

Second Chances



Juveniles serving life without parole in Michigan prisons



ACKNOWLEDGEMENTS

The report is dedicated to the juvenile lifers and their families.

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CONTENTS

Juvenile Life Without Parole: An Introduction	1
How Children are Sentenced to Life Without Parole	2
Characteristics of Juvenile Lifers in Michigan	4
Michigan Laws Leading to Increases in Juvenile Life Sentences	8
Kids Are Different: Children in Society and the Justice System	13
Juvenile Life Without Parole Does Not Serve the Interests of Justice	17
The Law: Juvenile Life Without Parole is a Cruel and Disproportionate Punishment	20
Human Rights: Children's Rights and Wrongs	21
Second Chances: Alternatives and Policy Recommendations	22
Conclusion	24
Notes	25



“The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult”¹

– U.S. Supreme Court Justice John Paul Stevens

JUVENILE LIFE WITHOUT PAROLE: AN INTRODUCTION

Each year in the United States, children as young as thirteen are sentenced to die in prison. It's called life without parole. It is estimated that thousands of children have been sentenced to life without the possibility of parole (LWOP) for crimes committed at an age when they are not considered responsible enough to live away from their parents, drive, make decisions related to their education or medical treatment, vote, leave school, or sign a contract.² Children under the age of eighteen cannot legally use alcohol, serve on juries, or be drafted, because they are presumed not to have the capacity to handle adult responsibilities. These differences between childhood and adulthood are recognized throughout the world, and incorporated in international human rights documents.

Despite a global consensus that children cannot be held to the same standards of responsibility as adults, in the last twenty years the trend in the United States has been to punish children the same as adults. Children are increasingly excluded from the protection of juvenile courts based on the nature of the offense, without any consideration of their maturity, culpability, or current or future danger to society.

In particular, Michigan allows a child of any age to be tried as an adult, and excludes seventeen-year-olds from juvenile treatment altogether.

These children are then subject to adult punishment, incarcerated in adult prisons, and may be sentenced to life without parole. Despite their young age, these juveniles are expected to negotiate the legal system and understand the consequences of decisions that could result in a life without parole sentence, even though research suggests they are not capable of understanding what "forever" means.

Since the 1980s, the number of children given life sentences without hope of release has increased dramatically and the cost of warehousing them for life is staggering to our communities and to our humanity. In Michigan alone, there are now more than three hundred individuals serving life without parole for offenses committed prior to their eighteenth birthday. Under current laws, none will be given a second chance.

Until now, little attention has been given to who these children are and how they have been treated by the criminal justice system. This report examines juvenile life without parole sentences imposed in Michigan for offenses committed by individuals under eighteen, as they compare to the nation and the world. The report outlines the nature and extent of these sentences, their inequities and their toll on society, and presents recommendations for a rational and humane response to juvenile crime.

HOW CHILDREN ARE SENTENCED TO LIFE WITHOUT PAROLE

[T]here are no rehabilitative programs available to this defendant currently in existence in the State of Michigan. We are having this hearing, and a gut-wrenching situation for everyone here, and especially me, because of this young lady, you knowing now, my conclusion and what is going to happen to her - the terrible waste of human time, taxpayer money . . . The legislature has chosen to take away the judge's discretion in your case, and I have no choice in the sentence on the first-degree murder charge.

– Muskegon County Circuit Court Judge, sentencing a sixteen-year-old girl to LWOP for aiding and abetting murder in 1991.

Throughout the twentieth century, children in the United States charged with committing a crime were tried in special juvenile courts. The juvenile system placed youth in facilities separate from the adult penal system and focused on rehabilitation. The vast majority of cases involving crimes committed by juveniles, including homicides, were handled by the juvenile system.³ While children could be transferred from juvenile to adult courts through a judicial waiver, such transfers were relatively rare and required consideration of factors such as the nature and seriousness of the offense, the age and maturity of the child, whether the child had a prior record, and the likelihood of rehabilitation in the juvenile system.⁴

In the 1990's, many states developed provisions for prosecuting children in adult courts, employing the fiction of juveniles being the same as adults for purposes of culpability and punishment.

Some states created automatic waivers for certain offenses, or excluded serious offenses committed by 16- or 17-year olds from juvenile court jurisdiction. Other states created options for prosecutors to file charges directly in adult courts, without pre-evaluation or waiver by a juvenile court judge. Between 1992 and 1995, forty states and the District of Columbia passed laws increasing the options for sending juveniles to adult courts.⁵ These laws expanded the use of automatic waivers, statutory exclusion, and direct files, lowered minimum ages, and expanded offenses eligible for this treatment. Under this new generation of laws, many children are now automatically labeled adults for the purpose of criminal prosecution, without any consideration of their age and maturity or potential for rehabilitation.⁶

These changes led to national increases in the number of youth sent to adult prisons and jails. The number of minors who were sent to prison in 1999 was twice the number sent in 1985, and the number of juveniles incarcerated in jails has increased even more dramatically.⁷ These increases are due to re-characterizing children as adults, rather than an increase in crime by children. Despite the fact that crime rates in 1999 were similar to those in the mid-1980s, the overall rate of incarceration of juveniles in 1999 was still 70% higher than it was in 1985.⁸

TRANSFER PROVISIONS

Procedures for Trying Juveniles as Adults

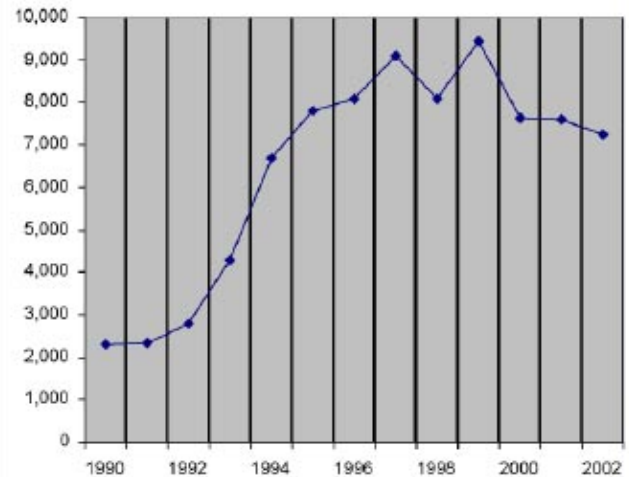
Judicial Waiver: Juvenile court judge makes transfer determination based on individual characteristics, including maturity, seriousness of offense, prior record, and amenability to treatment.

Automatic Waiver: Automatic transfer from juvenile to adult court, based upon age, offense, or prior record.

Direct File: Prosecutor authorized to bypass juvenile court and file certain charges in adult court

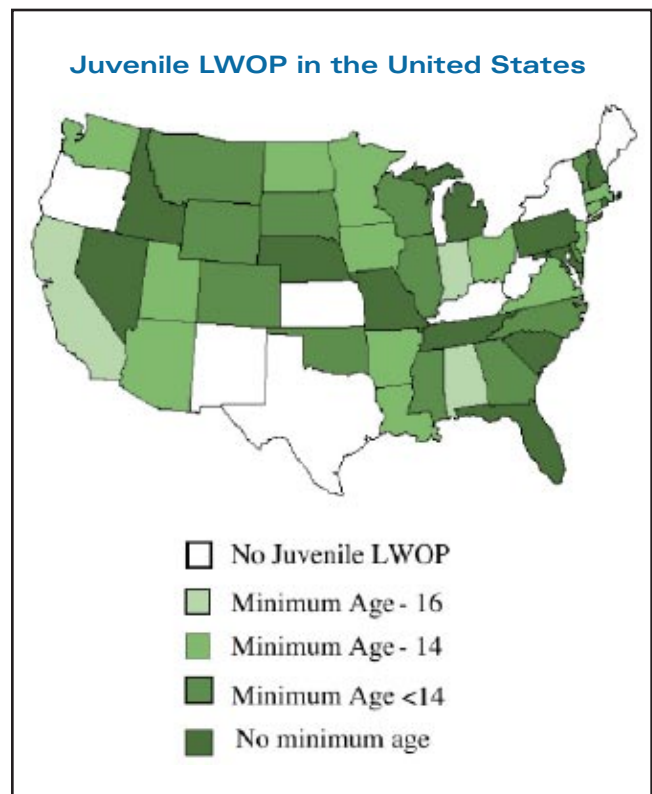
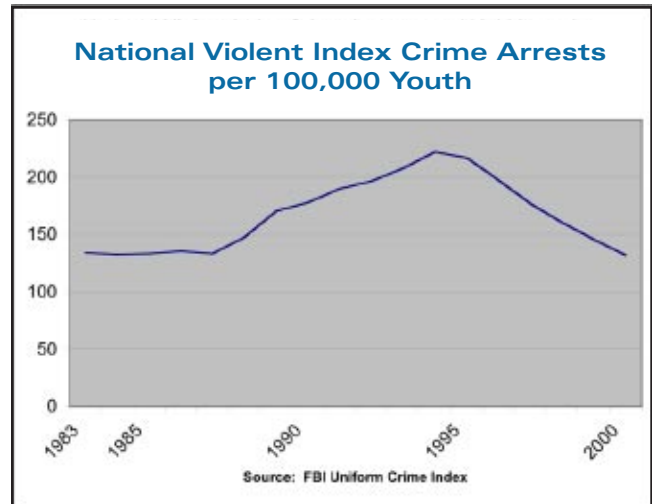
Statutory Exclusion: Charges may not be filed in juvenile court for juveniles, based on age, offense, or prior record.

