



CATEGORICALLY LESS CULPABLE

CHILDREN SENTENCED TO LIFE WITHOUT POSSIBILITY OF PAROLE IN ILLINOIS

The Illinois Coalition for the Fair Sentencing of Children

Many photos throughout this book, including the cover photo, were generously donated by and are reprinted with permission from Steve Liss, a Soros Justice Media Fellow, whose work has focused, in part, on documenting the lives of children in juvenile detention facilities. These photographs were taken inside juvenile detention facilities, but the children depicted here are not serving life without parole sentences in Illinois.

This book also includes photographs of several individuals now serving sentences in Illinois of life without parole for crimes committed when they were juveniles. Each of these images is used with the permission of the individual's family.

ABOUT THE ILLINOIS COALITION FOR THE FAIR SENTENCING OF CHILDREN

The Illinois Coalition for the Fair Sentencing of Children is a network of attorneys, academics, child advocates, and concerned citizens who believe it is inappropriate to sentence children under the age of 18 to life in prison without parole. It is comprised of the following member organizations:

- American Civil Liberties Union of Illinois
- DLA Piper
- Human Rights Watch, Chicago Committee
- John Howard Association of Illinois
- Juvenile Justice Initiative
- Law Office of the Cook County Public Defender
- Children and Family Justice Center, Bluhm Legal Clinic, Northwestern University School of Law
- Edwin F. Mandel Legal Aid Clinic, University of Chicago School of Law



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ACKNOWLEDGMENTS

Each member of the Illinois Coalition for the Fair Sentencing of Children's Advisory Board (listed individually below) made a significant contribution to this report over the past two years, providing research strategy advice, identifying and organizing volunteers, and offering valuable commentary on drafts.

In particular, Betsy Kalven of the Children and Family Justice Center and Aarti Kotak of DLA Piper US LLP handled the painstaking process of identifying the inmates serving juvenile life without possibility of parole in Illinois, investigating each inmate's case, developing prisoner questionnaires, and scheduling almost 100 prison interviews across the state. Elizabeth Kooy of the Juvenile Justice Initiative analyzed the information gathered through this process and produced the charts and maps included herein. Anne Geraghty of DLA Piper was responsible for researching and drafting the report. Her contributions to the success of this project were invaluable. She received research assistance from Nicole Miller and Sarah Silins.

We are also grateful to Lauren Adams and Richard Klawiter, who were integral to the creation and vision of the Coalition, as well as Alison Parker and Deborah LaBelle, who provided us with our initial data about those serving life sentences in Illinois.

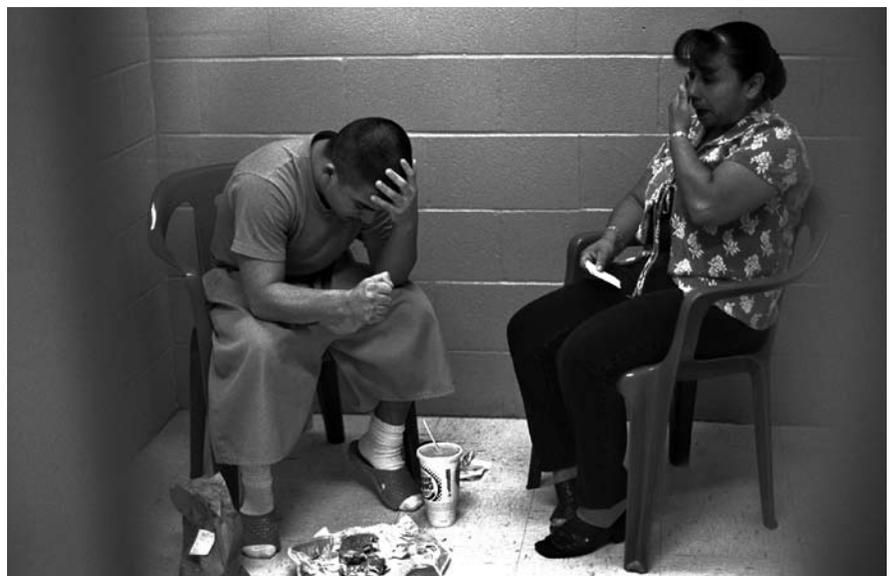


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Librarians and support staff at DLA Piper helped us gather information on the individuals serving life without possibility of parole, and Toni Curtis at the Children and Family Justice Center provided valuable logistical support throughout. Volunteers, including attorneys and summer associates at DLA Piper, law students from Northwestern University School of Law and the University of Chicago, and attorneys from Vedder Price and Goldberg Cohen traveled long distances to interview almost 100 individuals. There are too many volunteers to recognize each individually, but we could not have completed the report without their generous assistance.

We are also grateful to Steve Liss, Soros Justice Media Fellow, for donating his photographs to us, and to the Illinois Department of Corrections for graciously allowing us into their facilities for interviews. In particular, we would like to thank Deanne Benos, Randy Grounds, and Lori Killam.

Thank you to the family members of crime victims who spoke with us over the past two years and educated us about the perspectives and unmet needs of victims' families. We have tried to fashion recommendations that account for their concerns, and we hope that this report will help initiate a constructive dialogue about this complex and difficult issue.

Finally, we are grateful to all the prisoners in Illinois serving juvenile life without possibility of parole, as well as their family members, who took the time to complete our surveys and to speak with us. Their honesty and willingness to share their thoughts were critical to this project as a whole.

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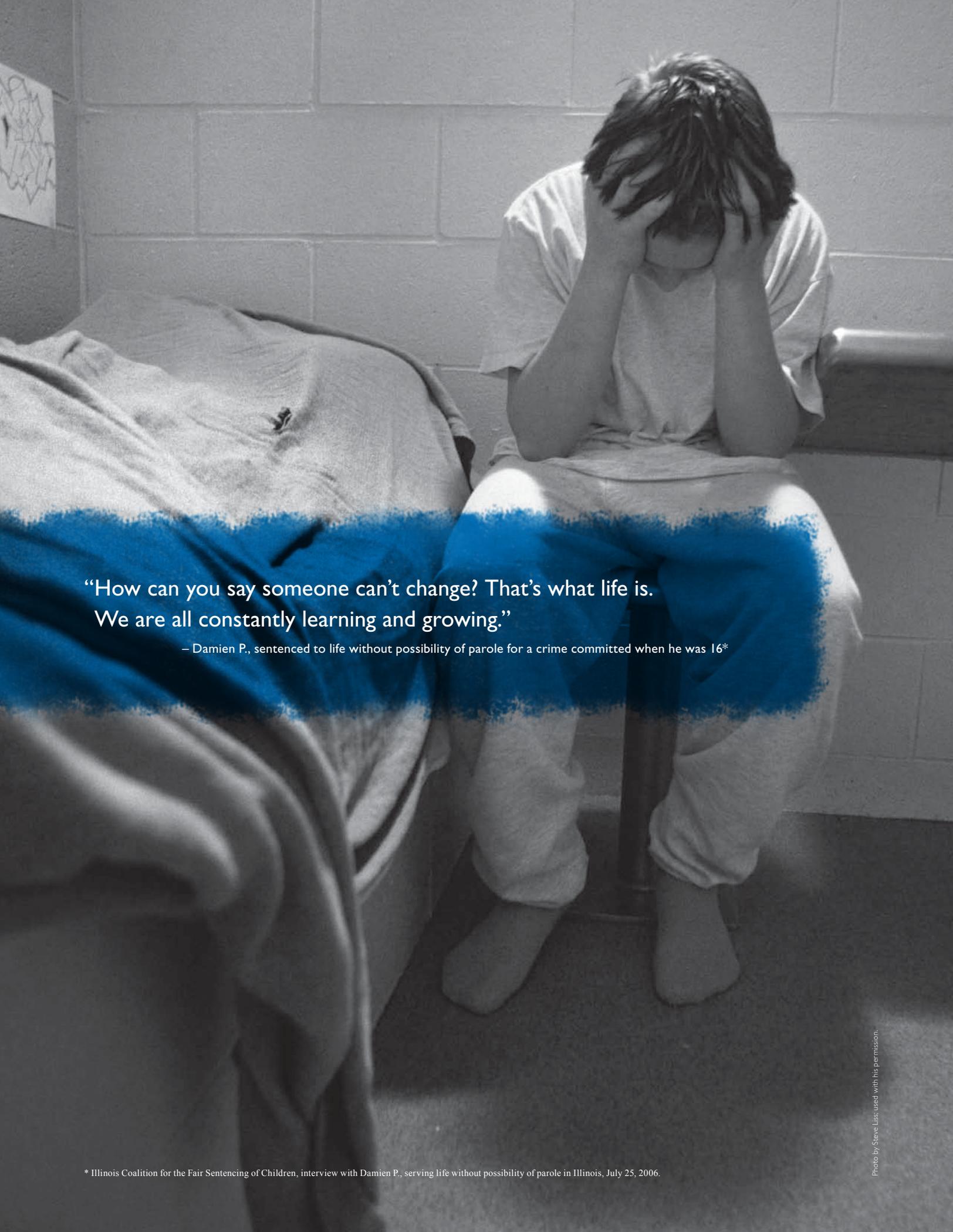
Malcolm Young, John Howard Association of Illinois



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“How can you say someone can’t change? That’s what life is.
We are all constantly learning and growing.”

