

## Inhuman sentencing of children in the United States of America

Briefing for the 22<sup>nd</sup> session of the Human Rights Council Universal Periodic Review in May 2015.

Submitted by the Child Rights International Network (CRIN) ([www.crin.org](http://www.crin.org)), September 2014.

### **Inhuman Sentencing of children in the United States of America**

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.<sup>1</sup>
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.<sup>2</sup>
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.<sup>3</sup> Eight States routinely permit children aged 17 to be tried under the adult jurisdiction<sup>4</sup> while a further two routinely permit children to be tried as adults from the age of 16.<sup>5</sup>

### **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 Columbia. Life imprisonment without the possibility of release is lawful for child offenders in 38 states.<sup>6</sup>
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 child<sup>7</sup> and in 2012 that mandatory life imprisonment without parole sentences

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<sup>1</sup> See Campaign for the Fair Sentencing of Youth, “How many people are serving in my state” for updated figures. Available at: <http://fairsentencingofyouth.org/reports-and-research/how-many-people-are-serving-in-my-state/>.

<sup>2</sup> Cipriani, D. Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective, Ashgate 2009, p. 221 and 222.

<sup>3</sup> For full details of the relevant state laws, see the Campaign for Youth Justice, *Stat Trends Legislative Victories from 2011 – 2013 Removing Youth from Adult Criminal Justice System*, October 2013. Available at: <http://www.scribd.com/doc/174873850/State-Trends-Legislative-Victories-from-2011-2013-Removing-Youth-from-the-Adult-Criminal-Justice-System-October-2013>.

<sup>4</sup> 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.

<sup>5</sup> New York and North Carolina. *Ibid.*

<sup>6</sup> See Campaign for the Fair Sentencing of Youth, “How many people are serving in my state” for updated figures. Available at: <http://fairsentencingofyouth.org/reports-and-research/how-many-people-are-serving-in-my-state/>.

<sup>7</sup> *Graham v. Florida*, 560 U.S. \_\_\_ (2010). For a summary of the case, see <http://www.crin.org/Law/instrument.asp?InstID=1464>, or to review court documents related to the case, visit <http://www.scotusblog.com/case-files/cases/graham-v-florida/>. For further information on what this case means for children's rights, see *Supreme Court limits use of life without parole sentences for children in conflict with the law*, Child Rights Information Network, available at <http://www.crin.org/resources/infoDetail.asp?ID=22609&flag=news>.

cannot be imposed for an offence committed while under the age of 18.<sup>8</sup>

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,<sup>9</sup> while courts in four states have taken the more restrictive interpretation.<sup>10</sup>

### *Death penalty*

7. The death penalty is unlawful and unconstitutional for persons under 18 at the time of the offence.<sup>11</sup>

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.<sup>12</sup> Citing the federal prohibition on cruel and unusual punishment,<sup>13</sup> the Court declared the juvenile death penalty to be unconstitutional and outlawed the practice.<sup>14</sup>

### *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,<sup>15</sup> 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.<sup>16</sup>

## **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.<sup>17</sup> Other sources report slightly different figures. According to the research conducted by

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<sup>8</sup> Miller v. Alabama [2012] No. 10-9646. Available at: <http://www.supremecourt.gov/opinions/11pdf/10-9646g2i8.pdf>.

<sup>9</sup> See *State of Nebraska v. Casteneda*, 287 Neb 289; *On the application for a writ of habeas corpus*, No. AP-76,964, Supreme Court of Texas; *Illinois v. Davis* [2014] IL 115595, Supreme Court of Illinois; *Iowa v. Lyle* [2014] No. 11-1339; *Petition of the State of New Hampshire*, No. 2013-566, Supreme Court of New Hampshire.

<sup>10</sup> Louisiana, Michigan, Minnesota and Pennsylvania as per the Campaign for the Fair Sentencing of Youth, “New Hampshire rules Miller is retroactive” 2 September 2014. Available at: <http://fairsentencingofyouth.org/2014/09/08/new-hampshire-rules-miller-is-retroactive/>.

<sup>11</sup> 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>.

<sup>12</sup> 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.

<sup>13</sup> United States Constitution, Amendment VIII.

<sup>14</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>15</sup> See *Ingraham v. Wright*, 430 U.S. 651 (1977); United States Constitution, Amendment VIII.

<sup>16</sup> 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.”

<sup>17</sup> 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.<sup>18</sup> The Sentencing Project estimated that the figure exceeded 2,500 in April 2014.<sup>19</sup>

### 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.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup>

### 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;

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[http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=280&id=106](http://www.sentencingproject.org/detail/publication.cfm?publication_id=280&id=106)) and *State Distribution of Estimated 2,574 Juvenile Offenders Serving Juvenile Life Without Parole*, an update to Human Rights Watch and Amnesty International's joint report *The Rest of Their Lives: Life without Parole for Child Offenders in the United State*, first published in 2005 (Updated table available at <http://www.hrw.org/en/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole>; original report available at <http://www.hrw.org/en/reports/2005/10/11/rest-their-lives>). *No Exit* lists 6,807 juvenile offenders serving sentences of life imprisonment, including 1,755 without the possibility of parole. Because *No Exit* uses figures that track states' definitions of juvenile offender and hence exclude some persons under 18 serving sentences of life imprisonment where they were ineligible for juvenile court jurisdiction, the figure provided for juveniles serving life sentences without the possibility of parole has been replaced with the comparable and more robust figure of 2,574 provided in *State Distribution*. Even with this substitution, this figure still likely underestimates the total number of persons serving sentences of life imprisonment for offences committed when they were under the age of 18 given the varying definition of juvenile offender in *No Exit*.

<sup>18</sup> Figures available at: <http://fairsentencingofyouth.org/reports-and-research/how-many-people-are-serving-in-my-state/>.

<sup>19</sup> The Sentencing Project, *Juvenile Life Without Parole: An Overview*, 2 April 2014. Available at: [http://sentencingproject.org/doc/publications/jj\\_Juvenile%20Life%20Without%20Parole.pdf](http://sentencingproject.org/doc/publications/jj_Juvenile%20Life%20Without%20Parole.pdf).

<sup>20</sup> *Report of the Working Group on the Universal Periodic Review: United States of America*, A/HRC/16/11, 4 January 2011.

<sup>21</sup> UN Human Rights Committee, *Concluding observations on the fourth periodic report of the United States of America*, CCPR/C/USA/CO/4, 23 April 2014, para. 23.

<sup>22</sup> 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.