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Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2010/01/30/children-sentenced-to-die-in-prison/>

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by [Jean Casella and James Ridgeway](#) | January 30, 2010

In the process of researching a post on [children in lockdown](#), we read several recent reports on children sentenced to life without the possibility of parole (LWOP). The topic warrants a post of its own, especially since the practice is currently under review by the Supreme Court of the United States.

According to the web site for 2007 PBS Frontline documentary [When Kids Get Life](#):

The United States is one of the only countries in the world that allows children under 18 to be sentenced to life without parole. Human Rights Watch and Amnesty International report that more than 2,000 inmates are currently serving life without parole in the United States for crimes committed when they were juveniles; in the rest of the world, there are only 12 juveniles serving the same sentence, according to figures reported to the United Nations Convention on the Rights of the Child.

The United States, of course, remains one of only two UN member nations which has yet to ratify the Convention on the Rights of the Child. (The other is Somalia). The U.S. did ratify the International Covenant on Civil and Political Rights, which demands that juvenile imprisonment focus on rehabilitation but it did so only after reserving the right to sentence children to death, or to life without parole.

The 2005 Amnesty International/Human Rights Watch report [For the Rest of Their Lives: Life Without Parole for Child Offenders in the United States](#), traces the rise of harsh sentencing for juveniles, and summarizes the arguments against it:

The dramatic increase in the imposition of life without parole sentences on child offenders in the United States is, at least in part, a consequence of widespread changes in U.S. criminal justice policies that gathered momentum in the last decades of the twentieth century. Responding to increases in crime and realizing the political advantages of promoting tough law and order policies, state and federal legislators steadily increased the length of prison sentences for different crimes and expanded the types of offenders facing prison sentences. They also promoted adult trials for child offenders by lowering the minimum age for criminal court jurisdiction, authorizing automatic transfers from juvenile to adult courts, and increasing the authority of prosecutors to file charges against children directly in criminal court rather than proceeding in the juvenile justice system. The United States thus abandoned its commitment to a juvenile justice system and the youth rehabilitation principles embedded in it.

Adult time for adult crime may be a catchy phrase, but it reflects a poor understanding of criminal justice principles. If the punishment is to fit the crime, both the nature of the offense and the culpability or moral responsibility of the offender must be taken into account. As the U.S. Supreme Court has repeatedly recognized, the blameworthiness of children cannot be equated with that of adults, even when they commit the same crime. Most recently, in *Roper v. Simmons* in 2005, the Court ruled that the execution of child offenders was unconstitutional, finding that juveniles are categorically less culpable than adult criminals. The ruling noted that juveniles lack the well-formed identities of adults, are susceptible to immature and irresponsible behavior, and vulnerable to negative influences and outside pressures. Neuroscientists have recently identified anatomical bases for these differences between juveniles and adults, establishing the behavioral significance of the less developed brains of children.

Life without parole sentences for child offenders meaning there is no possibility of release during the prisoners' lifetime effectively reject the well-established principle of criminal justice that children are less culpable than adults for crimes they commit. As the father of a teen offender serving life without parole pointed out to us: I'm a former cop. I'm a true believer in law and order. But my son was a child when this happened. He wasn't thinking like an adult, and he wasn't an adult . . . how is it that the law can treat him as if he is one?

Although juvenile crime has decreased sharply since the mid-1990s, sentencing laws and policies have remained largely unchanged. In some states, judges are actually *required* to impose a life without parole sentence for certain crimes, regardless of age. Children as young as seven could receive a mandatory sentence of LWOP in Florida and Pennsylvania.

Research by the Equal Justice Initiative, which issued the 2007 report [Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison](#), found 73 cases where children 13 and 14 years of age have been condemned to death in prison, nearly two-thirds of them children of color. In most of the cases, the propriety and constitutionality of their extreme sentences have never been reviewed because the children don't have lawyers to mount such challenges. Most of the sentences were mandatory, and the court could not give any

consideration to the child's age or life but phentermine in South Africa history. Some of their crimes were not homicides, and many were offenses where older teenagers or adults were involved and primarily responsible.

In November of 2009, the Supreme Court heard arguments on two cases of children sentenced to LWOP; it has yet to issue a ruling. The cases contend that sentencing children to live and die in prison is cruel and unusual punishment, in violation of the Eighth Amendment of the Constitution. According to the [Equal Justice Initiative](#), Both cases ask the Court to address whether the differences between children and adults that led the Court [in 2005] to strike down the death penalty for children also make permanent imprisonment a constitutionally impermissible punishment for a child.