– Damien P., sentenced to life without possibility of parole for a crime committed when he was 16*

* Illinois Coalition for the Fair Sentencing of Children, interview with Damien P., serving life without possibility of parole in Illinois, July 25, 2006.

EXECUTIVE SUMMARY

What should we as a society do when our youngest citizens commit the most serious crimes? In the late 1970s, the Illinois legislature answered that question by passing a series of measures to address what was then seen as an upward spiral in youth crime.¹ The measures included a provision that authorized—and in many cases mandated—the sentence of life without possibility of parole (LWOP) for persons as young as 13 years old.

Nearly 30 years later, the landscape has changed dramatically. Cutting-edge brain research has confirmed that adolescents are more susceptible to rehabilitation than adults because their brains are not yet fully formed. The United States Supreme Court has declared the death penalty unconstitutional for juveniles, describing children as “categorically less culpable” than adults and more likely to change as they mature.² And there is a rapidly growing consensus, within the United States and almost everywhere else in the world, that sentencing children to life without possibility of parole violates universal principles of human rights.

The United States is one of only two countries around the world that continues to sentence children to life without possibility of parole. The vast majority of those sentences are issued in the United States. Indeed, at least 2,380 people in the US,³ compared with only 7 in the rest of the world, currently are serving life sentences for crimes they committed as children.

In 2006, Colorado outlawed juvenile LWOP outright. Similar legislation is pending in Nebraska,⁴ Florida, Michigan, California, and Illinois,⁵ and concerted efforts are being made to ban the practice in Iowa, Louisiana, Massachusetts, and Washington as well.⁶

The Illinois Coalition for the Fair Sentencing of Children believes that, in light of this gathering consensus, it is time to re-examine the well-intentioned but failed policy of sending our most serious juvenile offenders to prison for

SUMMARY OF OUR RECOMMENDATIONS TO THE ILLINOIS LEGISLATURE

- Pass legislation that abolishes the sentence of life without possibility of parole for children.
- Apply this new legislation retroactively.
- Include victim notification provisions in any legislation passed.

1. In fact, national violent crime rates have decreased dramatically over the past 15 years. US Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Violent Crime Rates*, available at <http://www.ojp.usdoj.gov/bjs/glance/viort.htm>.

2. *Roper v. Simmons*, 543 U.S. 551 (2005).

3. Center for Law and Global Justice, University of San Francisco School of Law, *Sentencing Our Children to Die in Prisons*, i (November 2007).

4. Joanne Young, *Youth Shouldn't Be Sentenced to Life Without Parole*, Lincoln Journal Star, January 10, 2007.

5. Human Rights Watch, *When I Die, They'll Send Me Home: Youth Sentenced to Life Without Parole in California*, Vol. 20, No. 1(G) 5 (January 2008).

6. *Id.*



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the rest of their lives with no possibility of presenting a case for their release. Two fundamental principles guide us in this belief:

- **Children are categorically less culpable than adults.** Through recent brain-scanning research, scientists have confirmed that because children’s brains are not yet fully developed, they lack the impulse control of their adult counterparts and are more vulnerable to peer pressure. Our state has recognized these inherent differences between children and adults time and time again. Illinois prohibits children from using alcohol, voting, making decisions regarding health care, being drafted, serving on juries, marrying without parental consent, or signing contracts. In most instances, children also are treated differently than adults when they become involved with the criminal justice system.
- **Children are capable of change.** Research also confirms that, because children are not yet mentally or developmentally mature, their identities are not fully formed, and they are inherently capable of growth, reform, and rehabilitation—if given the chance to succeed. This principle is the bedrock of the juvenile

justice system, which originated in Illinois, and has been reinforced by contemporary research on adolescent brain development.

Today in the State of Illinois, 103⁷ people are serving LWOP sentences for crimes they committed as children. These individuals, all of whom entered prison as teenagers, will mature into adulthood, grow old, and die in prison. Regardless of their degree of involvement in the crime, their achievements, age, or demonstrated rehabilitation, they will never have a chance to appear before a parole board.

Each of these 103 individuals is in prison because he or she was convicted of murder. Most were convicted of multiple homicides, and some were found to have committed especially brutal acts. These crimes must be dealt with seriously. However, providing these offenders with an opportunity for parole through meaningful periodic review does not suggest that they should be or will be paroled. Offering the opportunity for parole simply

7. We made every effort to identify every person serving an LWOP sentence in Illinois. However, because the Illinois Department of Corrections does not maintain information on the number of people serving LWOP sentences, we were not able to verify our data, and the figure we arrived at, 103, is therefore likely underinclusive. Furthermore, although in Illinois juvenile court jurisdiction ends at the age of 17, this figure includes anyone who is serving an LWOP sentence for a crime he or she committed while under the age of 18—which is used as the age of majority in the United States and in the international community.

Illinois should take a leading role in abolishing the practice of juvenile life without possibility of parole in the United States.

means providing them the chance and the incentive to mature and prove they are capable of change.

Illinois should take a leading role in abolishing the practice of juvenile life without possibility of parole in the United States. In 1899, Illinois was the first state to establish a juvenile court. Since that time Illinois has maintained one of the largest and most sophisticated juvenile justice systems in the nation. In 2006, our state reaffirmed its commitment to balanced and restorative justice for young offenders by forming the new Department of Juvenile Justice and the Illinois Supreme Court in *People v. Miller*⁸ already has recognized that—at least in certain instances—mandatory life sentences are inappropriate for juvenile offenders.

We urge Illinois lawmakers to begin an open dialogue about this issue involving victims’ families as well as prosecutors, defense attorneys, juvenile advocates, and the families of those serving juvenile LWOP, to find a mutually acceptable way of balancing the need for public safety and punishment with the proud Illinois tradition of giving child offenders a second chance.

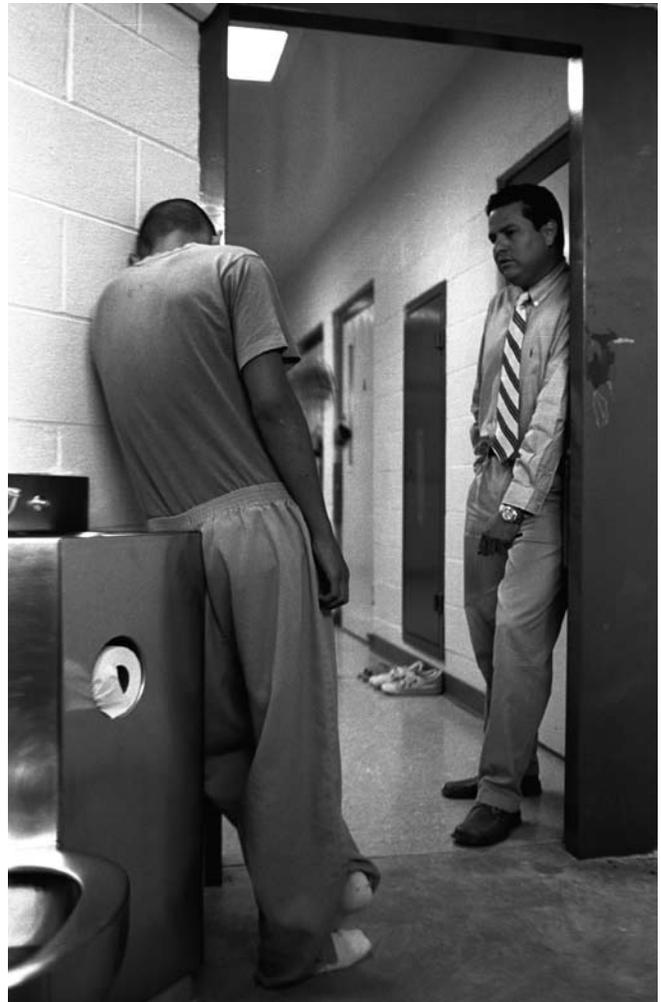


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8. 202 Ill.2d 328, 781 N.E.2d 300, 269 Ill.Dec. 503 (2002).



“And on the verdict of guilty of first degree murder... I sentence you to a term of natural life in the Illinois Department of Corrections... That is the sentence that I am mandated by law to impose. If I had my discretion, I would impose another sentence, but that is mandated by law.”

– Honorable Thomas Dwyer, Associate Judge, Circuit Court of Cook County, while sentencing a 15-year-old accomplice to life without possibility of parole*

* Brief of Petitioner at 10, *People v. Allen*, No. 92 CR 08607-02 (Dec. 13, 2002) (quoting trial judge).

