

Bad Kids: Should We Lock Them Up and Throw Away the Key

Written by: Bobby Bostic

Currently there are over 2,500 juveniles (anyone who was under the age of 18 years old when they committed their crime) serving a sentence of life without parole for homicide in the United States. ("Rest of Their Lives") In addition to this there is three thousand more serving de facto life without parole sentences (a sentence of many decades in prison beyond the juvenile's life expectancy) for violent crimes that did not involve murder. (Graham v. Florida) Before I express my viewpoint on this issue I want to ask the readers a question. Do you feel that juveniles who commit heinous crimes should die in prison? Now before you answer that question; please give it considerable thought as you reflect on it. Do you have a family member who is a troubled teen who is involved in petty crime or delinquent acts? If those acts turn violent would you want them to spend the rest of their lives in prison?

However there are always two sides to an argument. What if you were the family member of a victim who was senselessly murdered by a juvenile defendant? Where would you stand on the issue then? Even if you feel that they should be harshly punished for what they did to your loved one; do you think that there is any hope that they could one day change? You are entitled to whatever answer you may chose to these questions. Before you firmly commit yourself to a stance on this issue I would like to express a few notions I have in this regard after briefly giving you the facts.

When we think of kids we don't often associate them as being criminals. Somehow in today's turbulent world that is changing. Crime does exist and some kids will gravitate towards it. The first juvenile delinquent courts in this country were first established in the early 1900's. In further decades as juvenile crime progressively rose; more and more kids were certified to stand trial as adults. Although they were still technically juveniles; the criminal justice system treated them as adults. Fast forward to the 1980's and 1990's when crime reached an all time high; particularly juvenile crime. In fact criminologists carved out a special niche for this particular class of youth offenders, deeming them as the "super-predators". This resulted in a huge uptick of juveniles being sentenced to life without parole sentences, de facto life without parole sentences and even the death penalty.

Gangs entered into the picture and for the most insignificant of reasons kids started killing other kids. Society became afraid for its kids while at the same time becoming afraid of them. In response they were given harsher sentences in the criminal justice system. Meanwhile in the rest of the world; countries moved away from sentencing juveniles as adults while moving toward treatment for them. The death penalty, juvenile life without parole as well as de facto life without parole was done away with in the majority of developed countries. In fact, as of today the United States is the lone county who sentences juveniles to life without parole. ("Sentencing Our Children to Die in Prison".)

Enter the United States Supreme Court. As the Highest Court in the land it sets the legal precedent for this country as to what can or not be legally done per the United States Constitution. In 2005 the High Court entered this controversial debate by declaring it unconstitutional to sentence juveniles to the death penalty. (Roper v. Simmons). The Court held: "Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders". The Court cited scientific and sociological studies to uphold its position that (1) juveniles has

lessened culpability, therefore they are less deserving of the most severe punishments (2) As youth have a lack of maturity and underdeveloped sense of responsibility, they are more vulnerable to negative influences and outside pressures, including peer pressure (3) The character traits of juveniles are not well formed as that of an adult, making them much more likely for rehabilitation.

After the Court's prohibition of the death penalty for juveniles, the harshest sentence that they could receive was life without parole. Not only for murder, but also for other crimes such as robbery, rape, armed burglary, vast drug conspiracy, etc. This led the United States Supreme Court to enter into the fray again in 2010. In the case of *Graham v. Florida*, the Court held that the Eighth Amendment's Cruel and Unusual Punishment Clause prohibited the states from sentencing juveniles to life without parole for non-homicide crimes. ("*Graham v. Florida*"). Basing its ruling on much of the factors outlined in its *Roper* decision as well as updated scientific factors the Court said that states must at least give these children the chance to one day show that their childhood crimes does not define who they are; and therefore give them a chance to prove that they are eligible for release before their life ends.

