

OCD | Special Report

Imprisoned Forever: Sentencing Juveniles to Life in Prison Without Parole

No nation in the world sentences more children convicted of major felonies to life in prison without the chance of parole than the United States. Today, America's prisons hold at least 2,380 inmates serving life without parole for crimes they committed when they were under the age of 18.¹ Israel is a distant second with 7—a population that would only account for about 2 percent of current Pennsylvania inmates who were sentenced to life without parole as juveniles.

Even children just beginning their teenage years have received such sentences. In a recent study, the nonprofit Equal Justice Initiative documented 73 cases of 13- and 14-year-old children who have received life sentences without the possibility of parole.

The sizable U.S. population of inmates who were sentenced to life without parole when they were children is largely the result of major shifts in America's approach to juvenile justice that began more than a decade ago when the nation experienced a brief but significant increase in juvenile crime and rising concern about youth violence. Those changes included laws that make it easier—and in some cases, mandatory—to transfer the cases of young offenders from juvenile courts that focus on rehabilitation to criminal court, where they are treated as adults and subjected to adult sentences, including the harshest allowed by law.

Characteristics of Juveniles Sentenced to Life Without Parole

The U.S. prison inmates sentenced to life without parole when they were children were convicted in criminal court of committing major felonies. Most were convicted of homicide. Their roles in those crimes vary, however.

Studies suggest that a majority of these children did not act alone and that a significant number did not commit the actual murder. The Equal Justice Initiative study also identified several 13- and 14-year-old children who were sentenced to life in prison without parole for nonhomicide offenses.

For the majority of these juveniles, the crime that resulted in a life without parole sentence was the first they had committed. In a national study, researchers found that in 59 percent of juvenile life without parole cases surveyed, the juvenile was a first-time offender with no juvenile or adult criminal record.²

In all cases, juveniles sentenced to life without parole were convicted of crimes committed during a period in their lives when adolescents undergo profound biological and social changes and often experience heightened peer pressure, yet have a limited ability to comprehend risks and consequences.

As an inmate population, they are the most vulnerable. Research suggests that children serving time in adult prisons are the most likely population to experience physical and sexual abuse from other inmates.

A recent study of California inmates serving life without parole for crimes committed when they were juveniles offers a detailed profile of this prison population.

California's Juvenile Lifers

An estimated 227 youths have been sentenced to life in prison without the chance of parole in California, which is among the highest totals in the nation.³ By comparison, the Pennsylvania Department of Corrections reports that 360 inmates in prison across the commonwealth are serving sentences of life without parole that were imposed when they were under the age of 18 years.⁴

The nonprofit Human Rights Watch studied California inmates who received sentences of life without parole when they were juveniles. The study relied on a range of data, including court records, California Department of Corrections and Rehabilitation records, survey responses from 130 of the inmates, and in-person interviews with about 10 percent of those serving life without parole for crimes committed as a minor.⁵

The vast majority of those 17 years old and younger sentenced to life without the possibility of parole were convicted of murder. However, in 45 percent of the homicide cases surveyed, juveniles sentenced to life without parole did not commit the murder. One, for example, was a lookout in a car theft that ended in murder. Another sat in the getaway car during a burglary that resulted in a murder committed by his codefendant. Another juvenile participated in a robbery that resulted in an unplanned killing.

In nearly 70 percent of cases in which the juvenile was not acting alone, at least one of the codefendants was an adult. The study found that in 56 percent of cases in which there was an adult codefendant, the juvenile was sentenced to life without parole while the adult codefendant received a lower sentence that offered the possibility of later release from prison.

The study reports that 85 percent of the juveniles who were sentenced to life without parole in California were non-White and that 75 percent of all cases involved African American or Hispanic youth.

In financial terms, the study estimated that the current juvenile life without parole population in California will cost the state's taxpayers about \$500 million by the end of their lives.

13- and 14-Year-Olds

A study by the nonprofit Equal Justice Initiative identified 73 inmates nationwide who were 13 or 14 years old when sentenced to life in prison without parole. These cases were confined to 19 states. Pennsylvania's 18 cases of 13- and 14-year-olds sentenced to life without parole is the highest in the nation, followed by Florida with 15 cases. Pennsylvania is also one of only six states that have sentenced children as young as 13 years old to life without parole.

Nationwide, nearly 49 percent of the 13- and 14-year-old children who received these sentences were African American, 30 percent were White, about 10 percent were Hispanic, and the others were of various racial and ethnic backgrounds, including Native American and Asian American. The majority of these children were from low-income families.

In the vast majority of cases, these children received their sentences as a result of a homicide conviction. However, the study identified six 13- and 14-year-olds who received a sentence of life without parole for crimes that did not result in a death.