THE LAW IN ILLINOIS

In Illinois, children as young as 13 years old may be sentenced to life without the possibility of parole.⁹ Depending on the type of crime involved, the sentence is almost always mandatory¹⁰—as is the child’s transfer from juvenile to adult court.¹¹ Indeed, in the 103 juvenile LWOP cases we identified, 95 percent were transferred to adult court automatically, and 79 percent received mandatory life sentences once they were convicted in adult court. Thus, in almost all cases where children face LWOP sentences, there is no point at which either a juvenile or an adult court judge or jury can consider the child’s age, home environment, degree of involvement in the crime, rehabilitative potential, or circumstances of the offense. The law simply dictates that if the child commits one of the crimes outlined in the statute, he or she is beyond redemption and is not entitled to a second chance—ever.

This is true—at least for children 15 or older—even when the child is found guilty under the exceptionally harsh accountability statute in Illinois, which mandates that an accomplice receive the same punishment as the principal offender, no matter how small his or her role in the crime.¹² Thus, a child 15 or older may receive a mandatory life sentence for acting as a lookout or for driving a getaway car for a robbery, even if he or she has no idea that the principal is carrying a weapon.

In recent years, the Illinois Supreme Court and several circuit courts have questioned the constitutionality and fairness of Illinois’ mandatory juvenile

9. 705 ILCS 405/5-130(1)(a); (4)(a) (providing for the mandatory transfer of children as young as 13 years old to adult court); 730 ILCS 5/5-8-1 (a)(1) (authorizing discretionary and mandatory life sentences for murder).

10. Illinois law dictates that mandatory life sentences be handed down in many cases, including cases of multiple homicide, the murder of a police officer, or the killing of a young child during the course of a sexual assault or kidnapping. 730 ILCS 5/5-8-1. In other cases, the sentence is discretionary, such as when a single murder is accompanied by exceptionally brutal or heinous behavior. *Id.*

11. 705 ILCS 405/5-130.

12. 720 ILCS 5/5-2; *see also* 405 ILCS 5/5-130, which exempts children under the age of 15 from automatic transfer requirements when they are charged on an accountability theory.



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THERE ARE CURRENTLY TWO WAYS JUVENILES CAN BE SENT TO ADULT COURT IN ILLINOIS:

- 1. Discretionary transfer:** At the prosecutor's request, the juvenile court may transfer certain cases, after considering individual characteristics, including seriousness of offense, prior record, educational background, history of mental health problems, age, and amenability to treatment.
- 2. Automatic transfer:** When the State charges children as young as 13 with certain crimes, transfer to adult court is mandatory. Once the child is in adult court, adult sentencing laws—including mandatory life without parole penalties—apply.

In Illinois, over 95 percent of children serving life without parole sentences were automatically transferred to adult criminal court with no opportunity for a judge to review the appropriateness of the transfer.

Almost 80 percent of children serving LWOP sentences in Illinois received a mandatory sentence, meaning that judges were permitted no leeway in the sentencing decision.

LWOP law. Several judges, such as Judge Thomas Dwyer (quoted on the previous page), have announced in open court that they would not impose life sentences for a child defendant if they had the discretion to make that decision.

In one case, the Illinois Supreme Court found that a mandatory juvenile LWOP sentence went too far to comport with the Illinois constitution. In *People v. Miller*,¹³ the Court considered whether a 15-year-old boy who acted as a lookout during a multiple homicide should receive life without the possibility of parole. Under the law, the decisions to transfer the boy from juvenile to adult court, to treat him just as harshly as if he had pulled the trigger, and to impose a life sentence all were mandatory. On review, the Court agreed that the sentence was so disproportionate to the crime, especially given the boy's age and role in the crime, that it violated a provision in the Illinois Constitution. The Court ordered a lesser sentence.

In 2007, Illinois circuit courts relied upon *Miller* to strike down mandatory life sentences in the cases of Marshan Allen and Charles Green. Neither Allen nor Green were the principal offenders in their cases; both had been

13. 202 Ill.2d 328, 781 N.E.2d 300, 269 Ill. Dec. 503 (2002).

In Illinois, children as young as 13 may be sentenced to life without the possibility of parole. Depending on the type of crime involved, the sentence is almost always mandatory—as is the child’s transfer from juvenile to adult court.

found guilty under an accountability theory.¹⁴ Green was 16 years old at the time of his crime. Allen was only 15.

These decisions, and especially the language in *Miller*, highlight serious problems with the current sentencing scheme in Illinois. Unfortunately, however, *Miller* is the only juvenile life case that the Illinois Supreme Court has ever agreed to hear. And, although there are many people who, like Miller, are serving mandatory life sentences in Illinois for crimes they committed at a very young age, only two others—Marshan Allen and Charles Green—have received hearings on the constitutionality of their sentences. Currently, the only other option for offenders serving juvenile LWOP sentences is to apply for executive clemency. But clemency is not the answer. It is granted only in the rarest of cases. Moreover, there is a significant backlog of clemency petitions in Illinois that have yet to be processed. Executive clemency is therefore not a realistic means of fixing the systemic problem of juvenile life without possibility of parole sentences.

