



June 18, 2009

The Honorable Robert Scott
Chair
House Judiciary Committee
Subcommittee on Crime
Terrorism and Homeland
Security
Washington, DC 20515

The Honorable Louie Gohmert
Ranking Member
House Judiciary Committee
Subcommittee on Crime
Terrorism and Homeland
Security
Washington, DC 20515

Dear Chairman Scott and Ranking Member Gohmert:

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On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than half million activists and members and fifty-three affiliates nationwide, we write to express our strong support for H.R. 2289, the Juvenile Justice Accountability and Improvement Act of 2009, which would restore discretion to judges and juries by denying funding to states that refuse to offer a parole option to juvenile offenders and allow states to improve the quality of legal representation for youths facing potential life sentences.

There are approximately 2,500 people serving life sentences without the possibility of parole for crimes committed before the age of 18.¹ While there are some who support the sentence of life without the possibility of parole as a necessary punishment for horrendous crimes, we are disturbed by the mandatory application of this sentence against children across our country. We are troubled by a sentence that labels young offenders as beyond reform and of no further value to society. Additionally, the disproportionate impact on racial minorities and the lack of justification in many cases for such a harsh sentence necessitate an end to this practice. We encourage the members of this committee to support this important legislation, which affords young offenders a meaningful opportunity for rehabilitation.

The United States is the only country in the world that continues to sentence children to life without the possibility of parole. The federal government and 44 states allow sentences of life without parole for juvenile offenders.² Contrary to popular belief, these children are not career criminals or predators. Fifty-nine percent of children serving a life sentence without

¹ These statistics have been gathered by Human Rights Watch, in collaboration with many organizations and state departments of corrections throughout the United States.
http://www.hrw.org/sites/default/files/related_material/JLWOP_Table_May_7_2009.pdf.

² ACLU of Michigan, *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons*, available at <http://www.scribd.com/doc/1027345/Second-Chances-Report-by-the-ACLU-of-Michigan-About-Juvenile-Life-Without-Parole-Sentences-in-Michigan>.

parole are first time offenders.³ The incarceration of these children is not only cruel but bears little relation to ensuring public safety or the fair administration of justice.

Our national criminal justice system was created on the premise that punishment is to serve several vital functions such as deterrence, retribution, incapacitation, and rehabilitation. In fulfilling these functions, the juvenile justice system has operated on the fundamental notion that actions of children cannot be equated to those of adults. By straying from these principles, the practice of sentencing children under the age of 18 to life without parole is a violation of both our Constitution and our international legal obligations.

The Supreme Court has expressed concern on numerous occasions regarding the failure to distinguish children from adults in the criminal justice system. Most recently, in *Roper v. Simmons*, the Court declared unconstitutional the imposition of a capital sentence for crimes committed before the age of 18.⁴ In examining psychological and sociological research, the Court specifically emphasized the following critical differences between adult and child offenders: children possess an underdeveloped sense of responsibility; they are in less control of their environment;; and such characteristics are transient and will fade with age.⁵ In fact, the Court found the transitory nature of youth to be such a mitigating factor that it declared it “misguided to equate the feelings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”⁶ The Court’s analysis is reinforced by a multitude of psychological studies that show adolescents act based on emotion, rather than logic, are less capable than adults of perceiving and comprehending long term consequences, but become better able to temper responses with reason and logic as they age and develop.⁷

These deep-seated differences between children and adults undermine any justification for the mandatory imposition of a juvenile life without parole (JLWOP) sentence. There is no evidence that the imposition of adult sentences actually deters adolescents, due to their limited abilities to grasp or even consider long term consequences of their actions.⁸ In *Thompson v. Oklahoma*, the Supreme Court found that capital punishment was an ineffective deterrent, as it is unlikely that young offenders would undertake the “cost-benefit analysis that attaches any weight to the

³ Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life Without Parole for Child Offenders*, (2005), available at <http://hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf> .

