what recent scientific research confirms—that adolescents often act impulsively and without much forethought about the consequences of their conduct. But we also know, and settled research demonstrates, that most kids age out of their wild and reckless behavior. Those that do should be given the opportunity to become contributing members of society. That is all that this bill does—gives juveniles sentenced to life imprisonment the chance to demonstrate that they are rehabilitated. Only if they can do so will they be released. This is the humane thing to do. It is the fiscally prudent thing to do. It is the internationally recognized standard for the just punishment of children. It should be done.

Submitted on behalf of the Center for Public Representation by:

J. Paterson Rae
Senior Attorney

Robert D. Fleischner
Assistant Director
Statement in support of elimination of juvenile life without parole sentencing

We, the undersigned current and former prosecutors and judges, write in support of changing state and federal laws to ensure that any life sentence imposed in a case where the defendant was under the age of eighteen at the time of the offense, receives meaningful periodic reviews. As those who have served as prosecutors and judges, we are well aware of the need to protect our community and ensure that individuals who commit serious offenses are sentenced appropriately. We question, however, whether it makes sense to send a youth to prison for the rest of his/her life (known as a life without parole or “LWOP” sentence) with no opportunity for review and no ability to assess whether the individual has been reformed and is safe to return to the community at some point before he or she dies. We thus support a carefully tailored review at an appropriate time to determine whether these individuals should remain incarcerated.

Scientific evidence proves that youth are fundamentally different from adults because of their immature brain development, and their weaker impulse control and reasoning abilities. Indeed, these exact factors led the U.S. Supreme Court a few years ago to conclude that youth should be treated differently by the criminal justice system because of their developmental differences. In the decision, Justice Kennedy, who wrote for the majority, noted the fact that youth have more potential to reform their behavior and be rehabilitated than adults. As such, the Supreme Court ruled that it is unconstitutional to execute those under the age of 18 at the time they committed a crime.\(^1\)

Juvenile LWOP is not only an unduly harsh and inappropriate penalty for youth, it is also extremely costly to taxpayers. In the United States, we spend approximately $90 million per year to incarcerate people serving juvenile LWOP sentences. Assuming they are incarcerated at age 17 (many are younger) and live to the average life expectancy of 78, we are spending a total of about $5.5 billion to incarcerate people who may at some point in their lives pose no threat to society and could be productive members of our community.

We know there are some people who have committed heinous crimes and are unfit to be released into the community regardless of their age when they committed the crime. Elimination of juvenile LWOP will not allow these people to be released to the streets. Instead, it will allow for careful reviews to determine whether, years later, individuals sentenced to life without parole as youth continue to pose a threat to the community.

For all of these reasons, we believe that it is both inappropriate and unjust to sentence juveniles to life without the possibility of parole.

Gary E. Bair, Chief, Criminal Appeals Division, Office of the Attorney General of Maryland, 1987-2002; Solicitor General, Criminal Appeals Division, Office of the Attorney General of Maryland, 2002-2004


A. Bates Butler III, United States Attorney, District of Arizona 1980-81; First Assistant U.S. Attorney, District of Arizona 1977-80; Deputy Pima County Attorney, Arizona, 1970-77

Paul Butler, United States Attorney, Department of Justice, 1990-1993

Robert J. Del Tufo, Attorney General, State of New Jersey, 1990-1993; United States Attorney, District of New Jersey, 1977-1980; First Assistant State Attorney General and Director of New Jersey’s Division of Criminal Justice

Michael H. Dettmer, United States Attorney, Western District of Michigan, 1994-2001

Nancy Diehl, Former Chief, Trial Division, Wayne County Prosecutor’s Office, Past President, State Bar of Michigan

Hon. Bruce J. Einhorn, United States Immigration Judge, 1990-2007; Special Prosecutor and Chief of Litigation, United States Department of Justice Office of Special Investigations, 1979-1990

Hon. Norman Fletcher, Justice, Supreme Court of Georgia, 1989-2005; Chief Justice, 2001-2005

