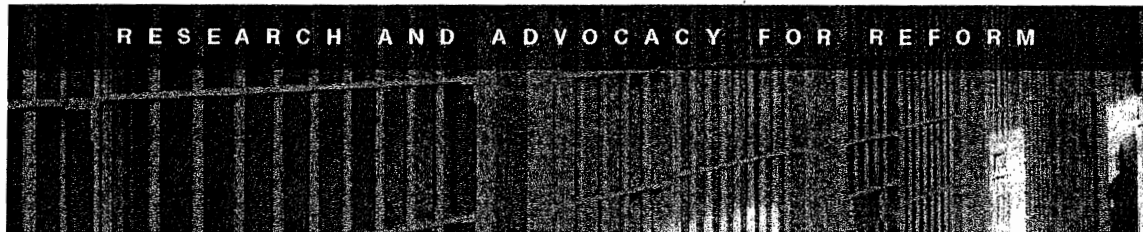


THE  
SENTENCING  
PROJECT



**Testimony of Ashley Nellis, Ph.D.  
Research Analyst  
The Sentencing Project**

Prepared for the Pennsylvania Senate  
Committee on the Judiciary  
Public Hearing on the Issue of Juvenile Lifers

September 22, 2008

**T**hank you for allowing me to testify on this important issue of sentencing juveniles under the age of 18 to life without parole. My name is Ashley Nellis and I am a Research Analyst at The Sentencing Project in Washington, D.C., a national organization that advocates for reforms in sentencing law and practice. I am here to testify in support of legislation that would eliminate juvenile life without parole and would instead allow meaningful access to parole for juveniles convicted of serious crimes.

Sentencing juveniles to life without parole (JLWOP) is problematic for a variety of reasons, and so it is disturbing that Pennsylvania's use of this punishment is so extreme:

- Pennsylvania leads the nation in JLWOP sentences;
- Pennsylvania has the greatest number of 13- and 14-year-olds with this sentence; and
- Pennsylvania demonstrates great racial and ethnic disparity in the application of this sentence.

The federal government and 45 states allow sentences of life without parole for juveniles 17 and younger; it is prohibited in 5 states and the District of Columbia; and it is allowed but not currently used in 10 states.<sup>1</sup> Around the nation, there are nearly 2,500 offenders under 18 serving life without parole sentences among the 34 states which currently house juvenile LWOP inmates.<sup>2</sup>

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<sup>1</sup> States where JLWOP is prohibited are: Alaska, Colorado, Kansas, New Mexico, and Oregon. States where JLWOP is allowed but not currently used in practice (i.e., states reported having no LWOP inmates who were under 18 at the time of their offense) are: Georgia, Indiana, Maine, New Jersey, New York, Ohio, Utah, Vermont, West Virginia, and Wyoming. Data collected from state departments of corrections by The Sentencing Project, 2008.

<sup>2</sup> Human Rights Watch (May, 2008) *The Rest of Their Lives: Life without Parole for Youth Offenders in the United States in 2008*. San Francisco: Author.

The Sentencing Project has collected data from state departments of corrections on youth serving life without parole sentences, disaggregated by race, ethnicity, and gender. Our preliminary analysis of the data reveals that Pennsylvania leads the nation in the number of youth sentenced to life without parole: there are at least 345 young people serving life sentences in Pennsylvania, though some reports indicate as many as 444 youth are serving LWOP sentences.<sup>3</sup> In most states, the use of JLWOP is far less common; in fact, in 10 states it is not currently used at all, in another 15 states there are fewer than 15 youth serving LWOP sentences, and in all but 4 states, there are fewer than 100 youth serving LWOP sentences. In Pennsylvania's neighboring states of New York and New Jersey, there are no children serving LWOP sentences.