⁴ 543 U.S. 551 (2005).

⁵ *Id.* at 569-70

⁶ *Id.* at 570.

⁷ Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life Without Parole for Child Offenders*, (2005), available at <http://hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf> .

⁸ *Id.*; see also ACLU of Michigan, *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons*, available at <http://www.scribd.com/doc/1027345/Second-Chances-Report-by-the-ACLU-of-Michigan-About-Juvenile-Life-Without-Parole-Sentences-in-Michigan>.

consequences.”⁹ These same differences negate any retributive value of sentencing juveniles to life without the possibility of parole. The Supreme Court has determined on several occasions that in order to fairly impose retributive punishment, the sentence must consider any factors that may mitigate the offender’s culpability. For example, in *Roper*, the Court stated that the difference between adults and youth is enough to “render suspect any conclusion that a juvenile falls among the worst offenders.”¹⁰

Mandatory JLWOP sentences are costly and offer little or no return in public safety. Studies demonstrate a more significant decline in youth violence in juvenile justice systems that favor rehabilitation over incarceration.¹¹ These rehabilitation programs result in significant savings to taxpayers and produce educated and skilled youths capable of contributing to society as adults. The District of Columbia, for example, experienced a 71% decline in the juvenile detention rate and a 55% decline in violent juvenile crime after implementing community-based alternatives to incarceration.¹² In contrast, neighboring Maryland communities retained a punitive incarceration model and saw an increase in the juvenile detention rate, with only a 15% decline in the rate of violent juvenile crime.¹³

In declaring unconstitutional the imposition of capital punishment for persons under eighteen, the Supreme Court emphasized rehabilitation, citing studies that show maturation naturally lessens antisocial, juvenile behavior and that “only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.”¹⁴ The varying cognitive and emotional abilities of adult and child offenders continue to be of concern to the Court as indicated by the decision in May to consider the cases of two young men from Florida facing life without the possibility of parole for non-homicidal crimes. These cases, *Graham v. Florida* and *Sullivan v. Florida*, will be decided during the Court’s upcoming 2009-2010 term. The U.S. practice of sentencing children to life without the possibility of parole is not only inconsistent with constitutional values, but it also violates our country’s most fundamental human rights obligations. Consequently, the practice has come under close scrutiny by the international community. Since 2006, three different international human rights treaty bodies that have examined the U.S. government’s compliance

⁹ 487 U.S. 815, 835 (1988)

¹⁰ 543 U.S. 551 at 568; see also *Atkins v. VA*, 563 U.S. 304, 320 (2002) (stating that the cognitive capacity of the offender is relevant to determining personal culpability); *Tison v. Arizona*, 481 U.S. 137, 149 (1987) (requiring that the criminal sentence must be “directly related to the culpability of the offender”).

¹¹ Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life Without Parole for Child Offenders*, (2005), available at <http://hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf> .

¹² *Id.*

¹³ *Id.*

¹⁴ *Roper*, 543 U.S. 551 at 568.

with its treaty obligations have expressed grave concerns with the practice of sentencing children to life without the possibility of parole.¹⁵

In May 2006, the U.N. Committee against Torture, which monitors compliance with the Convention against Torture, noted its deep concern for the staggeringly high number of children serving life sentences without the possibility of parole.¹⁶ Similarly, in July 2006, the U.N. Human Rights Committee, which oversees U.S. Compliance with the International Covenant on Civil and Political Rights (ICCPR), expressed its alarm at this widespread practice and recommended that the U.S. immediately bring itself into compliance and discontinue its use.¹⁷

The ICCPR specifically requires the separation of child offenders from adults and that criminal procedure for children charged with crimes “take account of the age and desirability of promoting their rehabilitation.”¹⁸ Even though the latter provision was co-sponsored by the U.S., the frequent imposition of life without parole by U.S. courts signals a clear adoption of the conflicting approach - “permanent banishment” instead of encouraging positive change through rehabilitation.¹⁹ Most recently, in March 2008, the U.N. Committee on the Elimination of Racial Discrimination also recommended that the U.S. end the practice because of the disproportionate impact such sentences have on racial, ethnic and national minorities in this country.