Average Daily Census of Juvenile Jail Inmates



These changes, which led to an increase in adult sentences for juveniles generally, also expanded the availability of natural life sentences for adolescents in the United States. Throughout the country, forty-one states now allow a sentence of life without possibility of parole to be imposed on juveniles, and while there is no consensus among the states on what age a child may be treated as an adult, fourteen states, including Michigan, allow a child of any age to be tried and punished as an adult and sentenced to life without parole.⁹ Eleven states have varying minimum ages for criminal prosecution under fourteen: Colorado (12), Georgia (13), Mississippi (13), Illinois (13), Montana (12), North Carolina (13), Oklahoma (13), South Dakota (10), Vermont (10), Wisconsin (10), Wyoming (13).¹⁰ Eleven states have lower age limits of 14,¹¹ and Louisiana and Washington have lower age limits of 15.¹² Three states that authorize life without parole for adult offenders do not allow sentences of life without parole for anyone under the age of sixteen.¹³

The crimes for which life without parole is imposed, and the frequency with which this punishment is actually applied, varies with each state. While the majority of children are serving life for homicide offenses, children can also be sentenced to life without parole for crimes including robbery (multiple), aggravated assault, and rape. To date, there are no complete national statistics on the number of juveniles sentenced to LWOP. The National Judicial Reporting Survey provides an estimate of criminal sentencing based on sample states, but data with regard to age at offense and parole eligibility is frequently missing. The National Corrections Reporting Program provides an annual census of those in adult prisons, but does not track age at offense or parole eligibility within the category of life sentences. However, the number of juveniles serving life without parole nationwide is estimated to be in the thousands.¹⁴



CHARACTERISTICS OF “JUVENILE LIFERS” IN MICHIGAN

Today, there are at least 307 individuals serving a life sentence without the possibility of parole (LWOP) in Michigan for crimes that occurred prior to their eighteenth birthday. Almost half (146) are serving LWOP for crimes committed when they were sixteen or younger. Most were sixteen or seventeen at the time of the offense, 43 were fifteen and 2 were fourteen. Those who were sent to prison as juveniles now range in age from seventeen to seventy-three. A third (104) are twenty-five or younger today. The majority (56%) of those serving LWOP have already served thirteen years, and 9% have already served twenty-five years or more.

While all of the youth serving a sentence of life without parole were convicted of an offense involving a homicide, not all were the principal responsible for the death. Michigan’s first-degree murder law allows the maximum penalty to be imposed on juveniles who are involved in criminal activities that result in someone’s death (felony murder), or who “aid and abet” a murder, even if another person, an adult, actually “pulled the trigger.”¹⁵ In a survey of the 146 juvenile lifers who were under seventeen at the time of the offense, nearly half report that they were either convicted on an “aiding and abetting” theory, or that they were not the person who committed the murder. Nearly half of those who reported that they were not the principal had adult co-defendants. Nearly half of those who reported that they were not the principal had adult co-defendants.

Research Methodology

The number and characteristics of LWOP sentences were drawn from the current prisoner population at the Michigan Department of Corrections as of May 2003. Numbers from other states are also based on current DOC populations. The number of youth who are serving “blended” sentences in juvenile placement, who may eventually be sentenced as adults, are not accounted for here.

The 146 lifers in Michigan who were under age 17 at offense were surveyed on issues related to their childhood experiences, trial and conviction, and their treatment in prison. A total of 124 responded. Corrections data and survey responses have been supplemented by review of individual files, court transcripts, interviews, and public accounts.

LWOP by Age at Offense

Fourteen	2
Fifteen	43
Sixteen	101
Seventeen	161
TOTAL	307

JUVENILE LIFER PROFILE

Henry Hill was sixteen in 1980 when he and two of his friends got into an argument with an acquaintance at a park. All of the people involved had guns. Henry Hill and one other juvenile had already left the park when his 18-year-old friend shot and killed the acquaintance.

Despite being evaluated to have the academic ability of a third grader, the mental maturity of a nine-year-old, and having psychologists recommend he stay in the juvenile system, Henry was waived to adult court for trial. He was convicted of aiding and abetting first-degree murder and sentenced to mandatory life without parole. This is the identical sentence given to the actual shooter.

Henry Hill is now forty years old and has been in prison for over twenty-five years. Henry Hill has earned his GED and vocational qualifications and has exhausted all programs and resources available to him.



Patrick McLemore was 16 when he and a 19-year-old acquaintance broke into a home they believed to be unoccupied to commit a robbery. When Patrick entered the home, he found his co-defendant had beaten the occupant to death.

Prosecutors charged Patrick, as an adult, with first-degree murder in circuit court. Patrick was convicted in 2000, and sentenced to mandatory life without parole.

There was no consideration of his age, maturity, or level of involvement in the offense. His co-defendant, who was not a juvenile, pled guilty to second-degree murder and is now serving a 30-60 year sentence.



In Michigan, most juveniles sentenced to LWOP come from a few select counties: ten counties have committed 85% of lifers, although they have only 58% of the youth population in the 2000 Census. Saginaw and Berrien counties have the highest rates of LWOP sentences relative to the youth population.

LWOP Commitments 1990-2000 by County			
	County	Number of LWOP <18 at offense	Avg. Annual Rate of LWOP per 100,000 youth*
1	Saginaw	13	3.67
2	Calhoun	7	3.16
3	Berrien	7	2.67
4	Genesee	14	1.98
5	Muskegon	5	1.82
6	Kent	16	1.77
7	Wayne	65	1.62
8	Oakland	18	1.1
9	Macomb	5	0.47
10	Washtenaw	2	0.44

LWOP Sentences (Offenders <18) by County of Commitment			
County	LWOP Sentences	County	LWOP Sentences
Wayne	123	Lapeer	2
Oakland	40	Otsego	2
Kent	18	Cass	2
Genesee	25	Ingham	2
Saginaw	20	Midland	2
Berrien	10	St. Joseph	2
Calhoun	8	Van Buren	2
Macomb	8	Bay	1
Muskegon	7	Clinton	1
Washtenaw	6	Eaton	1
Kalamazoo	6	Huron	1
Jackson	4	Lake	1
Shiawassee	4	Mecosta	1
St. Clair	3	Newaygo	1
Gratiot	2	Ottawa	1
TOTAL 307			

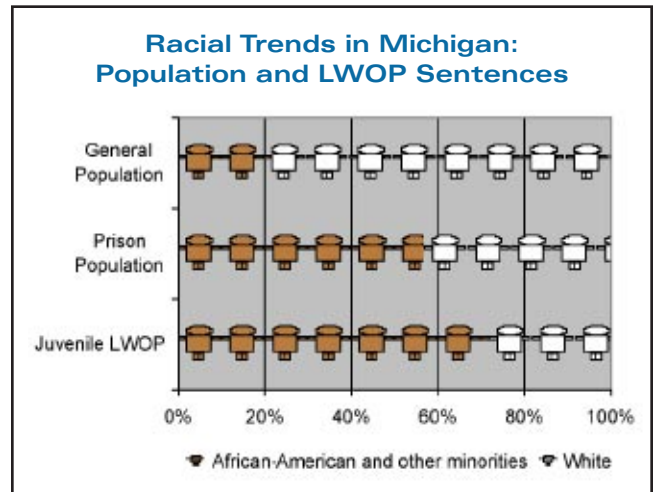
*Average annual rate, by intercensal estimate of 10 - 19-year-olds

“I am lost. In my case it is known I didn’t do the shooting. It is true that I was driving the car but we didn’t go back looking for these guys. My mother ask me to go get the kids something to eat. We (me and my co-defendant) knew we had to go right back past the place where we just got into a fight at. I honestly didn’t know he had a gun until he pulled it out and said ‘turn at this stop sign,’ then he shot.”