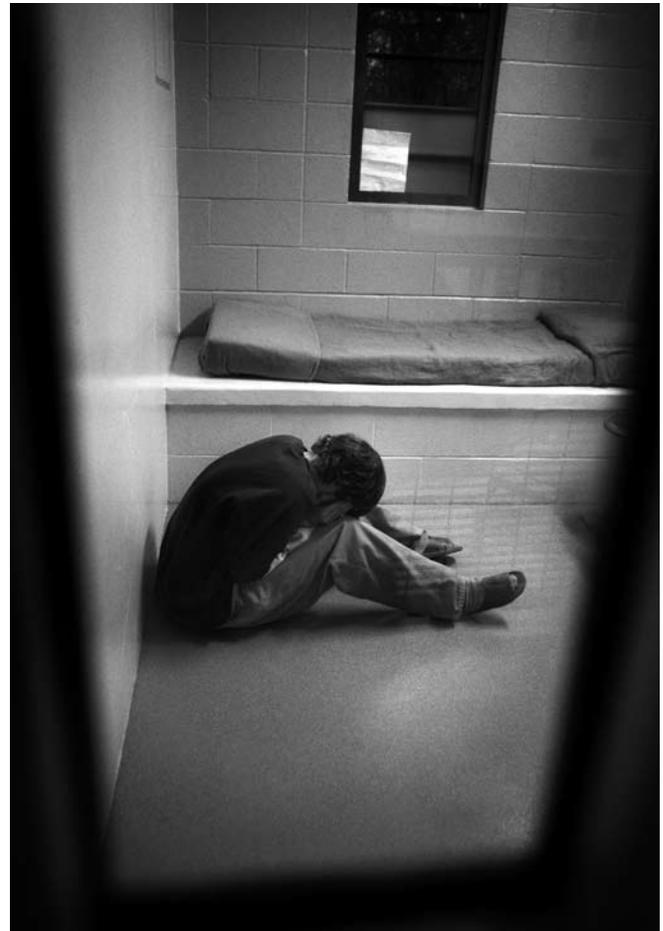


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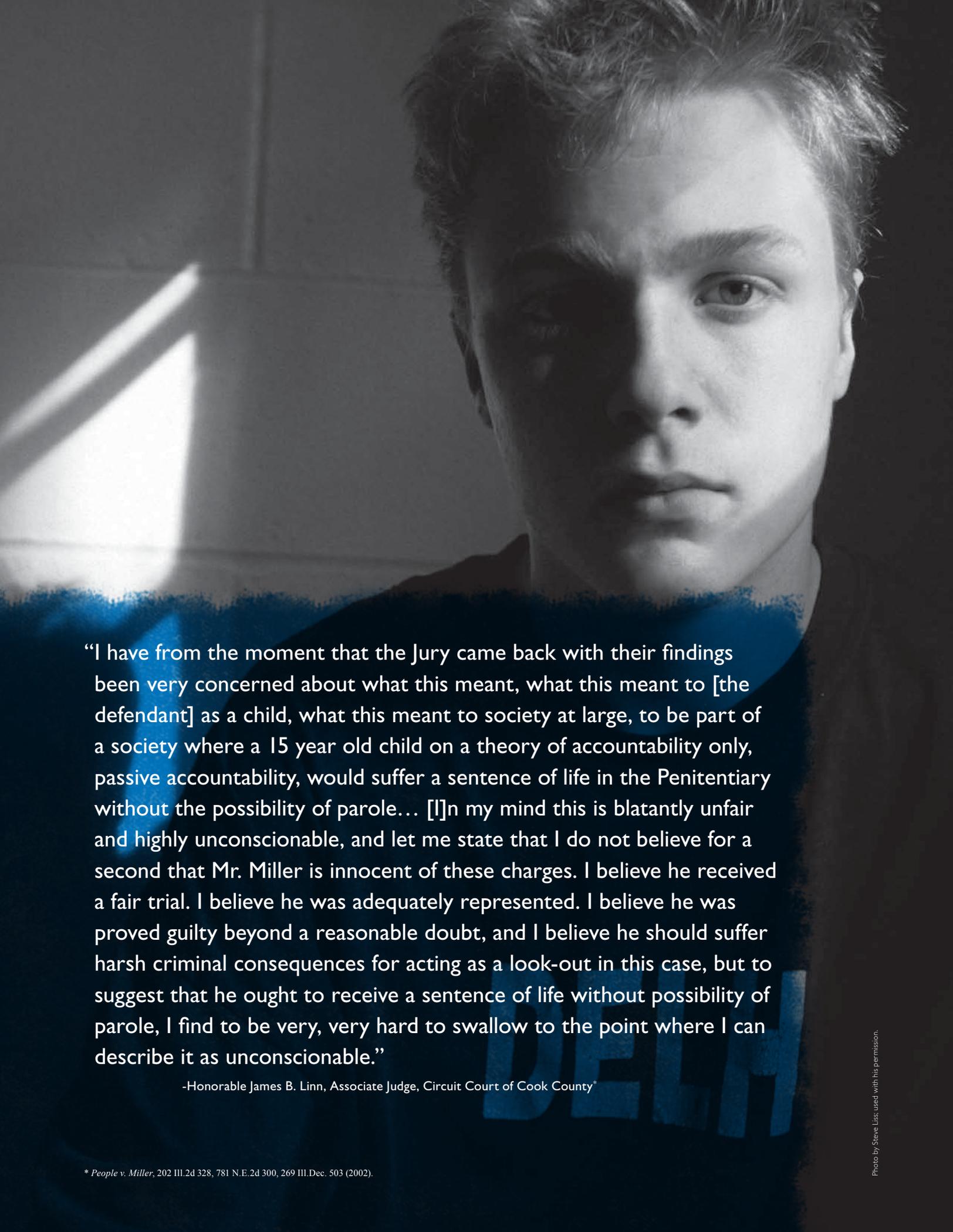
In Illinois, juvenile court jurisdiction ends at the age of 17, so anyone above that age is automatically sent to adult criminal court. However, in the great majority of states, juvenile court jurisdiction extends to the age of 18 and, under federal law, children under the age of 18 may not be subject to the death penalty. International law similarly defines a child as a person under the age of 18. For purposes of discussing life without parole, therefore, this report defines the term “juvenile” as anyone under the age of 18.

“I am America’s child. You made this and now don’t sweep it under the rug.”

Kentrell S.*

* Illinois Coalition for the Fair Sentencing of Children, interview with Kentrell S., serving life without possibility of parole in Illinois, August 30, 2006.

14. *People v. Green*, No. 85 cr 2456 (Circuit Ct. of Cook County, Criminal Division, August 15, 2007) (order denying Motion to Dismiss Post-Conviction Petition); *People v. Allen*, No. 92 cr 8607 (November 29, 2007) (hearing on State’s Motion to Dismiss Post-Conviction Petition). Both Allen and Green are awaiting resentencing pending the State’s appeals. Because neither has been resentenced, we have included both in our count of individuals serving juvenile LWOP sentences in Illinois.



“I have from the moment that the Jury came back with their findings been very concerned about what this meant, what this meant to [the defendant] as a child, what this meant to society at large, to be part of a society where a 15 year old child on a theory of accountability only, passive accountability, would suffer a sentence of life in the Penitentiary without the possibility of parole... [I]n my mind this is blatantly unfair and highly unconscionable, and let me state that I do not believe for a second that Mr. Miller is innocent of these charges. I believe he received a fair trial. I believe he was adequately represented. I believe he was proved guilty beyond a reasonable doubt, and I believe he should suffer harsh criminal consequences for acting as a look-out in this case, but to suggest that he ought to receive a sentence of life without possibility of parole, I find to be very, very hard to swallow to the point where I can describe it as unconscionable.”

-Honorable James B. Linn, Associate Judge, Circuit Court of Cook County*

* *People v. Miller*, 202 Ill.2d 328, 781 N.E.2d 300, 269 Ill.Dec. 503 (2002).

CHAPTER 2:

“CATEGORICALLY LESS CULPABLE”: WHY CHILDREN ARE DIFFERENT

Science has shown that teenagers are not yet completely formed, either physically or mentally. Although children are able to grasp the concepts of “right” and “wrong” at a very young age, the nuances of weighing long-term risks and benefits are lost on even late adolescents, making them more vulnerable to peer pressure than adults, more prone to take risks, and less likely to understand the perspective of others or the consequences of their decisions. These traits are clear to anyone who has spent time with a teenager (or remembers being one), and they are well documented in psychological research. When asked questions designed to gauge one’s preference for smaller, immediate rewards versus larger, long-term rewards, for example, adolescents consistently take the immediate reward.¹⁵ In solving puzzles, they are more apt to make the first move without planning ahead; in responding to scenarios presented to them, they are more likely to focus on the benefits involved and less likely to mention potential risks.¹⁶ Indeed, one study estimates that only 25 percent of 10th graders think through the long-term consequences of their important decisions.¹⁷ Research also has confirmed that teenagers and college undergraduates are even more impulsive when they are around their peers,¹⁸ and that they are around their peers most of the time.¹⁹ Not surprisingly, few of the inmates we interviewed acted alone in committing their crimes; they almost always were in the presence of co-defendants.

All of these characteristics—peer pressure, the tendency to overlook risks in favor of rewards, and impulsivity—are magnified in children who have experienced trauma in their lives and, as described in more detail later in this report, the majority of children facing life sentences have experienced significant trauma or family dysfunction.²⁰

Moreover, although young adults may look physically mature by the time they reach 16 or 17, research shows that the emotional and cognitive development process continues well into a person’s 20s. Thus, judges or prosecutors may look at young adults and conclude they are mature enough to suffer the full consequences of their actions, even though these young adults may in all likelihood be developmentally well behind their adult

15. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Issue Brief 3: Less Guilty by Reason of Adolescence*, at 2, available at: http://www.adjj.org/downloads/6093issue_brief_3.pdf.

16. *Id.* at 3.

17. *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, Human Rights Watch and Amnesty International, 46 (2005) (citing Catherine C. Lewis, *How Adolescents Approach Decisions: Changes Over Grades Seven to Twelve and Policy Implications*, 52 *Child Development* 538, 541-42 (1981)).

18. When presented with a simulated car-driving task, risk-taking behavior among adolescents and college students (but not adults) increased when friends were present. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Issue Brief 3: Less Guilty by Reason of Adolescence*, available at: http://www.adjj.org/downloads/6093issue_brief_3.pdf (citing P. Allard & M. Young, *Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners*, 6 *J. of Forensic Psychology Practice* 65 (2002)).

19. The time spent with one’s peers is twice as great during childhood as it is in adulthood. *Id.*

20. American Bar Association Juvenile Justice Center, *Adolescence, Brain Development, and Legal Culpability* (January 2004) (citing Chris Mallett, *Socio-Historical Analysis of Juvenile Offenders on Death Row*, 3 *Juv. Corr. Mental Health Report* 65 (2005)).

“When you’re young you think you’re untouchable.”
– Marcos G.*

Sentenced to life without possibility of parole for a crime committed when he was 16.

* Illinois Coalition for the Fair Sentencing of Children, interview with Marcos G., serving life without possibility of parole in Illinois, July 20, 2006.

“There is... complete or near unanimity among all 50 states and the District of Columbia in treating a person under 16 as a minor for several important purposes... All of this legislation is consistent with the experience of mankind, as well as the long history of our law, that the normal 15 year old is not prepared to assume the full responsibilities of an adult.”

– United States Supreme Court, *Thompson v. Oklahoma*.*

* *Thompson v. Oklahoma*, 487 U.S. 815, 824-825 (1988).

counterparts. Children also change rapidly. The young adult who appears at sentencing—often months or years after the crime—may well be far more mature than the child who committed the act, a fact that may affect the outcome of the trial and sentencing.²¹

Finally, psychological research proves that, for the very reason that their characters are not yet fully formed, children are uniquely susceptible to rehabilitation. According to the American Psychological Association, because children are considered “moving targets,” psychologists are strongly discouraged from assigning personality disorder diagnoses to children, and it is virtually impossible to diagnose an adolescent as a psychopath (indeed, several of the behaviors that are indicative of psychopathy are considered normal in

21. Brief of American Psychological Association *et al.* as *Amici Curiae* Supporting Respondent at 3, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633). See Sarah Durston *et al.*, *Anatomical MRI of the Developing Human Brain: What Have We Learned?*, 40 *J. Am. Acad. Child & Adolescent Psychiatry* 1012, 1012 (2001) (reviewing results of MRI studies of brain development in childhood and adolescence); Michael S. Gazzaniga *et al.*, *Cognitive Neuroscience: The Biology of the Mind* at 20-21, 138 (2d ed. 2002).

adolescents).²² If given the chance, even those young adults who commit the most serious crimes are able to grow into mature and responsible adults.