In Pennsylvania, juveniles can be transferred to the adult system when they are as young as 14 years old for certain crimes, and this state is one of 23 states that have provisions for transferring youth to adult court at any age.<sup>4</sup> In many cases, the LWOP sentences that are imposed are mandatory for certain crimes. This means that the court cannot give any consideration for the child's age or life history. In most instances, the children who commit the serious crimes that result in LWOP sentences have experienced a great deal of trauma, neglect, and abuse in their short years. Sentences that close the door on rehabilitation and second chances for children are cruel and misguided. Pennsylvania sentences more 13- and 14-year-olds to life without parole than any other state; indeed, among the 73 persons sentenced to LWOP as 13- and 14-year-olds, 25% are in Pennsylvania.<sup>5</sup>

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<sup>3</sup> Human Rights Watch collected data on JLWOP sentences independently in early 2008 and reported a figure of 444 juveniles serving life without the opportunity for parole.

<sup>4</sup> National Center for Juvenile Justice, 2007.

<sup>5</sup> H.R. 4300: Juvenile Justice Accountability and Improvement Act of 2007. 110th Cong., 2d Sess. (2008) (testimony of Bryan A. Stevenson, Executive Director of the Equal Justice Initiative)

As in most states, youth of color are overrepresented in the juvenile justice system in Pennsylvania from the point of arrest through the point of placement. Currently, 77% of Pennsylvania's JLWOP population is comprised of youth of color, even higher than their representation in juvenile detention facilities, where 64% of the population is youth of color. In Pennsylvania, there are nearly three times as many black youth serving LWOP sentences as there are white youth.

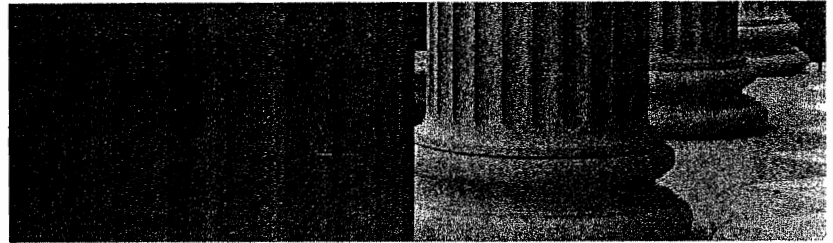
There is movement to change these laws in several states around the country; in Colorado, JLWOP was eliminated in 2005 and similar bills have been introduced in Michigan, California, Nebraska, Florida, Illinois, and Louisiana in the past few years. At the federal level, U.S. Representative Robert Scott of Virginia has introduced the Juvenile Justice Accountability and Improvement Act, which would require that juveniles receive at least one parole hearing during the first 15 years of their sentence.

Research suggests that youth are categorically less culpable than adults, lack the maturity to fully understand the implications of their actions, and are capable of turning their lives around in a positive direction. In 2005, the U.S. Supreme Court acknowledged these realities in its historic decision to overturn the death penalty for juveniles.<sup>6</sup>

Those seeking the elimination of juvenile life without parole do not advocate automatic release of these offenders, only that a parole hearing is granted so that they have an opportunity to show their progress within the system and at rehabilitation. Pennsylvania should join the growing number of efforts elsewhere in the nation by adopting legislation that would eliminate juvenile life without parole.

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<sup>6</sup> *Roper v. Simmons*, 543 U.S. 551 (2005)



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STATEMENT BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
THE SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY

September 11, 2008

*Sentencing Young Children to Die in Prison*

**BRYAN A. STEVENSON**

Equal Justice Initiative, Executive Director

*H.R. 4300, The Juvenile Justice Accountability and Improvement Act*

MR. CHAIRMAN AND COMMITTEE MEMBERS:

In the United States, dozens of 13- and 14-year-old children have been sentenced to life imprisonment with no possibility of parole after being prosecuted as adults. While the United States Supreme Court recently declared in *Roper v. Simmons* that death by execution is unconstitutional for juveniles, young children continue to be sentenced to imprisonment until death with very little scrutiny or review. A study by the Equal Justice Initiative (EJI) has documented 73 cases where children 13 and 14 years of age have been condemned to death in prison.<sup>1</sup> Almost all of these kids currently lack legal representation and in most of these cases the propriety and constitutionality of their extreme sentences have never been reviewed.