– 15 year old serving life without parole for conviction of aiding and abetting a murder committed by a co-defendant.

The unfairness of imposing an adult system and adult punishments on children is heightened by the inequities resulting from race, class, and gender. The majority (221) of juvenile lifers are minority youth, 211 of whom are African-American. The percentage of African-American juvenile lifers (69%) is greatly disproportionate to the general population in Michigan, which is 15% African-American.

Saginaw and Calhoun counties have the highest rates of African-American youth serving LWOP sentences, relative to their population. Minority over-representation, always a concern in criminal justice, is of heightened concern when dealing with juveniles. In the juvenile justice system, minority youth are more likely to be arrested, detained, committed to residential placements, and waived to the adult criminal justice system than their white peers.¹⁶ Class bias intersects with race and results in harsher treatment of children of single parents, low income, and working families in the intake and disposition system.¹⁷ Along with perceptions of African-American and Hispanic youth as “dangerous” or “gang-involved,” the lack of resources and access to counsel all contribute to the resulting inequities in the treatment of juveniles.¹⁸



JUVENILE LIFER PROFILE

Jamar Johnson was 16 when he and his older brother were accused of murdering their younger brother. Despite having no prior juvenile record, the prosecutor chose to charge Jamar as an adult. At trial he was represented by appointed counsel who called no witnesses on his behalf. No psychological examination was performed to determine Jamar’s competency to stand trial. Jamar’s conviction was based on the testimony of a last minute witness who claimed that Jamar called her and admitted his involvement while he was in jail pending trial.

When Jamar was convicted in 1990, the judge had a choice between sentencing him as a juvenile, which would entail five years in the juvenile system, or sentencing him as an adult to life without parole. Jamar was given no opportunity for treatment or rehabilitation, and was sentenced as an adult to life without possibility of parole.

Jamar has now served fourteen years of a life without parole sentence. He still receives regular visits from his family.



Amy Black's history of sexual abuse started when she was only seven years old. As a teenager, Amy began using drugs and running away from home. When she was sixteen, Amy was present when her older boyfriend got into a fight with another man and stabbed the man to death. Amy helped clean up the mess.

When they were both arrested a few days later, Amy's boyfriend told her to take the blame because she was only 16. She confessed based on her belief that she'd be charged as a juvenile. According to testimony, there were no appropriate juvenile facilities for girls that would accept serious offenders. The judge, noting specifically the lack of resources for female juvenile offenders, decided his only option was to sentence Amy as an adult.

Amy was sentenced in 1991 for aiding and abetting first-degree murder and has now served thirteen years, in an adult prison, of a life without parole sentence.



"What's the difference if it was 27 and 44? Or 27 and 52? 20 and 40? 19 and 35? Where do you draw that line? I don't know where that line is at. Everybody's adjudicated the same, they come to the system, they all have time to do."

— Former MDOC Director, responding to concerns about housing juveniles with adults following an allegation of assault on a 16-year-old girl by the 27-year-old that she shared a cell with.¹⁹

Girls comprise a very small portion of juveniles serving LWOP in Michigan (2%), but they face special hardships. Of those surveyed, two-thirds of girls were sentenced on "aiding and abetting" theories. Unlike boys, who are sent to the Michigan Youth Correctional Facility and housed with other prisoners under age 20, girls are sent directly to the women's prisons and housed side by side with adult prisoners. Juveniles who are housed in adult facilities are at greater risk of harm from adult prisoners.¹⁹ Juveniles are also at a higher risk of custodial sexual assault by male guards, which is endemic in women's prisons in Michigan.²⁰

MICHIGAN LAWS LEADING TO THE INCREASE OF JUVENILE LIFE SENTENCES

“I would add though for the record that I don’t think that – I don’t agree with the legislature’s sentence in this case and I want that to be reflected for the record . . . If the Court was granted discretion in imposing sentence in this case, the minimum sentence that I would impose would probably be in the range of 20-25 years, with the maximum life. My thoughts in that regard are that the defendant would be incarcerated in the circumstance until he’s approximately 35 or 40 years old, I think, at a minimum, and if he exhibited appropriate behavior during that period of time, he could, should, in my opinion be considered for parole.”

– *Huron County Circuit Court Judge, sentencing a fifteen-year-old to Life without Parole in 1998.*

Homicide Offending by Minors (<18) and LWOP Sentences, 1990-2001				
State	LWOP sentences	Average Rate of homicide (per 100,000 youth)	Average Rate of LWOP sentences (per 100,000 youth)	LWOP as percent of homicides
Michigan	182	3.0	.60	22
Florida	155	2.26+	.39	17+
California	166	3.7	.16	4
Illinois	69	4.5	.19	4
Missouri	54	.9	.33	12
S. Carolina	21	6.8	.24	4
Georgia	13	2.7	.05	3

+Florida homicides 1992-2001, Florida Department of Law Enforcement

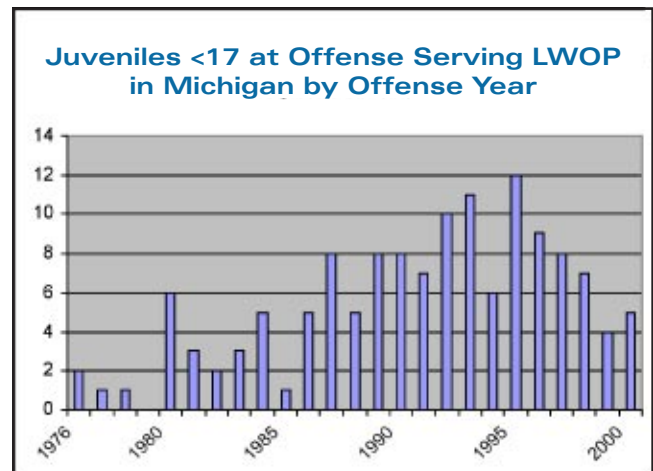
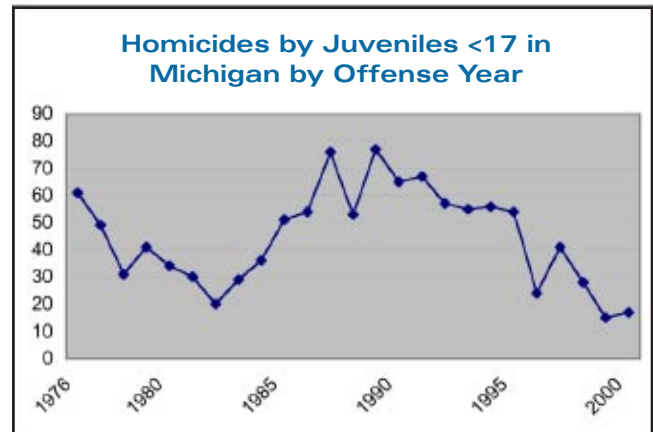
Juvenile Homicide Offending (<17) and LWOP Sentences, 1990-2001				
State	LWOP sentences	Average Rate of homicide (per 100,000 youth)	Average Rate of LWOP sentences (per 100,000 youth)	LWOP as percent of homicides
Michigan	88	2.06	.34	20
Florida	88	1.43+	.22	15+
California	73	2.27	.07	3
Illinois	33	3.22	.09	4
Missouri	28	1.61	.18	11
S. Carolina	7	4.08	.12	4
Georgia	2	1.95	.01	1

+Florida homicides 1992-2001, Florida Department of Law Enforcement

The tables on page 8 compare the rates of crime and LWOP sentencing of seven states across the country, and the results of the initial data analysis demonstrate Michigan's excessive reliance on LWOP for juveniles. The high number of "juvenile lifers" in Michigan cannot be attributed to the State's higher rate of homicide, as Michigan also has the highest rate of LWOP sentences relative to homicides.

Michigan's higher rate of LWOP sentences cannot be explained by the availability of the death penalty in the other comparison states. California and Illinois prohibit the execution of those who were under 18 at the time of the offense.²¹ Florida and Georgia prohibit execution of juveniles under the age of 17.²² Only Missouri and South Carolina allow execution of 16-year-olds, and there are only two individuals on "death row" who were sixteen at the time of the offense, both from South Carolina. Neither Missouri nor South Carolina has executed a sixteen-year-old offender since 1973. Comparing rates of LWOP sentences only for those under the age of 17 at the time the offense was committed, Michigan still imposes this punishment at a much higher rate.

Michigan's high rate of LWOP sentences for juveniles can be attributed to the shift in policy away from judicial waiver and toward automatic treatment of juveniles as adults. The increase in the sentencing rate relative to homicide directly coincides with a series of changes in Michigan laws over the last twenty years that allow more juveniles to be tried and punished as if they were adults.