THE HARD SCIENCE OF CULPABILITY

Within the past few years, cutting-edge brain imaging techniques have given us an even greater understanding of the developmental differences between teenagers and adults. Using magnetic resonance imaging (MRI) and other technologies, scientists have been able to take virtual snapshots of the human brain at various developmental stages.²³ This research confirms that the brain does not fully develop until late adolescence, some time around or after the age of 18. Furthermore, the portion of the brain that develops last is the frontal cortex, which controls the mind’s executive functions, including impulse control, risk assessment, and moral reasoning. Because adolescents do not have fully developed frontal cortices, they rely more heavily on the amygdala, the brain’s much more primitive thought center that responds to stimuli by triggering such impulses as aggression, anger, and fear.²⁴ In short, doctors have now

“I was completely in shock when I heard the judge say natural life. I didn’t really understand until I was put back in the holding cage and asked a guy in the next holding cage how much time will I have to do.”

– Illinois Inmate serving Juvenile LWOP

“I realize now I cannot just go along with a crowd. I realize that I am responsible for my own future. I must become my own person.”

– Marshan A.,
in a letter to the judge who sentenced him.

22. *Id.* at 20-24.

23. For a good synopsis of this research, see Brief of American Medical Association *et al.* as *Amici Curiae* Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633). See also Sarah Durston *et al.*, *Anatomical MRI of the Developing Human Brain: What Have We Learned?* 40 *J. Am. Acad. Child & Adolescent Psychiatry* 1012, 1012 (2001) (reviewing results of MRI studies of brain development in childhood and adolescence); Michael S. Gazzaniga *et al.*, *Cognitive Neuroscience: The Biology of the Mind* at 20-21, 138 (2d ed. 2002).

24. *Id.*



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provided a medical reason for the various behaviors identified by psychologists as typical in adolescents: they are not capable of behaving like adults because they lack the developed brain structure to do so.

It is these fundamental differences between children and adults—both physical and developmental—that have prompted legislators and policymakers to treat children differently in a host of respects for the past hundred years: children cannot drive, vote, sign

contracts, marry, drink alcohol, or smoke cigarettes. For these reasons, Illinois has treated children who commit crimes differently for well over a hundred years, since it established the nation’s first juvenile court system in the late 19th century.

THE ADOLESCENT BRAIN

RECENT BRAIN RESEARCH CONFIRMS WHAT WE ALREADY KNEW ABOUT TEENAGERS:

Teenagers are not adults: Adolescent brains do not fully develop until after the age of 18.

Teenagers take more risks: The frontal cortex, which controls impulses and risk assessment, is the last part of the brain to develop.

Teenagers overreact: Before the frontal cortex develops, children rely on the amygdala, which triggers aggression, anger, and fear in response to stressful situations.

Teenagers change: As the frontal cortex develops, individuals become better at moral reasoning, assessing risks, and controlling impulses.



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CHAPTER 3:

CHILDREN SERVING LIFE WITHOUT POSSIBILITY OF PAROLE IN ILLINOIS

Illinois has at least 103 child offenders serving life without the possibility of parole for crimes they committed before their 18th birthday.²⁵ Only 6 other states have more people serving juvenile life sentences.²⁶

Juvenile life without possibility of parole sentencing disproportionately impacts African Americans and Latinos in Illinois. Although Caucasians make up nearly 90 percent of the entire population of this state,²⁷ only 18 percent of those serving juvenile LWOP sentences are Caucasian. The remaining 82 percent are either African American (72 percent) or Latino (10 percent). This racial disparity is especially strong in Cook County, where 64 of the 73 individuals sentenced to life without parole are youth of color. Disproportionate impact on people of color is an issue across the country, but the problem is especially stark in Illinois, where the percentage of African American youth sentenced to life without parole far exceeds the national average of 60 percent.²⁸

A little less than half of those serving juvenile LWOP in Illinois were convicted for crimes that took place when they were 17. Another 36 percent were 16 at the time of their crimes, 12 percent were 15, and 4 percent were 14.²⁹ There are no individuals in Illinois serving LWOP sentences for crimes they committed at the age of 13, although such a sentence is allowed under the law.

The vast majority, or 79 percent, of those serving life without possibility of parole sentences were subjected to Illinois' mandatory sentencing scheme, and 95 percent were transferred to adult court without a hearing or any possibility for the judge to determine age, maturity, mental ability, or degree of involvement in the crime charged.

Only one of the 103 individuals serving a juvenile LWOP sentence is female.³⁰

Nationwide, approximately one quarter of individuals serving juvenile life without parole were convicted of felony murder, which means that they did

25. Although 17-year-olds are automatically treated as adults in Illinois when they commit criminal offenses, 705 ILCS 405/5-120, laws in other states and across the world treat children under the age of 18 as juvenile offenders. For that reason, we include 17-year-olds in this report.

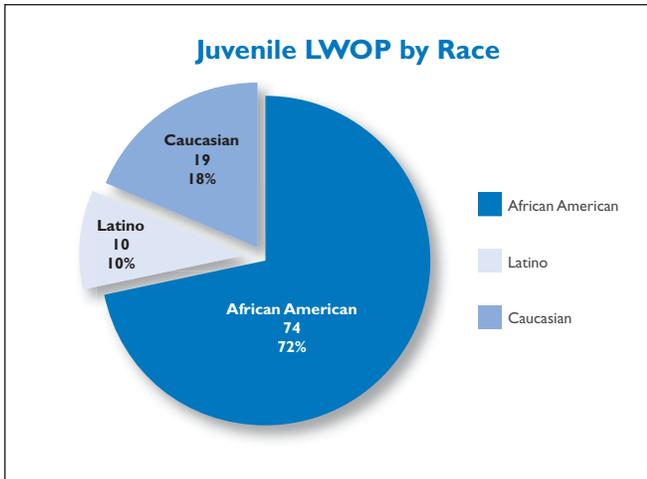
26. *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, Human Rights Watch and Amnesty International 35 (2005). The six states which have more individuals serving juvenile LWOP are California, Florida, Louisiana, Michigan, Missouri, and Pennsylvania.

27. US Census Bureau, Profile of General Demographic Characteristics: 2000, Illinois, available at http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=04000US17&-qr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U.

28. *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, Human Rights Watch and Amnesty International, 28 (2005).

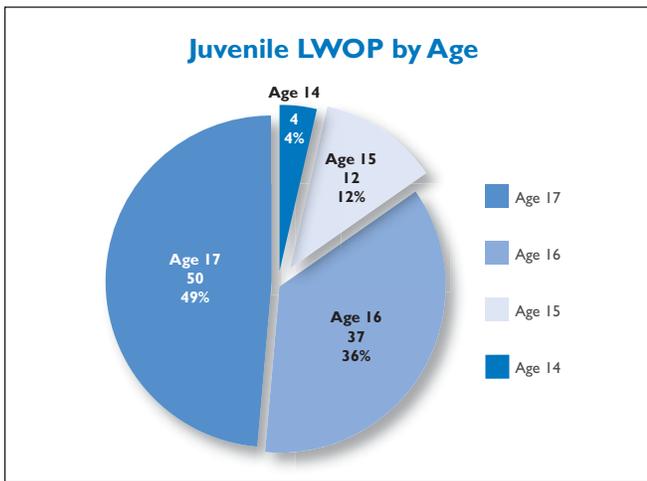
29. This is consistent with national statistics, according to which 16 percent of those serving juvenile LWOP sentences were 15 or younger at the time of the crime. *Id.* at 25.

30. This comports with national statistics, which have found that child offenders serving life sentences are overwhelmingly male (97.4 percent). *Id.*



IN THEIR OWN WORDS: INTERVIEWS WITH INDIVIDUALS SERVING LIFE WITHOUT POSSIBILITY OF PAROLE SENTENCES IN ILLINOIS

Of course, statistics can only tell us so much about those serving life. For that reason, the Coalition felt it was important to interview those serving juvenile LWOP sentences in Illinois.³⁵ We wanted to learn about these individuals who were convicted of such serious offenses at such a young age. What led them to where they are now? What were their crimes? What are their lives like now? What, if anything, have they done to try to better themselves while in prison? Their answers to these questions provide a snapshot of a group of individuals who, for the most part, have deeply troubled pasts, who are trying to cope with their sentences, and who still hold out hope that some day they will be given a second chance.



not intend to commit murder, but killed someone during the course of another felony, such as a robbery.³¹

Although only 13 of the 83 inmates we spoke with in Illinois told us they were found guilty under an accountability theory, meaning that they were not the principal actors in their crimes, the number is likely higher.³²

Across the country, well over half of the individuals serving life without parole sentences (59 percent) received life sentences for their very first criminal conviction,³³ and, in one quarter of the years between 1985 and 2001, children were actually more likely to be sentenced to life without possibility of parole than their adult counterparts.³⁴

FACING A SENTENCE OF LIFE WITHOUT POSSIBILITY OF PAROLE

Almost every prisoner with whom we spoke needed to grapple with the impossible reality of spending life in prison. Coping with this sentence was especially difficult in the first few years after their sentences. One young man, Jamie J., spoke about the misdirected energy he had after he arrived, telling us that at the age of 15 he felt written off and “helpless.”³⁶ Others told us they had considered committing suicide and that they had to struggle every day to find some purpose in their lives.