Two years later the court made yet another stance on this issue in the case of *Miller v. Alabama*. ("*Miller v. Alabama*"). In that ruling the Court prohibited states from automatically giving juveniles life without parole for homicide convictions without first considering mitigating factors. It left open the states to have the opportunity to give juveniles life without parole in only the rare case where the courts found that a juvenile was incorrigible beyond repair. Four years later the Court again pushed reluctant states towards its reasoning by making its *Miller* ruling retroactive in the case of *Montgomery v. Louisiana*. ("*Montgomery v. Louisiana*"). It told state courts: "that before sentencing a juvenile to life without parole, the sentencing judge must take into account how children are different, and how those differences counsel against sentencing them to a lifetime in prison". The Court furthered said: "the opportunity for release will be afforded to those who demonstrate that children who commit even heinous crimes are capable of change".

Despite all of the above Court rulings we still have at least 2,500 juveniles serving life without parole as well as around 3,000 others serving de facto life without parole. Now that I have given you a very brief history dealing with this sentencing practice we now arrive back where we began: should kids be sentenced to die in prison? Well it all depends on who you ask. The tough on crime proponents spew rhetoric such as "do the crime, do the time" or "if they are old enough to kill then they are bold enough to die in prison", etc. Rightfully alongside them are the actual victims of crimes and their family members who have an immediate stake at issue. Then there is society in general.

Kids do not think things through. Juveniles make very irrational decisions without taking into consideration the long term effects. Even in the cases where they kill; sometimes it takes months it not years for their maturity to set in to allow them to show sufficient empathy and experience meaningful remorse. Modern science proves everything that I am saying. ("*Age Difference in Future Orientation and Delay*"). Neuropsychologist Lawrence Steinberg wrote: "changes in impulse control and planning are mediated by a cognitive control network which matures more gradually and over a longer period of time, into early adulthood". (Steinberg).

Critics may claim that I am making excuses for those violent juveniles. I have merely stated

proven scientific facts. To argue with my position is to argue against science; thereby forfeiting logic as well as reason. Yet I will not be dogmatic or one-sided in my stance on this issue. What if I were to put myself in the victim's shoes (or their family members)? How would I feel then? If I was strictly reacting from my emotions then I would only see vengeance on such a juvenile offender. Yet, after my storm of emotions get contained; I would still dislike the juvenile defendant who committed this terrible crime. Nevertheless I would always keep in mind that the person who committed this crime was a child. If they show remorse and redeeming qualities I would come around to the view that they are worthy of second chance one day.

Vindictive judges in many states have skirted around the Supreme Court's prohibition on life without parole sentences by instead trying juveniles whereby the judge gives them a de facto life without parole sentence. When a juvenile is sentenced to multiple decades in prison or even hundreds of years there is no way in which they'll be able to live to see their parole date because it is set beyond their life expectancy. As Kelly Scavone vividly states in her law journal: "Although virtual life without parole sentences are not categorically barred for juvenile homicide offenders under Miller, lengthy sentences without parole eligibility create the exact result that the Court was trying to avoid in Miller and Graham. Juveniles must be afforded individualized sentencing hearings that accounts for the mitigating factors of youth, and in the majority of cases, must be given an opportunity to reenter society before spending their entire lives behind bars". Therefore de facto life without parole is not a viable solution to the problem. Some states have adapted a reasonable format by implementing laws whereby life sentenced juveniles can go see the parole board after serving 25 years of their sentence. This is a sufficient solution.

Furthermore, seeing the parole board does not automatically mean that they will be released. What it does is at least give them an opportunity. Henceforth, it will be up to that former juvenile to show that they have been rehabilitated and will be a productive member of society if they are released. Parole will serve as a slight check and balance on their progress in the free world. What I propose is not a get out of jail tree card. I hold that these juveniles must be held accountable. Once they have sufficiently shown remorse, paid their dues to society, and rehabilitated themselves; I say we should give them a second chance. It makes no sense to waste taxpayers' money by holding them in prison until they die. They deserve a second chance. Bad kids can become good adults. We shouldn't lockup our children and throw away the key.