Bennett Gershman, Professor of Law, Pace University; Prosecutor, Manhattan District Attorney’s Office, 1967-1972; Former Prosecutor, New York Special State Prosecutor

Daniel F. Goldstein, Assistant United States Attorney, District of Maryland, 1976-1982

Isabel Gomez, Former Judge, Hennepin County Circuit Court, State of Minnesota

Joseph R. Grodin, Former Associate Justice, California Supreme Court
Shirley M. Hufstedler, United States Secretary of Education, 1979-1981; Judge, United States Court of Appeals for the Ninth Circuit, 1968-1979; Associate Justice, California Court of Appeal, 1966-1968; Judge, Los Angeles County Superior Court, 1961-1966

Bruce Jacob, Former Assistant Attorney General, State of Florida

Robert M. A. Johnson, Anoka County Attorney, State of Minnesota, 1983-present


Gerald Kogan, Former Chief Justice, Supreme Court of the State of Florida; Former Chief Prosecutor, Homicide and Capital Crimes Division, Dade County, Florida


Scott R. Lassar, United States Attorney, Northern District of Illinois, 1997-2001


Kenneth G. Mighell, United States Attorney, Northern District of Texas, 1977-1981

Alan B. Morrison, Assistant United States Attorney, Southern District of New York, 1968-72


Mark Osler, Assistant United States Attorney, Eastern District of Michigan, 1995-2000

A. John Pappalardo, United States Attorney, District of Massachusetts, 1992-1993


Steven C. Teske, Presiding Judge, Juvenile Court of the Clayton Judicial Circuit, State of Georgia, 1999-present; Former President of the Georgia Council of Juvenile Court Judges

John Van de Kamp, Attorney General for the State of California, 1983-91; District Attorney, Los Angeles County, 1975-83


James J. West, United States Attorney, Middle District of Pennsylvania, 1985-1993
<table>
<thead>
<tr>
<th>SECTION</th>
<th>PROPOSAL</th>
<th>EXISTING LAW</th>
<th>EXPLANATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1</td>
<td>Amends section 23 of chapter 90 so that a finding of delinquency cannot be entered against any person under this section.</td>
<td>Section 23 of chapter 90 provides that if a person was not previously found responsible for or convicted of, or found delinquent for operating a motor vehicle after his license to operate was suspended or revoked, such person is to be punished by a fine of not more than $500.</td>
<td>The law was changed by section 67 of chapter 27 of the Acts of 2009, decriminalizing a first offense under this section for adults. The bill makes the law consistent for juveniles by decriminalizing the first offense of any juvenile drives after his or her license to operate has been suspended or revoked.</td>
</tr>
<tr>
<td>Section 2</td>
<td>Amends section 34J of chapter 90 so that a finding of delinquency cannot be entered against a person under this section, unless a previous conviction exists, or a finding of delinquency or a finding of sufficient facts to support a conviction were previously entered against such person.</td>
<td>Section 34J of chapter 90 provides that if a person was not previously found responsible for or convicted of, or against whom a finding of delinquency...was rendered for operating a motor vehicle without a liability policy the penalty would be a fine of not more than $500.</td>
<td>The law was changed by section 70 of chapter 27 of the Acts of 2009, decriminalizing a first offense under this section for adults. The bill makes the law consistent for juveniles decriminalizing the first offense of any juvenile who operates a motor vehicle without a liability policy.</td>
</tr>
<tr>
<td>Section 3</td>
<td>Amends section 52 of chapter 119 changing the definition of “Delinquent child” by changing the age range, and the offenses for which a child can be adjudicated delinquent.</td>
<td>Section 52 of chapter 119 defines certain words and phrases to be used throughout the remainder of chapter 119, one of which is “Delinquent child.” The existing definition is “a child between seven and seventeen who violated any city ordinance or town by-law or who commits any offence against a law of the commonwealth.”</td>
<td>The bill defines a “Delinquent child” as being between the ages of seven and eighteen. It also changes the definition so that a child would no longer be found delinquent for civil infractions, violations of municipal ordinances or town by-laws, or misdemeanors that are punished by imprisonment in a jail or house of correction.</td>
</tr>
<tr>
<td>Section 4</td>
<td><strong>Amends section 52 of chapter 119 by adding a definition for “Civil infraction” for the remainder of said chapter. It is defined as a violation for which a civil proceeding is allowed, and for which the court shall not appoint counsel, or sentence any term of incarceration.</strong></td>
<td><strong>Section 52 of Chapter 119 does not include a definition for civil infraction.</strong></td>
<td>This defines a civil infraction under chapter 119. Since it is not a criminal offense, a child would no longer be adjudicated as delinquent for such offenses. Counsel would not be required and a person would not be subject to commitment and would not be detained.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Section 5</td>
<td><strong>Amends section 53 of chapter 272 so that a child cannot be found delinquent, if such child violates</strong></td>
<td><strong>Section 53 of chapter 272 provides penalties for certain offenses: common night walkers, common street</strong></td>
<td>The law was changed by section 67 of chapter 27 of the Acts of 2009, decriminalizing certain offenses for adults.</td>
</tr>
</tbody>
</table>
any of the offenses delineated in this section. The offenses include civil infractions and misdemeanors for which the penalty is a fine or imprisonment for not more than six months in a jail or house of correction. walkers...keepers of noisy and disorderly houses, and persons guilty of indecent exposure. The penalty for these is a fine or imprisonment for not more than six months in a jail or house of correction, or both making it a misdemeanor. This section also provides penalties for disorderly persons and disturbers of the peace: a 1st offense is by fine (civil infraction) and 2nd and subsequent offenses are a fine, or imprisonment in jail or house of correction for not more than six months, or both – making it a misdemeanor.