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

### **Young Children Are Different From Adults**

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<sup>1</sup> Equal Justice Initiative, *Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison* (2008), available at <http://eji.org/eji/files/20071017cruelandunusual.pdf>.



Unlike older teenagers, 14-year-olds in most states cannot get married without permission or obtain a driver's license. The law mandates that they must attend school and limits the hours they can work in after-school jobs. The law treats young adolescents differently because they *are* different. Using state-of-the-art imaging technology, scientists have revealed that adolescents' brains are anatomically undeveloped in parts of the cerebrum associated with impulse control, regulation of emotions, risk assessment, and moral reasoning. Accordingly, the neurological development most critical to making good judgments, moral and ethical decision-making, and controlling impulsive behavior is incomplete during adolescence.<sup>2</sup> As a result, young teens experience widely fluctuating emotions and vulnerability to stress and peer pressure without the adult ability to resist impulses and risk-taking behavior or the adult capacity to control their emotions.<sup>3</sup> At the same time, because a child's character is not yet fully formed, he will change and reform as he grows up.<sup>4</sup>

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<sup>2</sup> Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 Ann. N.Y. Acad. Sci. 77-85 (2004); Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 Proceedings Nat'l Acad. Sci. 8174 (2004); Elizabeth R. Sowell et al., *Mapping Cortical Change Across the Human Life Span*, 6 Nature Neuroscience 309 (2003).

<sup>3</sup> L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neuroscience & Biobehav. Revs. 417, 421 (2000); Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741, 742 (2000); Lita Furby & Ruth Beyth-Marom, *Risk Taking in Adolescence: A Decision-Making Perspective*, 12 Developmental Rev. 1, 9-11 (1992).

<sup>4</sup> *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (it would be "misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.").

While the differences between children and adults are “marked and well understood,”<sup>5</sup> children as young as 13 have found themselves in the adult criminal justice system and subject to its most severe penalties. Because of their low social status in relation to adult interrogators, beliefs about the need to obey authority, greater dependence on adults, and vulnerability to intimidation, juveniles are uniquely susceptible to coercive psychological interrogation techniques designed for adults, leading to false confessions<sup>6</sup> and undermining the reliability of the fact-finding process.<sup>6</sup> Together with their diminished understanding of rights, confusion about trial processes, limited language skills, and inadequate decision-making abilities, young children are at great risk in the adult criminal justice system.

### **Condemned Children Share Childhoods of Neglect and Abuse**

Most of the children who have been sentenced to die in prison for crimes at 13 or 14 come from violent and dysfunctional backgrounds. They have been physically and sexually abused, neglected, and abandoned; their parents are prostitutes, drug addicts, alcoholics, and crack dealers; they grew up in lethally violent, extremely poor areas where health and safety were luxuries their families could not afford.

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<sup>5</sup> *Id.* at 572-73.

<sup>6</sup> Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 1005 (2004).

“[Y]outh is more than a chronological fact . . . It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.”<sup>7</sup> During 2005, approximately 899,000 children in the 50 states, the District of Columbia, and Puerto Rico were determined to be victims of abuse or neglect. More than 60% of victims suffered neglect, 15% suffered physical abuse, 10% suffered sexual abuse, and 7% were victims of emotional maltreatment. An estimated 1460 children died due to child abuse or neglect in 2005 – a rate of 1.96 deaths per 100,000 children. More than 40% of child fatalities were attributed to neglect, while physical abuse also was a major contributor to child deaths. Nearly 80% of perpetrators of child maltreatment were parents, and another 6.8% were other relatives of the child victim.<sup>8</sup>

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

The experiences of EJI’s clients exemplify the extremely deprived and difficult backgrounds of children sentenced to die in prison. Many of these children have been victimized by physical violence and sexual abuse inflicted on them by their parents and other family members. Several of these children endured

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<sup>7</sup> *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982).

