Inhuman sentencing of children in the United States of America

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1. Capital punishment is unlawful for persons under 18 at the time of the offence and sentences of corporal punishment are unavailable for all persons. However, life imprisonment is lawful in all parts of the country and life imprisonment without the possibility of release remains lawful for homicide–related offences in 38 of states and in the federal criminal system.1

2. The minimum age of criminal liability is set at the federal and state level. At the state level, 33 states set no minimum age of criminal responsibility, theoretically allowing a child to be sentenced to criminal penalties at any age, though in most of these states a capacity related test is applied.2

3. The majority of states permit child offenders to be tried in adult criminal court, although the extent to and means by which they do so varies.3 Eight States routinely permit children aged 17 to be tried under the adult jurisdiction4 while a further two routinely permit children to be tried as adults from the age of 16.5

Legality of inhuman sentencing

Life imprisonment

4. Life imprisonment remains lawful as a sentence for offences committed while under the age of 18 in all 50 states and the District of Colombia. Life imprisonment without the possibility or release is lawful for child offenders in 38 states.6

5. The Supreme Court has set limits on when states can impose life imprisonment without the possibility of release. In 2010, the Court declared that such sentences could not be imposed for non–homicide offences committed as a child7 and in 2012 that mandatory life imprisonment without parole sentences

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4 Georgia, Louisiana, Michigan, Missouri, New Hampshire, South Carolina, Texas and Wisconsin, as per Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book, 2011 updated in accordance with Council of Juvenile Correctional Administrators, “Illinois raises age of juvenile court jurisdiction” 8 July 2013 and Juvenile Justice Information Exchange, “Massachusetts Increases Juvenile Court Jurisdiction to Include 17-Year-Olds@ 26 September 2013.

5 New York and north Carolina. Ibid.


cannot be imposed for an offence committed while under the age of 18.  

6. At the time of writing, litigation was underway in state courts to determine whether the ban on mandatory life sentences applies to the sentencing of all people serving sentences of life imprisonment without the possibility of parole for an offence committed while under the age of 18, or only for those sentenced since the 2012 Supreme Court decision, but no consistent position had been adopted across the United States. Seven States have held that the ban on mandatory life without parole sentences applies to all such sentences, while courts in four states have taken the more restrictive interpretation.

**Death penalty**

7. The death penalty is unlawful and unconstitutional for persons under 18 at the time of the offence.  

8. Twenty states permitted the imposition of capital punishment on juvenile offenders until 2005, when a judicial challenge was heard by the United States Supreme Court. Citing the federal prohibition on cruel and unusual punishment, the Court declared the juvenile death penalty to be unconstitutional and outlawed the practice.

**Corporal punishment**

9. Corporal punishment is not a lawful sentence for any offence. While there is some suggestion that sentences of corporal punishment for criminal offenders might be unconstitutional, the Supreme Court has yet to expressly rule on the matter. Notwithstanding the lack of a formal national prohibition, corporal punishment remains unavailable as a sentence for all offenders in the United States as the federal government and all 50 states have abolished the practice.

**Inhuman sentencing in practice**

**Life imprisonment**

10. There are an estimated 7,626 persons in 47 states serving sentences of life imprisonment for offences committed when they were under the age of 18, 2,574 of whom were sentenced to life imprisonment without parole. Other sources report slightly different figures. According to the research conducted by

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11 While some statutes providing for the capital punishment of juveniles still appear in various state criminal codes, these laws have been ruled unconstitutional and are hence unenforceable. See Roper v. Simmons, 543 U.S. 551 (2005). For a case summary and a link to the full judgment, see http://www.crin.org/Law/instrument.asp?InstID=1433.
12 These states were Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, Utah and Virginia.
13 United States Constitution, Amendment VIII.
15 See Ingraham v. Wright, 430 U.S. 651 (1977); United States Constitution, Amendment VIII.
16 See JRank, American Law and Legal Information, Crime and Criminal Law, Corporal Punishment – Prevalence, available at http://law.jrank.org/pages/737/Corporal-Punishment-Prevalence.html; “The last two states to use corporal punishment as a judicial penalty were Maryland, where it was seldom inflicted before being abolished in 1952, and Delaware, where the last flogging took place in 1952 although formal abolition did not occur until 1972. Corporal punishment remains available, however, as a penalty for serious breaches of prison discipline in a number of states. Milder forms of corporal punishment for students remain a possible penalty in many states.”
17 This figure was determined using a combination of the data provided in The Sentencing Project’s report No Exit: The Expanding Use of Life Sentences in America (available at
the Campaign for the Fair Sentencing of Youth, 2494 people are serving sentences of life imprisonment without the possibility of parole in the United States for offences committed while under the age of 18.\textsuperscript{18} The Sentencing Project estimated that the figure exceeded 2,500 in April 2014.\textsuperscript{19}

**International human rights mechanisms**

11. During the first cycle of the Universal Periodic Review in 2010, Switzerland, Belgium, Austria and Slovakia recommended that the United States abolish life imprisonment without the possibility of parole for child offenders.\textsuperscript{20} In 2014, the Human Rights Committee recommended that the United States "prohibit and abolish the sentence of life imprisonment without parole for juveniles, irrespective of the crime committed" and ensure that juveniles are not transferred to adult courts.\textsuperscript{21}

12. In 2014, the UN Committee on the Elimination of Racial Discrimination expressed concern at the racial disparities in the sentencing of children, including to life imprisonment without parole, and recommended that the State abolish life imprisonment without the possibility of parole for all offences committed while under the age of 18. In 2006, the UN Committee Against Torture recommended that the State address sentences of life imprisonment of children, as they could constitute cruel, inhuman or degrading treatment or punishment.\textsuperscript{22}

**The review of the United States of America by the members of the Human Rights Council**

13. In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment of child offenders and the specific recommendations made to the United States of America by members of the Human Rights Council during the first cycle of the Universal Periodic Review, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee Against Torture, we hope that the members of the Human Rights Council will urge the government of the United States to:

- Explicitly prohibit and enforce prohibitions all forms of life imprisonment for persons under 18 years of age, under all systems of justice and without exception to ensure full compliance with international standards;
- Raise the minimum age of criminal responsibility in all States;


22 UN Committee Against Torture, *Conclusions and recommendations on the second periodic report of the United States of America*, CAT/C/USA/CO/2, para. 34.
• Prohibit the trial and sentencing of children as adults; and
• Provide disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.