Juvenile Prosecution and Sentencing for First-Degree Murder Before 1988

Prior to 1988, charges against children under seventeen were required to be filed in juvenile court, while seventeen-year-olds were excluded from juvenile court jurisdiction. Although prosecutors could request that a juvenile who was fifteen or sixteen be transferred from juvenile to circuit (adult) court by judicial waiver, children under fifteen could never be transferred to circuit court or sentenced as an adult. Prior to granting a waiver of a fifteen- or sixteen-year-old, state law required the judge to decide whether or not it would serve the best interests of the child and the public. The decision was based on the seriousness of the offense, the juvenile's maturity and "pattern of living," prior juvenile record, whether the juvenile would be amenable to rehabilitation in the juvenile system, and consideration of the public safety and welfare.²³ If the waiver was granted and the juvenile was convicted of first-degree murder in circuit court, the juvenile could be sentenced to life without parole. Under this process, relatively few

LWOP sentences were imposed on juveniles who were under seventeen at the time of the offense. The number of juvenile lifers sentenced for offenses between 1975 and 1987 was less than ten percent (7.5%) of the number of homicides committed by juveniles during that time.

Juvenile Prosecution and Sentencing for First-Degree Murder 1988-1996

In 1988, the legislature created an automatic waiver which allowed prosecutors to bypass juvenile court and directly charge fifteen and sixteen-year-olds with certain crimes, including murder, in circuit court. The legislation took away judges' discretion to decide whether a child should be tried as an adult, and eliminated judicial consideration of a juvenile's mental capabilities or level of involvement in the crime before transfer. Once convicted in circuit court, a hearing was held to determine whether a juvenile or adult sentence would best serve the interests of the child and the public. This determination was based on the same factors as judicial waiver, as discussed above, but these factors were evaluated by a circuit court judge after conviction in adult court.

The circuit court judge had only two widely disparate sentencing options for a juvenile convicted of first-degree murder in adult court: commitment to a juvenile facility until age nineteen, or mandatory life without possibility of parole. Judges who chose a juvenile disposition faced political censure, and were sometimes accused of letting kids "get away with murder."²⁴ Most judges faced with these limited choices decided to sentence juveniles to life without parole. The elimination of individual assessment before transfer resulted in an increase in LWOP sentences for juveniles convicted of first-degree murder for offenses committed before age seventeen. The number of juvenile lifers sentenced for offenses between 1988-1996, rose to 18% of the number of juvenile homicides during that time period.

Juvenile Prosecution and Sentencing for First-Degree Murder 1996 to the Present

In 1996, the Michigan legislature further broadened the availability of automatic waivers and adult sentences for juveniles. The automatic waiver provision was expanded to include fourteen-year-olds charged with a broad range of serious offenses, including homicide.²⁵ All juveniles tried in circuit court are now required to be sentenced the same as adults, which means mandatory LWOP for first-degree murder.²⁶

The 1996 changes also created a mechanism for trying juveniles of any age in juvenile court with adult-like proceedings, under a process called "designation."²⁷ If a designated youth is found guilty of first-degree murder, the juvenile court judge has three options: 1) commit the youth to a juvenile facility until age twenty-one; 2) sentence the youth as an adult to mandatory life without parole; or 3) suspend adult sentencing, send the youth to a juvenile facility and determine whether adult sentencing is appropriate at a later date ("blended" sentence). The blended sentence option allows the court to evaluate individual progress in juvenile programming at regular intervals before deciding whether to impose an adult sentence. The sentencing decision is based on the same criteria as judicial waiver, as amended to give greater weight to the seriousness of the offense and the juvenile's prior record. However, if a prosecutor chooses to file charges against a juvenile in circuit court, blended sentences are not available.

These changes have resulted in yet another increase in the rate of juvenile LWOP sentencing in Michigan. From 1997-2001, 23.5% of homicides committed by juveniles under seventeen resulted in an LWOP sentence. Of the twenty-six youth under

PROSECUTION OF JUVENILES FOR MURDER

Juveniles 14-16: Tried in Circuit Court unless prosecutor opts to file charges in Juvenile Court and not move for transfer.

Juveniles < 14: Can only be tried in Juvenile Court, but can be designated for adult proceedings at prosecutor's motion.

Disposition / Sentencing Options

Circuit Court

- Life Without Parole (Mandatory)

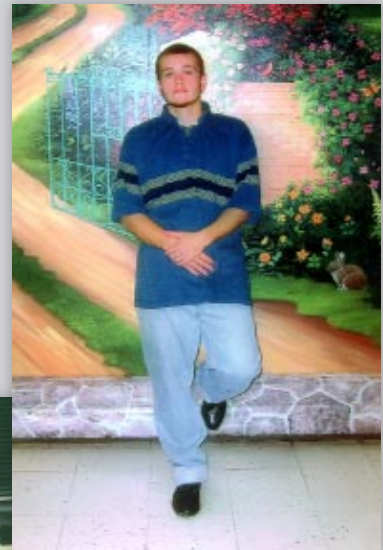
Juvenile Court

- Juvenile commitment until age 21
- Adult sentence suspended pending Juvenile commitment to age 21 (designated cases)
- LWOP (designated cases)

Matthew Bentley was fourteen years old in 1998 when he broke into a house, stole a gun, and shot the homeowner. The prosecutor filed charges against Matthew in adult court using an automatic waiver. Under current law, this meant that Matthew would receive a mandatory adult sentence of life without the possibility of parole, if convicted.

Matthew had a difficult home life. Both his father and one of his older brothers were in prison for molesting Matthew's siblings. However, neither Matthew's home circumstance nor his strong capacity for rehabilitation could be considered once he was found guilty in adult court. Despite serious reservations expressed at trial about sentencing a youth of Matthew's age to prison for life, and Matthew's demonstration of excellent progress while at the juvenile detention facility, the Circuit Court judge had no choice but to impose a mandatory life sentence without the possibility of parole.

Had Matthew committed the offense and been sentenced under the law that existed two years earlier, he would not have been eligible for trial in adult court, and would have received rehabilitative programming through a juvenile sentence rather than mandatory LWOP.



seventeen who were sentenced to LWOP since 1997, only one was a designated case. All of the others were subject to mandatory life without parole sentences.

Under current laws, a child as young as fourteen can be charged, tried and sentenced to LWOP without any evaluation or assessment of how their age may effect culpability, rehabilitative capacity, cognitive ability or public safety concerns. Children thirteen and younger may be sentenced to LWOP through designation procedures. Children, aged fourteen to sixteen, are only eligible for juvenile treatment if the prosecutor elects to file in juvenile court and does not request transfer. Seventeen-year-olds are not eligible for juvenile treatment under any circumstances. Based on the increased rates of juvenile LWOP since the 1996 changes, this sentencing structure will likely continue to produce high rates of LWOP even as juvenile crime declines.

LWOP Sentences Relative to Homicide (<17)	
Waiver only (Pre-1988)	7.5%
Automatic Waiver with option to sentence as juvenile or adult (1988-1996)	18%
Automatic Waiver and Mandatory Sentencing (1997-Present)	23.5

“Now we come to the third tragedy, the sentencing of [this juvenile]. The Court finds that all the evidence produced at the sentencing hearing demonstrates that the defendant is amenable to treatment. In fact, all of the evidence shows that defendant has been a model detainee while in juvenile custody. The staff at the detention home all describe him as well behaved, courteous and a hard-working student who is now receiving As and Bs. The Court also finds that the defendants’ history does not show a repetitive pattern of offenses. None of the persons who testified at the sentencing hearing, including the three persons who recommended sentencing as an adult, stated that the defendant would be dangerous to the public if released at age 21.

I am left with two options: (1) Sentencing defendant as a juvenile, in which event the defendant could be released within one year and, at the very most, by age 21. Or (2) Sentence defendant as an adult. There the Court is faced with a mandatory sentence of life without the possibility of parole. In my opinion, justice would not be served by sentencing the defendant as an adult. The only conclusion that I can reach is that the law deprives me of doing justice in this case. . . . It is further the recommendation, strong recommendation, of this court to the future governors of this state that you be given serious consideration for reprieve, commutation or pardon after serving 20 years in prison.”

– Saginaw County Circuit Judge sentencing a 16-year-old to LWOP in 1991.

KIDS ARE DIFFERENT: CHILDREN IN SOCIETY AND THE JUSTICE SYSTEM

“[L]ess culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult. The basis for this conclusion is too obvious to require extended explanation. Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult.”

– U.S. Supreme Court Justice John Paul Stevens²⁸.