After just a short time in prison, many of the inmates said they began to lose touch with family and friends. Most Illinois prisons are in remote parts of the state, far from the places where offenders grew up—typically so distant that often inmates only receive visitors once or twice a year, if at all. Although these inmates attempt to maintain

31. *Id.* at 27-28. We were not able to gather information on the number of individuals serving juvenile LWOP sentences who were convicted of felony murder in Illinois.

32. There is no way to discern from court records whether individuals were convicted under an accountability theory because the forms do not specify the theory under which a person was convicted. For that reason, we had to rely on individuals to self-report on accountability. Unfortunately, we did not gather this information consistently from the inmates because our questionnaire did not include a question about accountability, and only a few reported on accountability during their interviews.

33. *Id.* at 28.

34. *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, Human Rights Watch and Amnesty International, 33 (2005).

35. Although we made every attempt to collect surveys from and interview every individual serving juvenile LWOP sentences in Illinois, we only were able to collect this information from 83 of the 103 individuals we identified.

36. Illinois Coalition for the Fair Sentencing of Children, interview with Jamie J., serving life without possibility of parole in Illinois, July 25, 2006.

Almost every prisoner with whom we spoke needed to grapple with the impossible reality of spending life in prison.

ties to family and friends through the mail, many lamented the fact that their letters went unanswered. Joseph A. explained his frustration with rules that do not allow him to receive or keep pictures of his family—keepsakes that he felt could motivate him to improve himself.³⁷

Several of the individuals we interviewed commented on how frightening it was to go to prison as an adolescent. Cedric C. described some of the older inmates as “predators,” who would target new inmates who seemed young and weak.³⁸ Demetrius J. explained that he had to grow up fast in prison because some inmates seek to exploit naïve prisoners; in prison, he “couldn’t think like a kid anymore.”³⁹

Indeed, their fears often proved to be well founded. Richard H. lost all his upper front teeth when a fellow inmate beat him with a baseball bat.⁴⁰ Others were targeted with violence when they separated from or refused to join a particular gang. Still others told us of the constant threat of sexual abuse in prison.

EDUCATION IN PRISON

Because everyone we spoke with was incarcerated at a young age, all spent the years most crucial to cognitive and skill development behind bars. Education is, of course, key to that development, but these offenders had little or no access to educational programs, and told us that programs often were, and are, expressly denied to those serving life without parole sentences.

One inmate, for example, attempted to enroll in GED classes offered at his correctional institution. The prison policy gives enrollment preference to those with less time to serve, so his life sentence meant that he might not ever make it to the top of the list. Nicolas M. also described his difficulties in gaining access to the prison’s GED program. He stated, “The officials say there are more important people that need to take these classes that actually have a chance to get out someday.”⁴¹ Anthony S. told us he wanted to become a barber in the prison, but that he could not because it was considered vocational training—which would be of little use to an inmate serving a life sentence.⁴²



Used with permission.

Vincent P., now age 44, is serving a life without parole sentence for a crime committed when he was 17.

37. Illinois Coalition for the Fair Sentencing of Children, interview with Joseph A., serving life without possibility of parole in Illinois, July 19, 2006.

38. Illinois Coalition for the Fair Sentencing of Children, interview with Cedric C., serving life without possibility of parole in Illinois, June 27, 2006.

39. Illinois Coalition for the Fair Sentencing of Children, interview with Demetrius J., serving life without possibility of parole in Illinois, July 21, 2006.

40. Illinois Coalition for the Fair Sentencing of Children, interview with Richard H., serving life without possibility of parole in Illinois, October 17, 2007.

41. Illinois Coalition for the Fair Sentencing of Children, interview with Nicolas M., serving life without possibility of parole in Illinois, July 13, 2006.

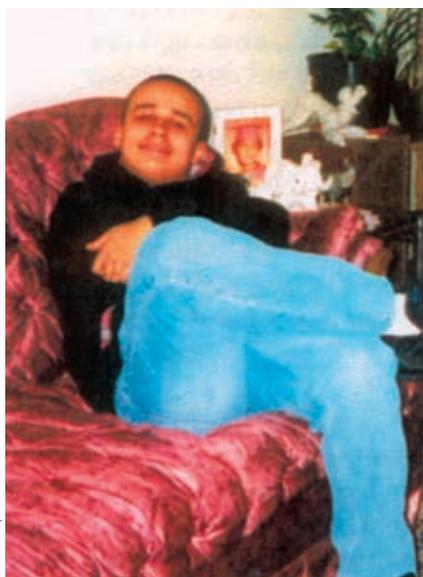
42. Illinois Coalition for the Fair Sentencing of Children, interview with Anthony S., serving life without possibility of parole in Illinois, July 27, 2006.

The jobs I've held—janitor, the general store—which consisted of loading and unloading trucks, storing food, filling racks, etc, the furniture factory, making different types of office furniture, and right now I am currently a clerk Nothing I've shown since being here shows or says that I cannot be rehabilitated, returned to useful citizenship."



Used with permission.

Joseph W., now age 33, is serving a juvenile life without parole sentence for a crime committed when he was 17.



Used with permission.

Jaime H., now age 27, is serving a juvenile life without parole sentence for a crime committed when he was 17.

Inmates also described the lack and the increasing elimination of educational and vocational programs offered in prison. For example, James W. said that once he obtained his GED, he exhausted the possibility of any further education—the only other educational programs available are classes aimed at those inmates who read below a 6th grade level.⁴³ Cedric C. wished he was able to take college courses, saying “That really hurt me, because how are you going to rehabilitate or reform yourself without education?”⁴⁴

Those who were unable to access education or find a prison job told us of the boredom they faced every day simply trying to pass the time. Darnell F. spends most of his time sitting in his room watching television, writing, and waiting for “chow.” In fact, he described waiting for chow as his full-time job.⁴⁵ James W. described prison as “not living, just existing.”⁴⁶

In spite of these obstacles, many inmates were motivated enough to seek out educational opportunities for themselves. Several had found and paid for correspondence courses through which they were able to receive a high school diploma or take college classes (although others told us they could not afford these programs). Some said they spent much of their time reading or in the library. Vincent P. said that he reads “all day, every day.”⁴⁷ More than one individual wanted to become a writer, and several inmates told us that they wrote poetry.

Those who have been able to participate in educational and work programs have found them to be an important step on the path toward rehabilitation. John H. told an interviewer, “I got my GED while I was in the county jail and went on to become a tutor for the GED instructor for the remaining time I spent in the county jail. From there I came to prison and it took almost two years to get a job but I’ve worked consistently since then. Out of the 13 years and 5 months I’ve been locked up, I’ve worked about 11 years and a few months. The jobs I’ve held—janitor, the general store—which consisted of loading and unloading trucks, storing food, filling racks, etc, the furniture factory, making different types of office furniture, and right now I am currently a clerk Nothing I’ve shown since being here shows or says that I cannot be rehabilitated, returned to useful citizenship.”⁴⁸

43. Illinois Coalition for the Fair Sentencing of Children, interview with James W., serving life without possibility of parole in Illinois, October 17, 2007.

44. Illinois Coalition for the Fair Sentencing of Children, interview with Cedric C., serving life without possibility of parole in Illinois, June 27, 2006.

45. Illinois Coalition for the Fair Sentencing of Children, interview with Darnell F., serving life without possibility of parole in Illinois, November 8, 2007.

46. Illinois Coalition for the Fair Sentencing of Children, interview with James W., serving life without possibility of parole in Illinois, October 17, 2007.

47. Illinois Coalition for the Fair Sentencing of Children, interview with Vincent P., serving life without possibility of parole in Illinois, December 12, 2007.

48. Illinois Coalition for the Fair Sentencing of Children, interview with John H., serving life without possibility of parole in Illinois, November 9, 2007.

HOPE FOR THE FUTURE

Almost everyone serving a life without possibility of parole sentence holds on to the hope of one day being released. The inmates were able to give us a detailed description of what their lives would be like if they were given a second chance. Their aspirations were straightforward. They wanted to get married, find jobs, and spend time with their families. Interestingly, many interviewees expressed a strong desire to reach back into their communities and work with vulnerable young people, to try to help them work through the problems our interviewees faced at their age and to prevent them from making the same mistakes they had made.

Jamie J. painted a vision of his life as a barber in his neighborhood and the role he would want to play as a caregiver for his mother, who had brain surgery five years ago. He hopes to become a neighborhood mentor for adolescents who are on the wrong path.⁴⁹ Albert K., who since entering prison has become a certified automotive technician, spoke of finding a job on the outside working on cars, working as a prison minister, and becoming a community activist. “I know I can be a valuable asset to a lot of people,” Albert wrote. “If I am just given the chance, I will be.” Marshan A. told us his hope of one day being free keeps him motivated to stay in school and better himself. “The worst part of being in prison is simply not knowing if I will ever be free,” he told us. “I want to get my own room and driver’s license. One day I want to get married and have children. I just want to live a normal life.”⁵⁰

Others, such as Anthony S., spoke of all of the experiences they had missed and that they would miss in the future: “It was like I was so young... I didn’t get a chance to experience so many things. Like to go to a basketball game. I see people on TV doing things that I never got to do. I never had a college experience. I didn’t go to prom. I miss having a family. I don’t even know a lot of

49. Illinois Coalition for the Fair Sentencing of Children, interview with Jaime J., serving life without possibility of parole in Illinois, July 25, 2006.