This bill makes the law consistent for juveniles so a charge of delinquency cannot be entered against them for being disorderly or disturbing the peace. Also, the bill provides that a juvenile cannot be adjudicated delinquent for any offense (misdemeanors) delineated in the first clause of this section, making it consistent with Section 3 of the bill.

| Section 6 | Amends section 70C of chapter 277 by removing the exception whereby its provisions do not apply to chapter 119. | Section 70C of chapter 277 allows the court to treat any violation of a municipal ordinance, or town by-law, or a misdemeanor offense as a civil infraction upon motion by the commonwealth, defendant, or court. There are certain exceptions for which such a motion cannot be made. Offenses for which one can be found delinquent under chapter 119 are included. | The bill makes the law consistent for juveniles and adults. If a juvenile violates a municipal ordinance, or town by-law, or is charged with a misdemeanor, the commonwealth, defendant, or court can motion to treat the offense as a civil infraction. |
Please join CfJJ in urging the Senate to support Proposed Amendment 140, Collection of Data on Juvenile Justice, offered to the Senate Ways and Means Fiscal Year 2011 Budget.

**THE PROBLEM**

Massachusetts fails to collect the basic statistical data it needs to understand how its juvenile justice system is operating. As a result, the Commonwealth is blindly funding a system without the metrics to assess either its fairness or effectiveness.

Here, for example, are some questions for which we should have answers— but don’t:

- How many youth are arrested each year?
- What types of crimes are youth committing?
- Who are these youth? (Data on race, ethnicity, gender, and age of youth are not reported as they move through the various decision points in the system.)
- How do youth of different races, ethnicities, and genders fare as they move through the juvenile justice system?

Moreover, collection of data on race and ethnicity at each decision point in the juvenile justice system is required by the federal Juvenile Justice and Delinquency Prevention Act. By failing to collect this data, Massachusetts risks losing federal grants which have in the past funded important prevention and intervention programs, including the only current alternative to detention program in the Commonwealth.

**THE SOLUTION**

By supporting Proposed Amendment 140, the Legislature can solve this problem by requiring each agency and department in the juvenile justice system to collect and make public statistical data on the race, ethnicity, gender, age, and type of offense charged of youth with whom they come in contact.
Without knowing the basic facts about who is being served by our juvenile justice system and what happens to them at each decision point in the system, we can’t spot or track trends, develop effective responses, or rationally determine budget priorities.

Moreover, without that data we can’t evaluate whether programs designed to improve outcomes for youth in contact with the system are working.