Punishment for violation of our criminal laws is premised upon both the nature of the crime and the moral culpability of the person committing the crime. Accordingly, murder committed with premeditation is punished harsher than murder committed impulsively. Those who lack the capacity to understand criminal proceedings are exempt from punishment under criminal law, on the recognition that they are unable to present an adequate defense. Research on adolescent cognitive development released since Michigan’s 1996 legislation confirms that adolescents cannot be presumed to be as culpable, or competent to stand trial, as adults. Yet the current scheme of automatic adult treatment and mandatory life sentences for juveniles fails to take into account this lesser culpability and competency of children which makes them fundamentally different from adults.

Immaturity reduces culpability for offenses

Culpability for offenses is measured, and should be punished, in proportion to a person’s ability to appreciate the wrongfulness of their actions or control their behavior to conform with the law.²⁹ Altogether, the body of research on adolescence supports the

conclusion that juveniles are not as culpable for offenses as adults, because they lack the same maturity necessary to control their actions and understand the consequences of those actions. Dramatic and rapid changes occur in the development of adolescents’ physical, intellectual, emotional, and social capabilities from ages twelve to seventeen.³⁰ Cognitive and psychological features of adolescence, such as immaturity, inability to calculate consequences, and inability to understand how their actions affect others, can reduce adolescents’ ability to anticipate the effects of their actions.³¹ This hinders their ability to foresee all the potential harms that could be caused before acting, and hence their ability to appreciate the wrongfulness of those consequences.

Adolescence is a time when peer groups, schools, and other settings strongly influence development and choices.³² Adolescents are highly susceptible to the manipulations of others, especially adults, and therefore are likely to be less culpable than their adult co-defendants. Delinquent children are also significantly more likely to have been physically or sexually abused than youth in the general population,³³ rendering them even more vulnerable to adult manipulation. Nearly half of the juvenile lifers in Michigan who responded to the survey reported that

JUVENILE LIFER PROFILE

Barbara Hernandez ran away from home to escape sexual abuse when she was 14. She got involved with an older man, who pushed his drug habit onto her and eventually prostituted her. If she resisted, he beat her. When he told her to lure a man into their house so he could rob him, she did. When she left the room, he stabbed the man to death. Charges were filed against Barbara in adult court and she was convicted of felony murder.

At Barbara’s sentencing in 1991, a social worker testified that the trauma Barbara experienced in her young life would make her easily led by others. Despite the fact that Barbara had no prior record, that she was not the principal actor in the murder, and that her traumatic childhood made her especially susceptible to manipulation, Barbara was sentenced as an adult to mandatory life without parole. She received the same sentence as her adult boyfriend, who was the principal. Barbara has now spent 14 years in prison.



“I claim to be no saint, which I understand that I should do some time for my crime, but just not the rest of my life. My thoughts then, were of a childish mentality thinking without weighing the consequences of my actions, or not really thinking at all of consequences.”

– *Sixteen-year-old sentenced to LWOP for aiding and abetting a murder in 1990*

they had adult co-defendants. However, because a mandatory LWOP sentence does not allow consideration of whether juveniles may be less culpable than adults, juveniles receive the harshest sentence available under law, the same or sometimes more punishment than issued to their adult co-defendant.

Research on delinquent youth shows that children who get in trouble with the law are more likely to suffer disabilities that can further diminish their culpability. Delinquent youth have higher rates of mental and psychological disabilities such as mental retardation, attention deficit disorder (ADD), depression, and post-traumatic stress disorder (PTSD).³⁴ These disabilities can affect decision making ability, and make youth especially vulnerable to manipulation by others,³⁵ further reducing their culpability for offenses.

Many juveniles are not competent to stand trial or assist in their own defense.

The cognitive features of adolescents affect not only their culpability for criminal offenses, but also their competence to stand trial. To be tried in

criminal court, individuals must have the capacity to understand the proceedings, their legal rights, and be able to consult with and assist their counsel in their own defense.³⁶ A study of adolescents found that at least one-third of fifteen and sixteen-year-olds do not have accurate conceptions of what a “right” is.³⁷ This and other studies completed since Michigan increased the availability of LWOP for juveniles confirm that adolescents cannot be assumed to have the cognitive abilities required to stand trial.³⁸ Adolescents have greater difficulty understanding the roles and motives of different actors in our complex adversarial system, which undermines their understanding of the proceedings and ability to assist counsel.³⁹ Developing cognitive and social capabilities can inhibit adolescents’ understanding of criminal proceedings and ability to make a defense, thus making innocent juveniles more vulnerable to making false confessions or being wrongfully convicted.⁴⁰

In addition to understanding the basic concepts underlying the legal system, adolescent defendants must be able to understand how these abstract concepts will impact them individually, in order to make informed decisions in their defense

JUVENILE LIFER PROFILE

Eric Latimer was sixteen in 2002 when he killed his adoptive father. A few months prior to the murder he had been hospitalized for emotional problems related to his conflict with his father, but he was released from the psychiatric facility after less than one day when the insurance would not cover the costs. Despite developmental disabilities and IQ scores suggesting mental retardation, Eric was charged, convicted and sentenced in the same manner as an adult to life without parole for first-degree murder.

Eric made a detailed confession to the police without the presence of his mother. He readily signed the Miranda waiver and told the police everything. A psychologist testified at trial that although Eric’s mannerisms make it appear as if he understands what is happening, he is significantly impaired and does not comprehend the consequences of his actions.

Eric has had trouble in the adult system and has spent much of his time in the mental health unit after threatening suicide.



“Compared to adults, a significantly greater proportion of juveniles in the community who are 15 and younger, and even larger proportion of juvenile offenders this age, are probably not competent to stand trial in a criminal proceeding.”

– *MacArthur Juvenile Adjudicative Competence Study*³⁸

at a criminal trial.⁴¹ Treating children as adults inaccurately assumes that a juvenile, even one who ostensibly understands the consequences of a lengthy prison sentence, necessarily possesses the skills to weigh different options and cooperate with counsel to the same extent as an adult. Developmental research suggests that these abilities emerge at different times in each individual, and vary widely between ages twelve and seventeen.⁴² Trying children in adult court is especially problematic for those fifteen and younger, who are even less likely to be competent to stand trial.⁴³

Because of their vulnerability, juvenile defendants are especially dependent on their legal counsel. The vast majority of juvenile lifers in Michigan (78%) relied on appointed counsel, as they lacked the resources to hire private defense counsel. The problems inherent in indigent defense systems have been well documented.⁴⁴ Because juveniles are more reliant on counsel, the negative effects of insufficient representation are severe. In 2002, a federal court overturned the LWOP sentences of Cortez Miller, Kermit Haynes, and DaShawn Lyons after they spent almost fifteen years in adult prisons. All three were sentenced to LWOP after pleading guilty to first-degree murder for offenses committed when they were fifteen and sixteen, respectively.⁴⁵ The district court judge ruled that defense attorneys’ advice to their clients, to plead guilty to first-degree murder,

was “extraordinary” and recognized that “because of petitioner’s young age, petitioner was particularly reliant on his attorney’s advice to plead guilty.”⁴⁶ At least nine other juvenile lifers who, like Haynes, Miller, and Lyons, are serving natural life sentences as a result of a guilty plea to first-degree murder, remain incarcerated in Michigan prisons. Inadequate appointed counsel, coupled with juveniles’ unique inability to assist in their own defense, can also lead to wrongful convictions, as confirmed in a recent study that found cases involving juvenile defendants were over-represented among cases that were ultimately overturned as a wrongful conviction.⁴⁷

Our laws, recognizing that individuals must have the cognitive and social maturity to make sound judgments and act responsibly before being allowed to vote, serve on juries, run for office or make legal contracts, set the age of civic participation at eighteen. This same recognition should be applied within our criminal justice system, not to excuse unlawful behavior by adolescents but to acknowledge their lack of developmental maturity, which lessens their criminal culpability and competency to stand trial.

“And I guess the other thing that – what is a child, you know, that’s what – that’s what bothers me a little about this. I think that perhaps in some cases there are people that are 18 years old that arguably you could – are not competent to understand the wrongfulness of their conduct because of their maturity.

And there are children that are probably ten years old that are sufficiently mature to understand the wrongfulness of their conduct. So a bright line age test that – of a certain age, everybody under that is considered in the eyes of the law incompetent and everyone over is competent, I think – I’m not so sure that that really is that fair either.

So where do we draw the line? That’s where I’m having trouble with this.”