50. Illinois Coalition for the Fair Sentencing of Children, interview with Marshan A., serving life without possibility of parole in Illinois, July 7, 2006.

my extended family because I never got a chance to meet them. I won’t be able to have kids, a wife, or anything.”⁵¹

LIFE BEFORE PRISON

Although many interviewees painted rosy pictures of what their lives would be like should they some day be released, most people we spoke with acknowledged that they had faced serious challenges during childhood. A large percentage were former gang members who had turned to gangs at a young age, including several as young as 8 years old. They attributed their decision to enter a gang to either the death of a parent or the lack of strong parental support due to physical abuse, drug addiction, or absence. Major family disruptions were common. Kenneth B. said he joined a gang when he was 12, just after his father died of cancer.⁵² Another former gang member told us his mother was a drug addict, and his father died when he was 5 years old. Robert H., who joined a gang at age 10, began suffering from depression when he was 8 and felt he had no adult to talk to. His mother, he said, was a good woman, but worked a factory job and was never around. His father was completely absent from his life. The only other adults in his life were his uncles, who were heavily involved in a gang.⁵³ A large number of these inmates also came from extreme poverty. Many interviewees joined a gang after they began selling drugs to pay for basic necessities, like food and shelter.

Almost all the inmates we spoke with told us that their lives as children were so filled with violence that violence seemed normal to them. Robert H. said that, during his childhood, “every day my main goal was to survive.”⁵⁴ Those who were in gangs told us that being shot at (and even actually shot) was a common occurrence, and all had close friends and/or family members who had been

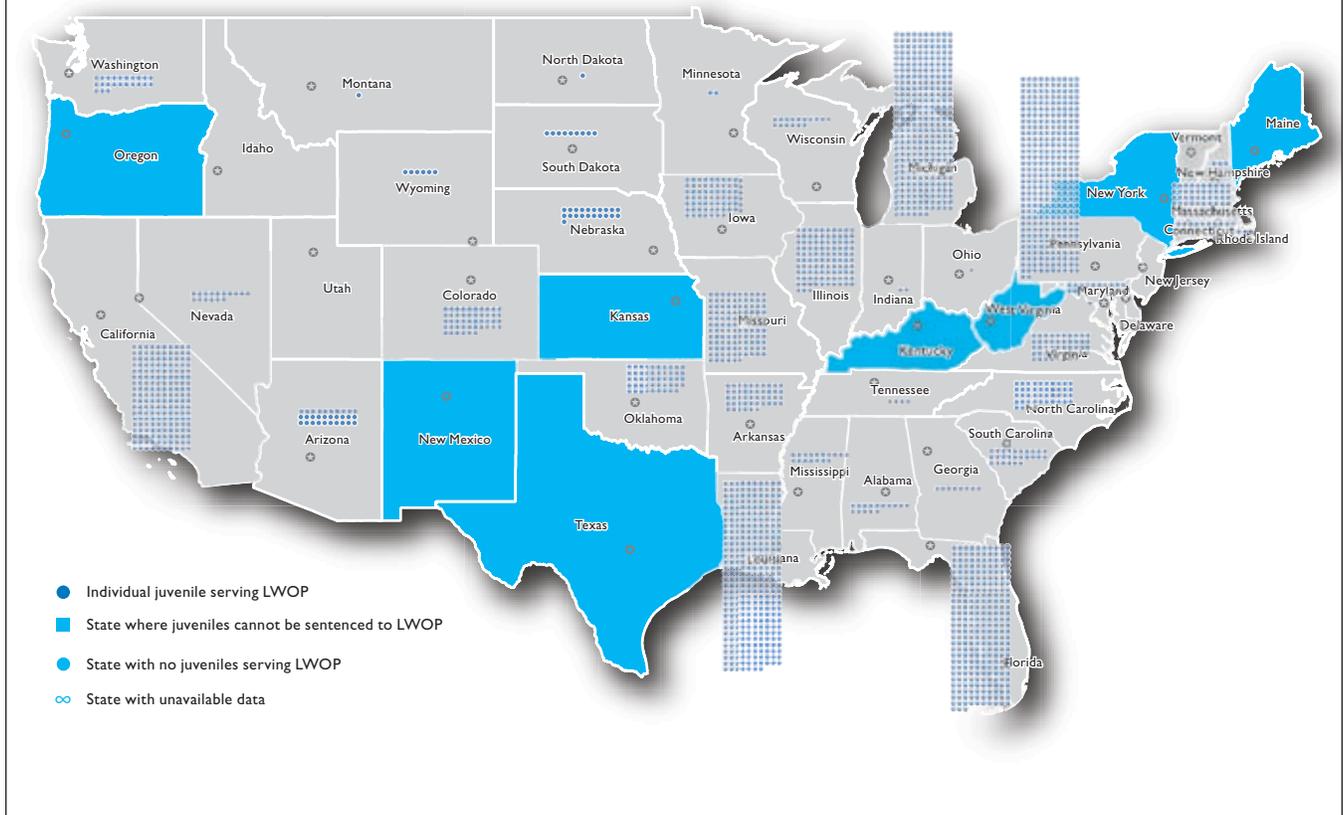
51. Illinois Coalition for the Fair Sentencing of Children, interview with Anthony S., serving life without possibility of parole in Illinois, July 27, 2006.

52. Illinois Coalition for the Fair Sentencing of Children, interview with Kenneth B., serving life without possibility of parole in Illinois, November 8, 2007.

53. Illinois Coalition for the Fair Sentencing of Children, interview with Robert H., serving life without possibility of parole in Illinois, October 3, 2007.

54. Illinois Coalition for the Fair Sentencing of Children, interview with Robert H., serving life without possibility of parole in Illinois, October 3, 2007.

Juveniles Serving Life Without Possibility of Parole, by State



killed by gun violence. Darnell F. joined a gang at age 10 and said he had been shot at more than 20 times. At age 13, he was shot in the leg. Although he had friends who were killed in gang violence, including one killed while sitting right next to him, it didn't make him sad because "that was life."⁵⁵ Fred W. also said that in his neighborhood, being shot was an ordinary part of life, and that he did not know anyone who had not been shot.⁵⁶ William N. told us that when he was growing up, people walked around in his neighborhood wearing bulletproof vests. "It was like living in a war," he reflected.⁵⁷ Marcos G. said that after he joined a gang at age 14, he began witnessing violence regularly, including beatings with baseball bats and shootings. He observed: "It's sad when something that depraved gets natural."⁵⁸

A common psychological reaction to frequent exposure to such extreme trauma is to become desensitized to

it, and this was true for many of the inmates we spoke with. To deal with these levels of trauma, many turned to drugs or alcohol, often at a very young age. Joseph A. started drinking every day after his father abandoned his family at age 12, and, soon thereafter, he also began using marijuana and cocaine.⁵⁹ Darrell C.'s mother was a drug addict, and his father was killed when Darrell was very young. By age 15, he was an alcoholic himself. He told us: "I was very serious about drinking. That was breakfast."⁶⁰ Marcos G. also described alcohol as "breakfast," and said that by age 15, he was drinking 20 to 30 shots of grain alcohol a day.⁶¹

In all, 78 percent of the individuals we spoke with admitted to using drugs or alcohol before entering prison, and at least 64 percent said they had become heavy abusers of drugs and alcohol by the age of 17.

Throughout all of the trauma that pervaded their lives, many yearned for a normal life. Darrell C. said that he

55. Illinois Coalition for the Fair Sentencing of Children, interview with Darnell F., serving life without possibility of parole in Illinois, November 9, 2007.

56. Illinois Coalition for the Fair Sentencing of Children, interview with Fred W., serving life without possibility of parole in Illinois, November 16, 2007.

57. Illinois Coalition for the Fair Sentencing of Children, interview with William N., serving life without possibility of parole in Illinois, October 30, 2007.

58. Illinois Coalition for the Fair Sentencing of Children, interview with Marcos G., serving life without possibility of parole in Illinois, July 20, 2006.

59. Illinois Coalition for the Fair Sentencing of Children, interview with Joseph A., serving life without possibility of parole in Illinois, July 19, 2006.

60. Illinois Coalition for the Fair Sentencing of Children, interview with Darrell C., serving life without possibility of parole in Illinois, November 8, 2007.

61. Illinois Coalition for the Fair Sentencing of Children, interview with Marcos G., serving life without possibility of parole in Illinois, July 20, 2006.