<sup>8</sup> U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2005* (Washington, DC: U.S. Government Printing Office, 2007), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm05/index.htm>.

years of sexual abuse and rape: one was repeatedly sexually assaulted beginning when he was just four years old; another boy was raped by a family member.

Ashley Jones was repeatedly threatened at gunpoint by her parents, sexually assaulted by her stepfather, forced into crack houses by an addicted mother, physically abused by family members, and abducted by a gang shortly before her crime.

Severe neglect is also common among children in this group. Joseph Jones grew up in Newark public housing, where his crack-addicted parents left him to cook, clean, and take care of his six younger siblings. At 13, Joseph's parents took him to North Carolina and abandoned him with relatives.

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

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

These adolescents suffer from drug and alcohol dependence that typically began in the womb and can be traced back through their family trees. Omer Ninham is the child of alcoholic parents and, by age ten, was drinking alcohol daily – even in the classroom, where his teachers looked the other way. Omer got his first toothbrush at age 14, when he was removed from his parents and sent to a youth home.

Tragically, these children received no effective or long-term services, even where their cries for help were early, frequent, and unmistakable. Evan Miller suffered physical and emotional abuse so severe that he tried to kill himself when he was just seven years old. By age eight, he had attempted suicide several times.

Research has shown that juveniles subjected to trauma, abuse, and neglect suffer from cognitive underdevelopment, lack of maturity, decreased ability to restrain impulses, and susceptibility to outside influences greater even than those suffered by normal teenagers.<sup>9</sup>

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

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<sup>9</sup>Nancy Kaser-Boyd, Ph.D., *Post-Traumatic Stress Disorders in Children and Adults: The Legal Relevance*, 20 W. St. U. L. Rev. 319 (1993).

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

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

EJI conducted a nationwide investigation to determine how many people in the United States are serving sentences of life imprisonment with no possibility of parole for crimes committed when they were 13 or 14 years old. By reviewing court decisions, searching media reports, and collecting information from state departments of corrections and from prisoners directly, we have identified **73** people who are serving sentences to die in prison for crimes they committed at age 13 or 14. These 73 children sentenced to death in prison are serving their sentences in just **19** states: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Illinois, Iowa, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Pennsylvania, South Dakota, Tennessee, Washington, and Wisconsin.

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

## **Sentencing Children to Death in Prison Violates the U.S. Constitution and International Law**

Nearly 2500 juveniles (age 17 or younger) in the United States have been sentenced to life imprisonment without parole. These cases raise important legal, penological, and moral issues. EJI believes that such a harsh sentence for the youngest offenders is cruel and unusual in violation of the Eighth Amendment to the United States Constitution. These children should be re-sentenced to parole-eligible sentences as soon as possible.

The Eighth Amendment to the United States Constitution prohibits “cruel and unusual punishments.” To determine which punishments are cruel and unusual, courts look to “the evolving standards of decency that mark the progress of a maturing society.”<sup>10</sup> The analysis includes measuring the blameworthiness of children against the harshness of the penalty and looking at how frequently the penalty is imposed.<sup>11</sup>

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<sup>10</sup> *Roper*, 543 U.S. at 561 (quoting *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958) (plurality opinion)).