– *Circuit Court judge, considering the effect of automatic waiver of a 14-year-old.*

"I did not see my attorney at all. I called his office and no one accepted the calls. He never visited me, I never had any kind of interview about the crime, I never even talked to him about the crimes. I seen him one time at a hearing that lasted about 5 minutes, then I seen him twice IN THE COURT ROOM at trial that was a two-day trial and then I seen him moments before I was to be sentenced. When I seen him before the sentence it was in the bullpen behind the court room and he told me there that I'd be getting natural life, I asked him how long that was and he told me, I couldn't understand the whole thing and kept asking him when I'd be going home, but another inmate explained it all to me. He never asked me if I even did the crime. I didn't know anything about the law or that he was supposed to come and see me during the trial.

I went through a murder trial at the age of 15 without ever talking to my attorney."

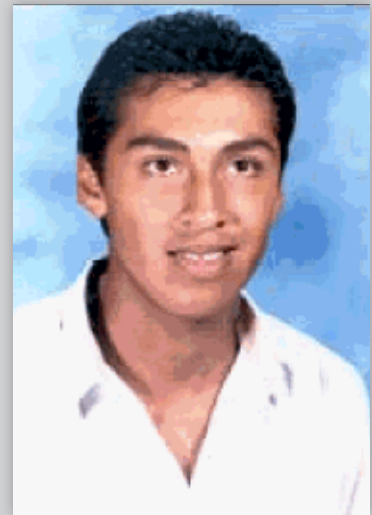
– *Juvenile sentenced to LWOP for felony murder in 1989*

JUVENILE LIFER PROFILE

Efren Paredes was fifteen in 1989 when he was accused of robbing the grocery store where he worked part-time and killing the manager. Efren had no prior juvenile history. Three other individuals were charged with the crime, and all negotiated plea deals after evidence of the crime was found at their homes. One received a six-month juvenile sentence and the other two received prison terms and will be eligible for release. Efren pled not guilty, went to trial and was convicted of felony murder. Efren continues to assert his innocence.

The judge had the option to sentence Efren as a juvenile or as an adult, but chose to sentence him as an adult based on the seriousness of the offense, his denial of involvement in the crime, and his perceived lack of remorse. At the time of the evaluation, Efren was sixteen and maintained faith in the system that he would eventually be exonerated.

In the fifteen years that he has been in prison, Efren has kept the pace of academic achievement and community service that he had prior to the conviction. He finished his GED before he turned seventeen, worked as a teacher's aide, and was promoted to school office clerk before leaving Riverside Facility in 1991. For the past eight years he has worked as a Braille transcriber, and hopes to continue working for the visually impaired if he is ever released. In addition to employment, Efren has been committed to community service, serving as a representative on numerous Wardens' Forums. Outside of prison, Efren would be considered a model citizen.



JUVENILE LIFE WITHOUT PAROLE DOES NOT SERVE THE INTERESTS OF JUSTICE

While the state must respond to juveniles who commit crimes, the response should be consistent with the goals articulated by our criminal justice system. These stated goals of rehabilitation, deterrence, punishment, and protection of the public, are not served by sentencing juveniles to a life behind bars without any opportunity for parole. In many cases, juvenile crimes are related to the impulsivity and immaturity of youth. That impulsivity and immaturity is not permanent but part of a developmental stage, making them strong candidates for rehabilitation. However, the rehabilitation programs that are available are usually closed to juvenile lifers, because they are reserved for those who have a possibility of release. Rehabilitation is abandoned when a child is sentenced to life without parole, because there is no chance of reintegration.

Sentencing Juveniles to LWOP Does Not Deter Crime

“The theory of deterrence . . . is predicated upon the notion that the increased severity of the punishment will inhibit criminal actors from carrying out murderous conduct. Yet it is the same cognitive and behavioral impairments that make these defendants less morally culpable – for example, the diminished ability to understand and process information, to learn from experience, to engage in logical reasoning, or to control impulses – that also make it less likely that they can process the information of the

possibility of execution as a penalty and, as a result, control their conduct based upon that information.”⁴⁸

Michigan’s 1996 legislative changes were based in part on ‘sending a message’ to kids that they couldn’t ‘get away with murder.’⁴⁹ Yet the principle of deterrence is based on the assumption of a rational actor who considers consequences before acting and is in control of his actions, an assumption that is not appropriate for children and adolescents. Adolescents are not likely to know the legal consequences of their actions. Research on adolescent development further undermines the applicability of deterrence for juveniles, who may lack the cognitive capacity to accurately foresee all of the potential consequences of their actions.⁵⁰

Even if adolescents are aware of the consequences, they often lack the maturity to fully weigh risks and future consequences of their actions.⁵¹ Therefore, sentencing policies may not have the same deterrent effect on juveniles that would be expected for adults. This is especially true for delinquent youth, as they have much higher rates of mental retardation, attention deficit disorder (ADD), and other learning disabilities than the general population.⁵² These disabilities can impair abstract reasoning, anticipation and planning, and the ability to resist impulsive behavior,⁵³ further reducing the deterrence effect of harsh adult sentences. In the mind and world of a child, the possibility of a long prison sentence does not work to ‘deter’ crime.

JUVENILE LIFER PROFILE

At age fifteen, **Kevin Robinson** and four older friends committed a robbery that resulted in a murder. Kevin and two others went inside, while the rest kept a look-out from outside. A co-defendant shot and killed someone inside during the course of the robbery. The two look-outs received second-degree murder convictions and sentences ranging from 21-50 years. Of the three that went inside, both Kevin and the sixteen-year-old shooter received life without parole. Their twenty-year-old co-defendant pled to second-degree murder and is eligible for parole.

Kevin was the youngest of 8 children and was in foster care during his childhood. He completed ninth grade and, while his IQ puts him at an educationally mentally impaired level, he has never received any psychological, mental health, or special education counseling.

Despite his disability, Kevin was tried and sentenced in 2001 as if he were a competent adult. Kevin is 19 now and has had a hard time in the adult system, which offers minimal psychological treatment. After the death of his father in 2002, he was on suicide watch for a significant time, but received psychological counseling for only 20 minutes, once a week.



“The implications and consequences of administering a long and harsh punishment are very different when the offender is young than when he or she is an adult.”

– Steinberg & Cauffman³⁰

The Punishment Does Not Fit the Crime

Punishment in our criminal justice system is intended to be meted out fairly, in proportion to culpability. While it is well recognized that the combination of immaturity, inability to calculate consequences, and the inability to understand the effects of their actions on others, can reduce adolescents’ culpability for offenses,⁵⁴ Michigan’s current system does not provide for punishment consistent with the lesser culpability of adolescents. Juveniles convicted of first-degree murder in Michigan are given the same maximum sentence used to punish adults for this crime, life without possibility of parole. Natural life sentences imposed on juveniles are inherently more harsh than those imposed on adults.⁵⁵ The punishment of a sentence of life without parole for a fifteen-year-old is significantly different than this same sentence imposed on a thirty-year-old for the same crime. These sentences when imposed on juveniles are longer, and the years juveniles miss are the most formative, during which they would otherwise finish

their education, form relationships, start families, gain employment, and through those experiences learn to become adults.

Moreover, adult prisons are especially harsh for juveniles. Juveniles held in adult prisons and jails are at a much greater risk of harm than their peers in juvenile facilities.⁵⁶ Sexual assault of juveniles is five times more likely in adult facilities and beatings by staff are almost twice as likely.⁵⁷ Because of their young age and smaller size, juveniles are often the prey for sexual predators and are over-represented as victims of custodial sexual misconduct.⁵⁸ Reflecting the risks and harshness of adult incarceration, the suicide rate for juveniles in adult prisons is eight times that of juveniles in detention facilities.⁵⁹

“My appeals are over . . . I’m here for the duration . . . I’ve attempted suicide four times, 3 on pill overdoses, once on pills and cutting my wrist. Maybe more than four times. No one wants to do life. I’ve never had sexual intercourse, never drove a car or vehicle. I don’t even know what I’m missing, only that I’m missing everything. Am I a murderer? I admit my guilt freely to you with shame. I wish to God I could live again. I wish I could become a part of society instead of a part away from it. If I have to serve it, I’ll end up a shell in a mental ward. Don’t even like to admit that to myself, but I recognize that I’m not mentally capable to endure this for another 50+ years.”

– Juvenile convicted of first-degree murder on aiding and abetting theory in 1997. His co-defendant pled guilty to second-degree murder and received a parolable life sentence.

“I’m doing time because I was at the scene of the crime. I did not kill anyone or shoot or rob anyone. I don’t think that I deserve to do the rest of my life in prison for one mistake. I have never been in a juvenile detention center or anything like that. Before this crime I only had concealing stolen property over \$100. The probation officer also stated that she thinks that I would be rehabilitated in the adult system. How can I be rehabilitated, and I received life, that means that I’m never getting out. So I had no chance to go home.”