One nonhomicide, for example, involved a 13-year-old Florida youth who was convicted with an adult codefendant for sexual battery. The study reported that due to the lack of physical evidence, the prosecution was unable to prove which of the two defendants committed the offense. In another non-homicide case, a 14-year-old California youth

was convicted with a 27-year-old codefendant of aggravated kidnapping. The youth was in a car with the older codefendant and another man, who, after a police chase, claimed he had been kidnapped, according to the report. No one was injured during the crime.

Not Like Adults

Adolescents who commit crimes do so during a tumultuous stage in their development that is marked by profound biological, psychological, emotional, and social changes.

Puberty, for example, is accompanied by physical changes and the onset of sexual maturity, but it also sparks new drives, impulses, emotions, motivations, changes in arousal, behaviors, and experiences that challenge an adolescent's self-regulation abilities. Changes in arousal and motivation tend to outpace more slowly developing self-regulation abilities⁶—a situation scientists liken to starting the engine of a car with an inexperienced and unskilled driver behind the wheel.

While much of the brain develops during the first few years of life, shaped by both biology and experience, important stages of development continue through a child's adolescent and teenage years. Recent research reveals that several key regions of the brain, including areas of the frontal cortex and the cerebellum, undergo remodeling during adolescence. These studies have demonstrated that much of the brain development during adolescence occurs in the regions and systems that play critical roles in regulating behavior and emotion and in perceiving and evaluating risk.

Researchers also have found that risk taking and poorly regulated behavior tend to lessen with maturity, suggesting that as children age they are amenable to change.

Today, the role of such factors in determining whether children are tried as adults or the type of sentences those convicted of serious felonies receive is limited in most states by statutes that establish sentencing guidelines in criminal courts and statutes that directly transfer the cases of children charged with major felonies to criminal court.

Juveniles and the Adult Criminal Justice System

The U.S. juvenile court system began to emerge in the late 19th century as the nation came to embrace the notion that children charged with crimes should be treated differently than adults in the criminal justice system. Proponents of a separate juvenile court argued that children were not only deserving of more compassion and should be spared the harshest punishment, but that they were also more amenable to reform and rehabilitation.

The juvenile court system that developed in states across the nation over the next 100 years focused on rehabilitating

young offenders rather than simply punishing them. Separate courts were established along with specialized facilities, such as juvenile detention centers, training schools, and centers that provided a structured environment for addressing the educational, psychological, and vocational needs of children or juvenile offenders.⁷

In addition, judicial decisions over that period provided juveniles charged with crimes with many of the same legal protections found in adult courts to ensure fair treatment under the law, including the right to legal counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination.

But such trends began to shift in the late 1980s, when states began to respond to rising juvenile crime rates by enacting laws that challenged the juvenile justice system's focus on reform and rehabilitation and allowed for more punitive action to be taken against serious offenders.

Today, all states have mechanisms to handle juveniles in adult criminal court.

Super Predators

The nation witnessed a steady increase in juvenile crime, particularly violent crime, from the late 1980s through 1994, when a historically high level of youth violence swept America. This rise in violence led to a notion advanced by the news media and selected academics that there was a new breed of violent and incorrigible juvenile "super predator."

The super predator theory held that this generation of young offenders was more coldhearted, more violent, and less amenable to reform or rehabilitation than its predecessors. The controversial theory was later empirically discredited. In fact, even while it was being advanced, juvenile crime rates began to decline. For example, between 1994 and 1998, juveniles arrested for Violent Crime Index offenses—murder, forcible rape, robbery, and aggravated assault—fell 19 percent, compared to a 6 percent decline in adults arrested for similar felonies.⁸

"Starting around 1994, juvenile and adult crime started dropping, and we now have ended up with crime rates that are around the lowest in 30 years," said Edward P. Mulvey, University of Pittsburgh professor of psychiatry, Law and Psychiatry Program at the Western Psychiatric Institute and Clinic. "If the super predator idea was accurate, there still would have been a large pool of very, very troubled and troubling children out there. They just didn't exist. That's not to say there are not damaged and problem children, but there is not the wave of inevitably damaged children that

was predicted."

The controversy over this theory, however, did not prevent widespread changes from being made to the way juveniles are dealt with in state justice systems across the nation that have led greater numbers of child offenders to be tried, convicted, and sentenced in adult criminal courts.

Transfers to Criminal Court

The most common response of policymakers to concerns over juvenile crime rates and the notion that juvenile offenders were growing more violent was to enact judicial transfer statutes that made it easier or mandatory to send the cases of juveniles charged with violent crimes and other serious felonies to adult criminal courts. All but six states enacted such statutes between 1992 and 1997.⁹

"Each state did it in slightly different ways, but the overwhelming trend was to greatly expand the net to include a wide range of crimes that were, by statute, to be automatically processed in adult court," Mulvey said. "As a result, the system saw an influx of children transferred into the adult system."