According to research conducted by the University of San Francisco School of Law’s Center for Law and Global Justice, African-American youth in the U.S. are ten times more likely to receive sentences of life without possibility of parole than white child offenders.²⁰ In California, the rate is a shocking 20 to 1, even though African-American youth comprise only 8% of the youth population.²¹ In the state of Michigan, 221 of the 307 juveniles serving life sentences without

¹⁵ Committee Against Torture (May 2006), UN Human Rights Committee (July 2006) and Committee on the Elimination of Racial Discrimination (March 2008).

¹⁶ United States Human Rights Network, *Children in Conflict with the Law: Juvenile Justice & The U.S. Failure to Comply with Obligations under the Convention for the Elimination of all Forms of Racial Discrimination*, (2008), available at <http://www.juvenilejusticepanel.org/resource/items/U/S/USHRNWGroupJJUSFailureICERD08.pdf>

¹⁷ *Id.*

¹⁸ Article 10(3); Article 14(4)

¹⁹ *Id.* The Convention on the Rights of the Child (CRC), to which the U.S. is a signatory, also emphasizes rehabilitation. The CRC not only requires that a reintegration and rehabilitation be a priority, but also indicates ways in which member states should seek rehabilitation. Article 37(a). As a signatory, the U.S. is not supposed to engage in any actions that would defeat the object and the purpose of the CRC.

²⁰ Center for Law and Global Justice, University of San Francisco School of Law, *Sentencing Our Children to Die in Prison: Global Law and Practice*, available at http://www.usfca.edu/law/home/CenterforLawandGlobalJustice/LWOP_Final_Nov_30_Web.pdf.

²¹ *Id.*; United States Human Rights Network, *Children in Conflict with the Law: Juvenile Justice & The U.S. Failure to Comply with Obligations under the Convention for the Elimination of all Forms of Racial Discrimination*, (2008), available at <http://www.juvenilejusticepanel.org/resource/items/U/S/USHRNWGroupJJUSFailureICERD08.pdf>

parole are minorities, 211 are African-American.²² Even though African-American youth only constitute 15% of the general population, they constitute almost 69% of the juvenile offenders serving life sentences without the possibility of parole.²³ Latino youth are five times more likely to receive life sentences without the possibility of parole than white youth.²⁴ Evidence has shown that even when juvenile offenders are similar in “age, gender, seriousness of the offense, and seriousness of their prior records,” minority youth are still more likely than white youths to receive the harshest sentences.²⁵ Article 5(a) of the U.N. Convention on the Elimination of all Forms of Racial Discrimination requires equal treatment before the courts. By failing to rectify racial disparities in the sentencing of children, the U.S. government is in violation of its obligations under the Convention.

In April 2009, following a visit to the United States during May and June, 2008, the U.N. Special Rapporteur on contemporary forms of racism, Doudou Diene, also noted the troubling racial disparities perpetuated by JLWOP sentencing in this country. In a report on his findings Diene was highly critical of the practice because of the racial disparities it created among children in the United States. Diene noted, “in view of the recent recommendations by the Human Rights Committee, the Committee Against Torture and the Committee on the Elimination of Racial Discrimination, and considering that the use of life imprisonment without parole against young offenders, including children, has had a disproportionate impact for racial minorities, federal and state governments should discontinue this practice against persons under the age of eighteen at the time the offence was committed.”²⁶

Children are less likely than adults to comprehend the consequences of their legal decisions and more likely to comply with authority- unwittingly offering confessions to police and accepting plea agreements- even though they have meritorious defenses or may be innocent.²⁷

Additionally, children without lawyers often act hastily under the mistaken belief that their cases will be resolved quickly and positively, especially when they are detained. In *In re Gault*, the

²² ACLU of Michigan, *Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons*, available at <http://www.scribd.com/doc/1027345/Second-Chances-Report-by-the-ACLU-of-Michigan-About-Juvenile-Life-Without-Parole-Sentences-in-Michigan>.