<sup>11</sup> In *Furman v. Georgia*, 408 U.S. 238 (1972), the Court struck down Georgia’s statute “under which the death penalty was ‘infrequently imposed’ upon ‘a capriciously selected random handful.’” *Godfrey v. Georgia*, 446 U.S. 420, 438 (1980) (Marshall, J., concurring) (citing *Furman*, 408 U.S. at 309-10 (Stewart, J., 34 concurring)); see also *id.* at 439 n.9 (noting that, in *Furman*, Justices Stewart and White “concurred in the judgment largely on the ground that the death penalty had been so infrequently imposed that it made no contribution to the goals of punishment.”). In *Coker v. Georgia*, 433 U.S. 584, 596-97 (1977), the Court looked to the rarity of death sentences for rape of an adult woman in concluding that the death penalty is an unconstitutionally cruel and unusual punishment for that crime. Likewise, in *Thompson v. Oklahoma*, 487 U.S. 815 (1988), a plurality of the Court determined that contemporary standards of decency did not permit the execution of offenders under the age of 16 at the time of the crime, noting that the death penalty was imposed on offenders under 16 with exceeding rarity. *Id.* at 832-33. When *Atkins v. Virginia*, 536 U.S. 304 (2002), was decided, only a minority of states permitted the

A sentence of imprisonment until death is a different and harsher punishment when inflicted on a young child.<sup>12</sup> In striking down a life without parole sentence imposed on a 13-year-old, the Nevada Supreme Court characterized it as a “denial of hope” and said that “it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the defendant], he will remain in prison for the rest of his days.”<sup>13</sup>

The United States Supreme Court has held:

**When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.**<sup>14</sup>

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

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execution of persons with mental retardation, “and even in those States it was rare. On the basis of these indicia the Court determined that executing mentally retarded offenders ‘has become truly unusual, and it is fair to say that a national consensus has developed against it.’” *Roper*, 543 U.S. at 563 (citations omitted); *see also id.* at 564 (“*Atkins* emphasized that even in the 20 States without formal prohibition, the practice of executing the mentally retarded was infrequent. Since *Penry*, only five States had executed offenders known to have an IQ under 70.”).

<sup>12</sup> *Hampton v. Kentucky*, 666 S.W.2d 737, 741 (Ky. 1984) (“life without parole for a juvenile, like death, is a sentence different in quality and character from a sentence to a term of years subject to parole.”).

<sup>13</sup> *Naovarath v. Nevada*, 779 P.2d 944, 948-49 (Nev. 1989).

<sup>14</sup> *Roper*, 543 U.S. at 573-574.



Sentences of life imprisonment with no parole also violate international law. The United States is the only country in the world where a 13-year-old is known to be sentenced to life in prison without the possibility of parole. The Convention on the Rights of the Child, ratified by every country except the United States and Somalia, forbids this practice and at least 132 countries have rejected the sentence altogether.<sup>15</sup>

The International Covenant on Civil and Political Rights, to which the United States became a party in 1992, prohibits life without parole sentencing for juveniles.<sup>16</sup> The official implementation body for the Convention Against Torture, Cruel, Inhuman or Degrading Treatment or Punishment recently commented that life imprisonment for children “could constitute cruel, inhuman or degrading treatment or punishment” in violation of the Convention.<sup>17</sup> Further, the United Nations General Assembly passed by a 185-1 vote (the United States voted against) a resolution calling upon all nations to “abolish by law, as soon as possible, the death penalty and life imprisonment without possibility for release for those under the age of 18 years at the time of the commission of the offence.”<sup>18</sup>

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<sup>15</sup> Connie de la Vega & Michelle Leighton, *Special Report on Human Rights Violations in Sentencing Children to Die in Prison: State Practice of Imposing Life Without Possibility of Parole* 5 (2007).

<sup>16</sup> Human Rights Committee, *Concluding Observations of the Human Rights Committee on the United States of America*, ¶ 34, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006) (determining that life without parole sentencing for children does not comply with articles 7 or 24(1) of the ICCPR).

<sup>17</sup> Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: United States of America*, ¶ 34, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006).

<sup>18</sup> G.A. Res. 61/146, ¶ 31(a), U.N. Doc. A/Res/61/146 (Jan. 23, 2007).

## **Conclusion**

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

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

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