By not collecting data required by the JJDPA, Massachusetts risks the loss of federal grant money that is needed to fund important prevention and intervention programs.

Policymakers – and taxpayers – deserve to have the facts. We can’t have a fair and effective juvenile justice system without them.

“We can have facts without thinking but we cannot have thinking without facts.”

- John Dewey
Parent-Child Privilege

Parent-Child Privilege will protect parents from being forced to testify against their children. It gives parents the same privilege afforded them in their relationships with their spouse, attorney, clergy, and health care provider. It prevents parents from being forced to testify against their children in the same way their children are prevented from being forced to testify against them.

- **Provides children with the same rights afforded other segments of society.** The privilege is essential to ensure that children be given the due process protections guaranteed them under law and protects their right against self-incrimination.

- **Combines existing law that provides a privilege to children with new language that extends the privilege to parents.** The 4th clause of MGL chapter. 233, section. 20 prevents children from being forced to testify against their parents. New language extends this privilege to parents.

- **Provides an exception when victims are family members who reside in the same household.** The privilege would not extend to either the parent or the child, if the victim is a family member who resides in the household. However, even if the victim is a family member who resides in the household, the parent cannot be forced to testify about any communication in which a child is seeking advice on legal rights or decision making.

- **Expands the existing definition of “parent” to meet the complex and varied family situations that are part of today’s society.** The privilege changes the current definition of “parent” from “the natural or adoptive mother or father of said child,” to “the biological or adoptive parent, stepparent, foster parent, legal guardian of a child, or any other person that has the right to act in loco parentis for such child.”

- **Allows children to confide in their parents and to seek their parents’ advice without having that confidence undermined.** Forcing parents to testify against their children can shatter the trust within a home, damage relationships within the family, and discourage children from confiding in and communicating with their parents. When children are frightened, confused, and at their most vulnerable, they need the guidance and advice of a parent. Children should not be afraid to ask their parents for help out of fear that their conversations might be used against them.

- **Protects parents’ essential and critical role as advisor to their children in the juvenile justice system.** Parents play a vital role in the juvenile justice system. They are expected to be involved and present at all stages of the process – from police interviews to court appearances. We want to encourage open lines of communication so that parents can help advise their children when making important decisions.
FACT SHEET

BILL NUMBER: H.445

TITLE: An Act Relative to the Protection of Children (Romeo & Juliet)


COMMITTEE: Committee on the Judiciary

HEARING DATE: September 27, 2011, @ 1pm, Room A-1

HISTORY: This bill was filed in the 2009 – 2010 Legislative Session. No action was taken.

GENERAL LAWS AFFECTED: Section 13B of chapter 265 relative to indecent assault and battery of a child under age 14. Section 23 of chapter 265 relative to the rape and abuse of a child. Section 4 of chapter 272 relative to inducing person under 18 to have sexual intercourse.

PROPOSAL: This proposal would eliminate from the crime of statutory assault and battery or rape those instances in which a minor between the ages of 14 and 16 has consensual sex with someone who is not more than 4 years older, those instances in which a minor between the ages of 12 and 13 has consensual sex or sexual contact with someone who is not more than 3 years older, and those instances in which a minor less than 12 years of age has consensual sex or sexual contact with someone who is not more than 2 years older.

Section 1 changes existing law so that if a person is a minor under the age of 14 and the other person is no more than 3 years older, or if the minor is under 12 and the other person is no more than 2 years older, a minor is not deemed incapable of consent. Any prosecutions under this section of persons under the age of 17 are to proceed in juvenile court or a juvenile session of the district court.
Section 2 changes existing law so that if a person is more than 4 years older than a minor under the age of 16, or more than 3 years older than a minor under the age of 14, or more than two years older than a minor under the age of 12 and has sexual intercourse with the minor, he/she is to be punished for the rape and abuse of a child. Existing penalties are maintained – life or any term of years, cannot be continued without a finding or placed on file.

Section 3 repeals the statute that provides for the punishment of persons who induce another under the age of 18 of chaste life to have unnatural sexual intercourse.