– *Juvenile convicted of felony murder at age 15 in 1996.*

Sentencing Kids to LWOP Does Not Make us Safer

The remaining articulated goal of sentencing is to ensure public safety. However, mandatory natural life sentences for juveniles do not allow for an evaluation of their danger to the community after a period of incarceration, rehabilitation, and maturity. Life without parole sentences for juveniles do not take into account the unique individual characteristics of the offense or of the adolescent. Crime statistics show that individuals are less likely to commit violent crime, including homicide, as they grow older. While homicide and other violent crime rates are highest among 18 to 24-year-olds, the rate significantly decreases after age twenty-five and continues to decline thereafter.⁶⁰ Beyond age thirty or forty, 15-25 years into the LWOP sentence, there is a very low risk of re-offending. Today, 43 of the 307 lifers in Michigan are already past their fortieth birthday. Research on parolable or second-degree

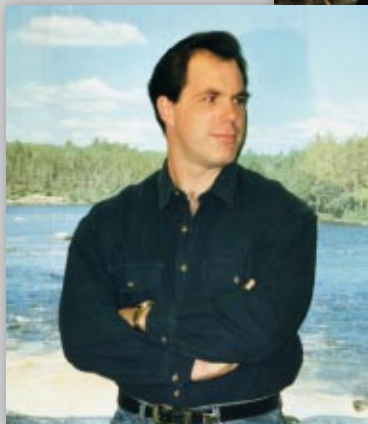
life sentences has found that paroled lifers have much lower recidivism rates than other parolees.⁶¹ However, under current laws none of these individuals will ever be reviewed for possible release, even if they are unlikely to commit another offense and pose no threat to the public safety.

The elimination of mandatory LWOP is consistent with the recent findings and recommendations of the American Bar Association’s Justice Kennedy Commission, which was convened in 2003 to examine the purposes of punishment and the disparities in sentencing in the United States.⁶² In recommending the repeal of mandatory minimum sentences to allow for greater consideration of the individual characteristics of offenders and the offense in sentencing,⁶³ the Commission recognized that neither automatic nor longer sentences translate into a safer world.

JUVENILE LIFER PROFILE

When he was sixteen, **Karl Strunk** and his parents requested that he be placed in foster care to escape a heated family environment. A social worker supported the request and expressed concern that if Karl were kept in the family home, something terrible would happen. However, Karl was not removed from his home environment, and a few months later he killed his father. He was tried and sentenced as an adult to life without parole in 1988.

Karl is now a thirty-two-year-old man and, after 17 years, his religion has helped him come to terms with his crime. Much of Karl’s family is still alive and his mother has forgiven Karl and supports his release. Unfortunately, as the laws stand now, Karl’s mother has lost not only her husband, but also her only son.



THE LAW: JUVENILE LWOP IS A CRUEL AND DISPROPORTIONATE PUNISHMENT

“Placing a young juvenile inside this environment was just plain cruelty.”

– *Juvenile convicted of first-degree murder at 16 in 1988*

Neither the United States Supreme Court nor the Michigan Supreme Court has ruled on the constitutionality of LWOP sentences, as currently imposed on juveniles.⁶⁴ The Supreme Court has banned death sentences for children fifteen and younger, recognizing the lesser culpability due to their youthful status. The Court, observing that those under sixteen were restricted by law from participating in many civil and political activities granted to adults, stated:

“There is, however, complete or near unanimity among all 50 states and the District of Columbia in treating a person under 16 as a minor for several important purposes . . . All of this legislation is consistent with the experience of mankind, as well as the long history of our law, that the normal 15-year-old is not prepared to assume the full responsibilities of an adult.”⁶⁵

The Supreme Court has also recognized that cognitive capacity must be considered when imposing the death penalty in *Atkins v Virginia*,⁶⁶ which held executions of mentally retarded individuals unconstitutional. According to the Court:

“[B]ecause of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. . . . Their deficiencies do not warrant exemption from criminal sanctions, but they do diminish their personal culpability.”⁶⁷

Challenges to juvenile LWOP sentences have largely failed to address issues of competency and culpability.⁶⁸ In two instances where the courts did address the issue, they supported the need for competency evaluations for juveniles. The LWOP sentence of a juvenile in Florida, which received national attention, was overturned on the grounds that a competency evaluation should have been made.⁶⁹ The Tenth Circuit upheld a 100-year sentence for a juvenile, based on the reassurance that a competency inquiry was incorporated in the waiver proceeding.⁷⁰

Under Michigan’s automatic waiver laws, however, there are no such reassurances. Under Michigan law, a juvenile as young as fourteen can be automatically waived to adult court, convicted, and receive a mandatory sentence of life without parole without any consideration of how age may affect cognitive capacity, competency, or culpability for the offense. A similar combination of automatic provisions was held unconstitutional by an Illinois trial court in 2002, in the case of *People v Miller*. The trial judge refused to impose the mandatory LWOP sentence on a 15-year-old look-out, ruling that the punishment was disproportionate to the crime, in violation of the Constitution, and contravened international law. The ruling was upheld by the Illinois Supreme Court.⁷¹

The Illinois and Florida cases, and the *Atkins* decision by the Supreme Court, all support a ruling that a life without parole sentence, imposed without consideration of an individual child’s competency and culpability, violates the Constitution.

HUMAN RIGHTS: CHILDREN'S RIGHTS AND WRONGS

To the ends of my soul I didn't have anything to do with the armed robbery. I wish God would speak for me to find me open ears and eyes.

– *Juvenile sentenced to LWOP in 1997 at age 16*

Another consideration for determining whether juvenile life without parole sentences are permissible by law is the standard for treatment of children that exists around the world. The practice of imposing a life without parole sentence on a juvenile violates customary international law, the Convention on the Rights of the Child, and multiple resolutions and guidelines for the treatment of children in the world.

The Convention on the Rights of the Child (CRC), a central document addressing basic standards of human rights for children, explicitly prohibits sentences of life without parole for juveniles under eighteen.⁷² The Convention has been signed and ratified by every country with the exception of the United States and Somalia.⁷³

The CRC requires that, "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age." The CRC recognizes that every child who breaks laws shall be "treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."⁷⁴

Juvenile LWOP sentences violate the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), which state that detention of children should only occur as a last resort and for the shortest length of time possible. The use of automatic waivers and LWOP sentences for juveniles also violate the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Riyadh Guidelines), which require that children are treated humanely in a manner proportionate to their age and crime, and with a focus on their reintegration into society.⁷⁵

The United States' use of unforgiving sentences to punish children, rather than promoting their reintegration into society, is unparalleled internationally. LWOP is explicitly banned in Austria, Ireland, Japan, Switzerland, Sweden and the United Kingdom.⁷⁶ Michigan's nearest neighbor, Canada, prohibits the sentence of life without parole on a juvenile, which is defined as anyone under eighteen. The harshest penalty Canadian courts impose on a child requires the possibility of parole in five to ten years.⁷⁷

Consistently, in the treaties and documents of nations and states around the world, the importance of treating children like children is recognized and upheld. The continued imposition of life sentences on children in Michigan and elsewhere in the United States, exhibits a refusal to recognize the unique position of children in our society and their potential for rehabilitation.

SECOND CHANCES: ALTERNATIVES AND POLICY RECOMMENDATIONS

I have been in prison now for nearly ten years and with each new day I only wish for another chance. Some of [us] make some of the biggest mistakes, and we have no choice but to live with them for the rest of our lives, waking up every day, regretting the things that we have done.

– *Juvenile sentenced to LWOP at age 15 in 1993.*

There are alternatives to automatic, mandatory life without parole sentences for children that allow for effective and equitable sentences without jeopardizing public safety. Recognizing the lesser culpability and competency of children convicted of homicide offenses does not require eliminating punishment for these crimes, but it does mean eliminating the harshest adult punishment from Michigan’s juvenile sentencing options. Providing the opportunity for blended sentences, with placement and treatment of juveniles in age-appropriate facilities would allow for actual rehabilitation of youth. Blended sentences also maintain the discretion to impose longer sentences if rehabilitation in juvenile placement is unsuccessful.