Today, all states have mechanisms to handle juveniles in adult criminal court. The most common is the judicial waiver, which 46 states have adopted, including Pennsylvania. This authorizes or requires juvenile court judges to waive jurisdiction over certain cases involving minors to allow them to be prosecuted in adult criminal courts. Statutes in 15 states give prosecutors discretion to file certain kinds of cases in juvenile or criminal court. And 29 states, including Pennsylvania, have laws that exclude serious felonies from being tried in juvenile court and require that they be transferred for trial in criminal court.¹⁰

Pennsylvania is one of 25 states that have laws that provide some mechanism that allows the court to consider transferring the case of a juvenile being prosecuted as an adult in criminal court back to juvenile court. Reverse waiver provisions allow the attorney for a juvenile charged in criminal court to petition to have the case transferred to the juvenile justice system.

Sentencing Guidelines

Criminal court judges in most states are limited by statute in considering evidence that might mitigate the sentence of convicted offenders. Federal and state statutes limit the ability of judges to take individual circumstances of a convicted offender into account by prescribing sentencing guidelines and setting mandatory minimum sentences.

As a result, factors such as the minor's age, educational

level, developmental factors, emotional maturity, and family history typically have limited, if any, impact on the sentencing of juvenile offenders who have been convicted in criminal court.

Life Without Parole

The nation witnessed a significant increase in the number of juveniles sentenced to life in prison without parole in the aftermath of new laws that made it easier or mandatory to try juveniles charged with major felonies in adult criminal court. Between 1990 and 2000, the number of juveniles receiving life without parole increased by 216 percent, despite a nearly 55 percent decline in the number of juveniles convicted of murder.¹¹

The estimated 360 inmates in Pennsylvania prisons who received life sentences without the chance of parole as juveniles is among the highest such totals in the nation. The reason, however, is unclear. Juvenile justice organizations in the commonwealth have begun to investigate those cases to gain a better understanding of why that prison subpopulation in Pennsylvania outranks most states, said Michael Pennington, director of the Office of Juvenile Justice and Delinquency Prevention at the Pennsylvania Commission on Crime and Delinquency.

One possible reason for the high ranking might be the fact that Pennsylvania has always transferred the cases of juveniles charged with homicide directly to criminal court. "But without looking at the data and each of these [life in prison without parole] cases, it is difficult to pinpoint why this happened," Pennington said.

Pennsylvania has achieved the high national ranking of juveniles sentenced to life without parole despite laws that allow juveniles charged in criminal court to petition to have their cases tried in the juvenile justice system. Pennsylvania also is considered a leader in juvenile crime prevention due to its community-based prevention initiatives and focus on evidence-based delinquency prevention.

U.S. Policy

While Tanzania and South Africa have become the latest nations to officially state they will consider parole for juveniles in all cases,¹² the United States continues to resist the trend that has seen 135 nations abolish the sentence of life without parole for children under the age of 18. Although 10 nations in addition to the United States have laws that allow for sentencing young offenders to life without the chance of parole, only in Israel have the courts done so.

The U.S. federal government and 44 states today allow criminal court judges to impose sentences of life in prison without parole on juveniles. Of those states, 13—including Pennsylvania—allow sentencing a child of any age to life without parole; one state sets the age limit at 8 years; 18 states allow the sentence to be applied to a child as young as 10 years; 20 states allow the sentence to be imposed on children as young as 12 years; and 13 states set the minimum age at 14 years.

Sentences of life imprisonment without parole violate the 1990 Convention on the Rights of the Child. However, the United States is one of only two nations—Somalia is the other—that has not ratified the Convention on the Rights of the Child.

References

Equal Justice Initiative (2007). *Cruel and Unusual: Sentencing 13- and 14-Year-old Children to Die in Prison*. Montgomery, Ala.: Equal Justice Initiative. www.eji.org/eji/files/20071017cruelandunusual.pdf

Human Rights Watch (2008). "When I Die, They'll Send Me Home: Youth Sentenced to Life Without Parole in California." *Human Rights Watch*, 20, 1. www.hrw.org/reports/2008/us0108/us0108web.pdf

This Special Report, written by Jeffery Fraser, is largely based on interviews and on the publications cited above. It is not intended to be an original work but a summary for the convenience of our readers. References noted in the text follow:

¹ Leighton, M. and de la Vega, C. (2007). *Sentencing Our Children to Die in Prison: Global Law and Practice*. San Francisco, Calif.: The Center for Law and Global Justice, University of San Francisco School of Law. www.law.usfca.edu/home/CenterforLawandGlobalJustice/Juvenile%20LWOP.html

² Human Rights Watch and Amnesty International (2005). *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, October 2005. www.hrw.org/reports/2005/us1005/index.htm, pp. 27–28.

³ Ibid.