Warren Richey of the [Christian Science Monitor](#) provided this account of the Supreme Court's review of the two cases on November 9, 2009:

A sharply divided US Supreme Court on Monday debated whether to invalidate state laws that permit juveniles to be sentenced to life in prison without parole for nonhomicide crimes. It is a potential watershed decision. But after two hours of arguments in two different cases, it was unclear whether a majority of the high court's nine justices were in agreement on the issue.

The two cases, *Graham v. Florida* and *Sullivan v. Florida*, ask the justices to consider whether sentencing a juvenile to spend the rest of his or her life in prison is cruel and unusual punishment in violation of the Constitution's Eighth Amendment. It is unquestionably unusual, said Bryan Stevenson, whose client went to prison for life at age 13. To state to a child of 13 that you will die in prison is cruel, he told the justices.

Joe Sullivan was sentenced to life without parole after being convicted of beating, raping, and robbing a 72-year-old woman. He was 13 at the time of the crime. Terrance Graham was sentenced to life without parole after pleading guilty to armed burglary and assault and after having his probation revoked for participating in a series of armed home invasion robberies. He was 17 at the time. Florida Solicitor General Scott Makar defended the sentences, saying they reflected a balance struck by state lawmakers and Florida judges. It goes to the core of state sovereignty, he said, for a state to develop and administer its own justice system.

The heart of the argument is that because juveniles are more impulsive, less mature, and less able to appreciate the full magnitude of their wrongdoing, they are less morally culpable for their crimes. If they are less culpable, the argument goes, they should not be punished as harshly as adults. A second, parallel argument is that because a juvenile's character is not yet fully formed, it is impossible for experts to accurately predict which young offenders will grow out of their violent, unlawful behaviors and which will not.

Mr. Graham's lawyer Bryan Gowdy argued that this uncertainty about which juvenile offenders are capable of reform justifies a categorical ban on life without parole sentences for juveniles in nonhomicide crimes. Mr. Gowdy and Bryan Stevenson, Mr. Sullivan's lawyer, are asking the high court to extend the reasoning of a 2005 decision in which the Supreme Court ruled 5-to-4 that the juvenile death penalty violated the Eighth Amendment.

Chief Justice Roberts repeatedly questioned why harsh juvenile sentences like those of Sullivan and Graham couldn't be reviewed case by case to determine if they were out of proportion to the underlying crime. He said that approach rather than a categorical ban fit neatly with the high court's existing approach in Eighth Amendment challenges.

Gowdy countered that the high court, in the 2005 juvenile death penalty decision, drew a categorical line at age 18.

That is because death is different, Roberts shot back, referring to the frequently cited justification for imposing special rules in capital punishment cases. The chief justice wondered aloud why the court shouldn't follow a less disruptive path toward case-by-case review.

It just comes down to adolescents are different, your honor, Gowdy replied.

After reading the transcripts of oral arguments in the two cases, Ohio State law professor Douglas A. Berman, on his excellent [Sentencing Law and Policy](#) blog, wrote:

I am largely underwhelmed and not especially hopeful that these cases will produce a profound set of opinions. All the Justices are understandably struggling with the standard where do we draw a line challenge; but I got the nagging feeling that many Justices are more worried about the risk of drawing lines that would help juvenile defendants than worried about the risk that some states may regularly impose excessive punishments on certain juve offenders.

James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and the former Yugoslavia. Earlier, he wrote for The New Republic and Ramparts, and his work appeared in dozens of other publications. He was the co-director of two films and author of 20 books, including a forthcoming posthumous edition of his groundbreaking 1991 work on the far right, *Blood in the Face*. Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book *Hell Is a Very Small Place: Voices from Solitary Confinement*. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets @solitarywatch.

Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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I have worked in corrections for 20 years and I have found that juveniles are rehabilitative. Most of them seek attention something that is lacked from either their father or mother. I was raised in a tough and poor neighborhood, just one of the lucky ones to escape the hood. I feel that everyone deserves a second chance especially a juvenile. Once they serve their time they should be allowed to prove themselves in society. I personally know of one that couldn't even pull the trigger, his co-defender did and he is sitting in jail for the rest of his life. He doesn't even belong there, he has a heart of gold. Because we are poor he might never get out. God bless those juveniles whom are now mature adults.

Here is a photo of one such teen and her words as she realizes just what that means.

<http://www.araoshagan.com/Pages/Juvies/Juvies19.html>

Thanks for the tip, Alan. We have read that important and extremely disturbing report, and will be quoting from it in our upcoming post on children in solitary.

May I suggest another report on this subject and the first of its kind in fact.

LBJ School Professor Michele Deitch's Report From Time Out to Hard Time: Young Children in the Adult Criminal Justice System

<http://www.utexas.edu/lbj/news/story/856/>

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