Parole and Release: Alternative sentences for First-Degree Murder

Amending Michigan’s penal code to authorize a term of years or parolable sentences for first-degree murder committed by a juvenile would eliminate some of the inequities caused by treating children the same as adults. This approach is used in three states (Kentucky, Oregon, New York) and the District of Columbia. Kentucky requires that youth who would otherwise receive LWOP be eligible for parole after 25 years in prison. A system similar to Kentucky’s was proposed to the Michigan legislature in 1996 by then Senator VanRegenmorter, in response to the juvenile sentencing dilemma.⁷⁸ The proposal was endorsed by former Governor John Engler, who acknowledged that the potential for re-offending after age forty is minimal.⁷⁹ In the context of drug offenses, the legislature did recognize the differences between juveniles and adults by passing legislation that provided for a maximum of twenty-five years for a juvenile for an offense that required mandatory life for adults.⁸⁰ A similar recognition that distinguishes juveniles from adults who commit homicide offenses, by setting a maximum term of years for juveniles, would rectify many of the inequities wrought by the current system.

According to Senate Fiscal analysis in 1996, providing parole eligibility for juvenile lifers would save the Department of Corrections \$5.6 million annually based on a conservative estimate of the number of juveniles who would actually receive a life without parole sentence.⁸¹ As the number of juvenile

lifers has grown, the savings to be realized are much greater. Based on the average costs reported in the 2002 MDOC Annual Report, it costs more than one million dollars to house a juvenile lifer for fifty years. The figures illustrated in the table assume clear conduct, which allows the individual to be housed at Level II after 7.5 years (the earliest allowed by current policy, and present-day costs.)

Beyond cost savings, the benefits of treating children like children and restricting additional punishments to a term of years is even greater. The prospect of a meaningful review provides the opportunity for rehabilitation and maturity in the juvenile setting. Such changes would bring the treatment of juveniles in Michigan up to the standards of humane treatment recognized worldwide. At the same time, if a juvenile is deemed a serious threat to public safety, blended sentencing allows an additional period of incarceration.

Juvenile Courts and Blended Sentences: Individualized Treatment for Juveniles

Michigan’s 1996 provisions for blended sentences had the potential to solve the dilemma of choosing between a short juvenile disposition and lengthy adult prison time. Juveniles would be placed in juvenile facilities designed to meet their needs, with programs aimed at education and rehabilitation, and re-evaluated to determine whether they have been rehabilitated, pose a threat to society, and whether

Costs of Housing a Juvenile for Natural Life			
	Cost per year	Number of years	Sub-total
Michigan Youth Correctional Facility	28,656	2.5	71,640
Other Level IV	28,057	5.0	140,285
Level II	19,052	42.5	809,710
Health Care	3,451	50	172,550
	Total		1,194,185

they have served enough time to suit retributive ends. It allows judges to re-assess an individual's progress after treatment, without asking them to predict the future.

However, this option is currently not permitted when juveniles are tried in circuit courts. Since the laws went into effect in 1997, all but one of the juveniles sentenced to LWOP were tried in circuit courts, where the adult sentence is mandatory. The elimination of automatic waiver provisions and mandatory adult sentences would create opportunities for juveniles charged with first-degree murder to be designated and given blended sentences. Children would be recognized as children, and an evaluation of the status of their rehabilitation and existence of any continued threat to public safety would be made prior to imposition of an adult sentence. By combining an initial investment in juvenile rehabilitation with additional "adult time" where necessary, concerns about 3-5 years being "too little time," are avoided.

Recommendations

Creating a safe and humane system for punishment of juveniles in light of current knowledge about adolescent development and behavior does not require an overhaul of Michigan's juvenile justice system. The following support a legislative solution:

1) Amend §769.1 to provide for the imposition of a twenty-five year maximum sentence for homicide offenses committed by juveniles.

2) Amend §712A.2(a)(1) and §712A.4 to eliminate the transfer of juveniles to circuit court for trial and sentencing.

3) Amend §712A.2d and §769.1 to provide that juveniles designated for adult proceedings are entitled to a pure juvenile disposition or a blended sentence. Juveniles convicted of homicide offenses would be placed in juvenile facilities until at least their eighteenth birthday. In a designated case where a blended sentence is imposed, if the juvenile commitment is unsuccessful, the maximum adult sentence may not exceed twenty-five years.

4) Increase funding and support for appointed counsel systems, especially those handling criminal cases in the juvenile court.

5) Provide retroactive relief for juveniles currently serving LWOP sentences. Those juveniles currently under the age of 18 would be moved from adult prisons to juvenile facilities, and re-sentenced according to the blended sentence system detailed above. Those who have already served fifteen years should be immediately eligible for parole, and all juvenile lifers should be re-sentenced to a term not exceeding 25 years. The parole board should consider the individual's potential for rehabilitation and risk of recidivism, revisit cognitive capacity and

maturity of the youth at the time of the offense, and insure that juvenile lifers are eligible for available treatment & rehabilitation programs. Further, any relief must take into account that juvenile lifers have been systematically excluded from rehabilitative programming in prisons. Steps must be taken to allow juvenile lifers to enroll in essential programming in preparation for parole reviews.

SECOND CHANCES

Historically, children who have committed homicides have been handled in the juvenile system and eventually released. Many have gone on to lead productive lives.

Roger Needham was 15 in 1978 when he brought a gun to school, murdered one classmate and wounded another in revenge for their repeated name-calling. The prosecutor charged Roger as a juvenile, and he was sent to a juvenile facility, Maxey Boys Training School. After four years of rehabilitative programming and treatment, Roger Needham was released from custody. He went on to graduate from the University of Michigan and teach at City University of New York.⁸² His rehabilitation reflects the potential for kids processed through the juvenile system. Most juveniles today will never get the same second chance that Roger Needham got, despite the similarity of their crimes.

Brandon Carnell murdered his parents and younger sister in 1988 when he was only fourteen. Under the law that existed in 1988, Brandon was not eligible to be tried as an adult. Instead, Brandon was convicted of first-degree murder as a juvenile and sentenced to a juvenile facility. He was incarcerated and given rehabilitative programming and treatment for five years and was released at age 19.⁸³

Fourteen years later, Brandon now directs several children's outreach programs and volunteers his time at his church. He has completed his education, married and created his own family and is now a full member of his community.⁸⁴ Had this crime occurred after 1996, it is very likely that Brandon would be tried in adult court, and sentenced to life without parole. There are many juvenile lifers who could be similarly productive members of society, if given the opportunity.

CONCLUSION

Michigan has now sent over three hundred juveniles to adult prison for life. Michigan maintains its high rate of life without parole sentences, even as juvenile homicide declines.

The many injustices inherent in these sentences warrant a change in the sentencing laws that continue to drive Michigan's high rates of life without parole punishment for juveniles. These sentences do not serve the purposes that underlie our criminal justice system. There is no real consideration of rehabilitation where LWOP sentences are imposed, nor is there any evidence to suggest that these harsh sentences reduce juvenile crime. Everything that is known about this age group suggests that they are more likely to be ignorant of changes in sentencing policy than deterred. Nor are these sentences fair in any retributive sense, when they result in harsher punishments for juveniles who are less criminally responsible, yet receive the identical sentence as competent adults.

These sentences come at a great cost to those immediately affected, their communities, and the entire state. Each of these lifers will cost the state at least one million dollars, and the value of keeping them in prison will never be re-evaluated. This cost is not justified by any benefit in terms of public safety, as the automatic, mandatory, and permanent sentence leaves no room for assessment of what amount of time in prison is reasonably required to protect the public safety.

Rather than keep these juveniles in prison until they die, individual assessments and proportional punishment would allow these individuals the opportunity to rejoin and contribute to society. The resources saved could be put towards efforts that are proven to reduce youth crime. Handling juveniles in courts designed to address the different circum-

stances surrounding crimes by juveniles offers opportunity for rehabilitation and individualized assessments of the need for continued incarceration. Such reforms conform with the recent recommendations of the American Bar Association – Justice Kennedy Commission, which calls for sentencing consistent with humane values, with sentences no greater than necessary to achieve the purposes for which they are authorized. The recommendations outlined in this report would also bring Michigan into conformity with the Constitution, international human rights standards, and basic concepts of fairness, by allowing these children a second chance.

Policy Recommendations

- Amend §769.1 to provide that juveniles convicted of homicide offenses may receive a sentence not exceeding 25 years.
- Amend §712A.2a and 712A.4 to eliminate automatic and judicial waivers to Circuit Court.
- Amend §712A.2d and §769.1 to limit disposition options to juvenile or “blended” sentences, such that no juvenile may be sent to prison before his or her eighteenth birthday.
- Transfer all juveniles currently under the age of 18 to juvenile facilities and commute to blended sentences.
- Reduce existing LWOP sentences to maximum of 25 years.
- Restore parole eligibility for all who have served at least 15 years.

NOTES

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ACLU of Michigan

60 W. Hancock

Detroit, Michigan 48201-1343

Phone 313.578.6800

Fax 313.578.6811

www.aclumich.org

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