²³ United States Human Rights Network, *Children in Conflict with the Law: Juvenile Justice & The U.S. Failure to Comply with Obligations under the Convention for the Elimination of all Forms of Racial Discrimination*, (2008), available at <http://www.juvenilejusticepanel.org/resource/items/U/S/USHRNWGroupJJUSFailureICERD08.pdf>

²⁴ *Id.*

²⁵ Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life Without Parole for Child Offenders*, (2005), available at <http://hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf> .

²⁶ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diene, Addendum, Mission to the United States of American (April 28, 2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.36.Add.3.pdf>.

²⁷ MacArthur Foundation, Adolescent Development & Juvenile Justice, *MacArthur Juvenile Competence Study Results*, available at http://www.adjj.org/content/related_resources.php?cat_id=2&page_id=2 .

Supreme Court stated that, given the complexities of our legal system, the “juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.”²⁸ In practice, juvenile offenders are frequently denied adequate legal representation.

Across the country, access to adequate legal representation is often obstructed by delayed appointment of attorneys, coerced waiver of counsel, overburdened defenders and insufficient allocation of resources for investigation and experts.²⁹ In some jurisdictions the lawyer appointment rate for juveniles is only 19%, other jurisdictions require that children know to formally request appointment of counsel.³⁰ Furthermore, appointed lawyers frequently lack the time and resources to adequately interview the client and conduct thorough investigations.³¹ In Texas, for example, many jurisdictions do not grant compensation for investigatory or expert services; the remaining jurisdictions generally cap funding at anywhere between \$300-500.³² Assessments of state juvenile justice systems also reveal a widespread culture in which judges strongly discourage vigorous representation of juvenile offenders.³³ Children charged with criminal wrongdoing need the assistance of legal counsel to protect their legal interest. H.R. 2899 will authorize the distribution of much needed grants to the states in order to provide quality legal counsel, as well as investigative and expert services necessary for competent representation.

If enacted, H.R. 2289, The Juvenile Justice Accountability and Improvement Act of 2009 will not result in the release of violent criminals onto the streets; rather, it will encourage states to return discretion to judges and the parole boards to decide what is in the best interest of public safety. By withholding funding to states that refuse to provide a parole option to child offenders, this legislation will be a driving force for the necessary reform of the most punitive state laws. In addition, H.R. 2289 will provide support for juvenile legal defense and assist in ensuring quality legal representation for children possibly facing life sentences. By restoring discretion to judges and juries during the sentencing process and to parole boards post-sentencing, Congress will take a crucial step in bringing the U.S. into compliance with its constitutional and international legal obligations.

²⁸ See, *In re Gault*, 387 U.S. 1, 36 (1967)

²⁹ United States Human Rights Network, *Children in Conflict with the Law: Juvenile Justice & The U.S. Failure to Comply with Obligations under the Convention for the Elimination of all Forms of Racial Discrimination*, (2008), available at <http://www.juvenilejusticepanel.org/resource/items/U/S/USHRNWGroupJJUSFailureICERD08.pdf>

³⁰ National Juvenile Defender Center, *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* 21-22 (1995), available at <http://www.njdc.info/pdf/cfjfull.pdf>.

³¹ *Id.*

³² Texas Appleseed, Fair Defense Project on Indigent Defense Practices in Texas – Juvenile Chapter, *Shelling Justice Short: Juvenile Indigent Defense in Texas* 20-21 (2000), available at <http://www.njdc.info/pdf/TexasAssess.pdf>.

³³ *Id.*