Almost every inmate we spoke with told us that their lives as children were so filled with violence that violence seemed normal to them.

was always envious of kids who had backpacks, because kids who had backpacks had parents who cared about them. “I wanted to have that backpack on. I wanted to be that individual going home and having my mom and dad say, ‘Where your homework at?’”⁶²

We were surprised to find that 24 percent of the people we interviewed had parents who were addicted to drugs or alcohol. Often, these parents failed to feed, clothe, and provide for their children. Lindsey C.’s mother was a drug addict and was dating a man high up in a gang. When Lindsey was growing up, drugs were always present in the house, and Lindsey said he would stay up at night trying to protect his younger brother and sister from the gang members hanging out at his house.⁶³

Others were victims of horrific abuse at their parents’ hands. Eric P., who was convicted of murdering his father and stepmother, told us he was regularly beaten by his father, who also beat his mother, once causing her to miscarry a baby.⁶⁴ When Corey J. was 7 or 8 his abusive mother stripped him naked and sat him down on a lit stove.⁶⁵ Eric R.’s drug-addicted mother stabbed him in the leg with a knife.⁶⁶

Few of the inmates were enrolled in school when they were arrested. While 62 of the 83 we spoke with told us they had completed some high school, a large percentage dropped out in the 9th grade. The little time they did spend in school was a struggle. Nineteen of the 83 said they did not make it past primary school.

Although 35 percent of the individuals we interviewed had been in a formal special education program at some point, it was apparent that many others had learning disabilities that had gone unnoticed or untreated. Kenneth B. was in “7th or 8th” grade when he was

COMMON CHARACTERISTICS OF THOSE SERVING JUVENILE LWOP

- 64% reported serious alcohol and drug abuse issues during childhood
- 24% had parents who were abusing drugs or alcohol
- 35% had been enrolled in special education classes
- 23% never made it to high school

arrested at age 16. Although he reports having a hard time “understanding certain things I’ve read and making sense out of it,” he never had been enrolled in special education classes.⁶⁷ Vincent P. never received special education services, even though he was illiterate in the 9th grade and did not learn how to read or write until he entered prison.⁶⁸ Michael C. was just 14 when he was arrested. He had been expelled from the 6th grade, was failing all of his classes, and was told that he had a “low I.Q.” But he never received special education services.⁶⁹

As a result of the trauma they endured as children, many of the inmates admitted that their lives became increasingly destructive as they reached adolescence. They joined gangs, began selling drugs, became heavy drug users, and dropped out of school. A significant number—including many of those who professed innocence—told us they were so out of control, they were glad that they ended up in prison; they felt it was the best thing for them at the time, and, in some cases, may have saved their lives.

TRIAL AND CONVICTION

Due to their age, lack of education, and in many cases their serious learning disabilities, few inmates

62. Illinois Coalition for the Fair Sentencing of Children, interview with Darrell C., serving life without possibility of parole in Illinois, November 8, 2007.
63. Illinois Coalition for the Fair Sentencing of Children, interview with Lindsey C., serving life without possibility of parole in Illinois, November 15, 2007.
64. Illinois Coalition for the Fair Sentencing of Children, interview with Eric P., serving life without possibility of parole in Illinois, November 16, 2007.
65. Illinois Coalition for the Fair Sentencing of Children, interview with Corey J., serving life without possibility of parole in Illinois, November 15, 2007.
66. Illinois Coalition for the Fair Sentencing of Children, interview with Eric R., serving life without possibility of parole in Illinois, December 12, 2007.

67. Illinois Coalition for the Fair Sentencing of Children, interview with Kenneth B., serving life without possibility of parole in Illinois, November 8, 2007.
68. Illinois Coalition for the Fair Sentencing of Children, interview with Vincent P., serving life without possibility of parole in Illinois, December 12, 2007.
69. Illinois Coalition for the Fair Sentencing of Children, interview with Michael C., serving life without possibility of parole in Illinois, November 8, 2007.

Many inmates impressed upon us how much they had changed since their arrest. They accepted responsibility for their actions and admitted that they deserved to be in prison for some portion of their adult lives.



Used with permission.

Mark C., now age 43, is serving a juvenile life without parole sentence for a crime committed when he was 16.

understood or actively participated in their own trials. Most wished they had testified in their own defense, but did not because their lawyers told them not to. For example, David E. did not testify at his trial because his attorney discouraged him from doing so. He said he felt like “he didn’t have a choice” about testifying “because he didn’t know better.”⁷⁰ Few had any comprehension of the sanction they were facing. One inmate told us that after he received his life sentence, he went back into his cell and asked a fellow inmate how much time he would have to serve. Gary C. recalled that he “knew what the rights said, but not how to exercise them.” He went on to say “I [was] 14. I never really learned how to ask for help... I had a hard time asking for help. I would have accepted it, but I couldn’t ask.”⁷¹

ACCEPTING RESPONSIBILITY

Many inmates impressed upon us how much they had changed since their arrest. They accepted responsibility for their actions and admitted that they deserved to be in prison for some portion of their adult lives. Joseph A., for example, said he accepts that he should not be released now, and he is not asking anyone for that, but that a sentence of a set number of years would motivate him to live a productive life in prison and provide him with hope for the future.⁷²

We asked those individuals who accepted responsibility how much time they felt would be appropriate for them to serve. Their answers ranged between 10 and 20 years.

Of course, not every person we spoke with accepted responsibility, and a significant number professed their innocence. Although it is unlikely that such a large number of those serving juvenile life without possibility of parole sentences are innocent, there are several who have raised serious doubts about their innocence. In fact, Northwestern University School of Law’s Center on Wrongful Convictions recently agreed to take cases on behalf of two Illinois inmates serving juvenile life without parole sentences.

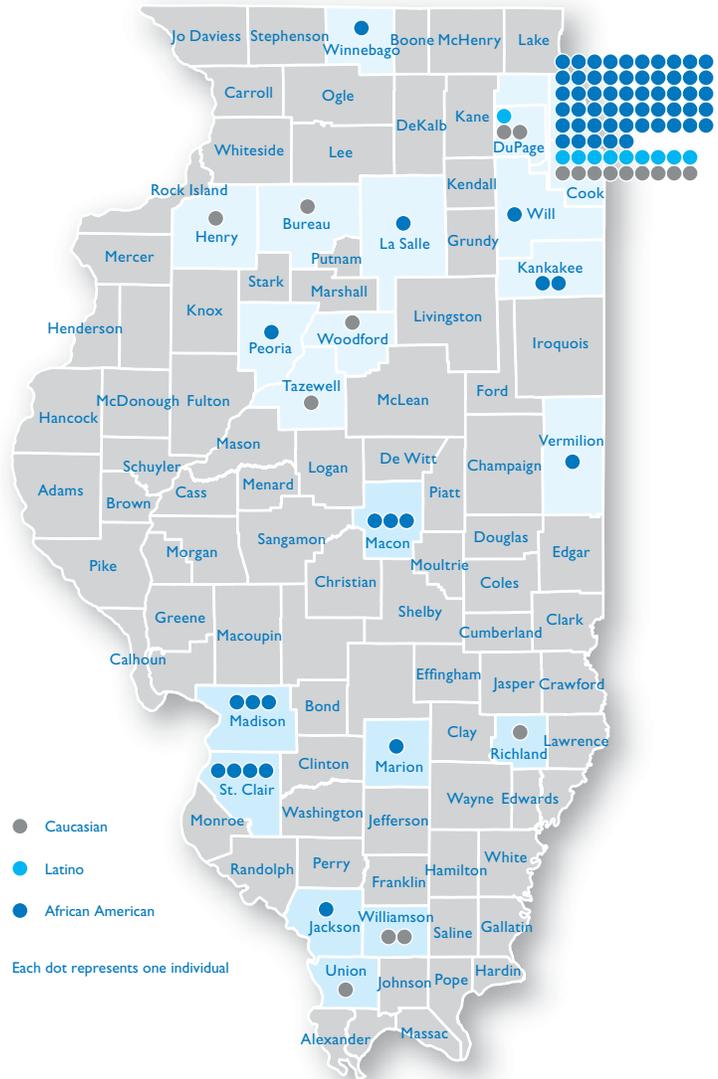
In looking back on our interviews, we remain aware of the severity of the crimes for which those we interviewed were convicted. Some of the people we met have done little to further themselves while in prison and have a long history of disciplinary violations while there, or they have accepted little or no responsibility for their crimes. For a small number of individuals whom

70. Illinois Coalition for the Fair Sentencing of Children, interview with David E., serving life without possibility of parole in Illinois, December 12, 2007.

71. Illinois Coalition for the Fair Sentencing of Children, interview with Gary C., serving life without possibility of parole in Illinois, October 3, 2007.

72. Illinois Coalition for the Fair Sentencing of Children, interview with Joseph A., serving life without possibility of parole in Illinois, July 19, 2006.

Number of Juveniles Sentenced to LWOP in Illinois by County and Race



we encountered, it is realistic to conclude that no independent review of their case will ever likely lead to their parole. We are advocates for the abolition of juvenile life without parole sentences, but we are not advocating for the wholesale release of everyone serving a juvenile LWOP sentence. All we propose is that each individual should have a chance to prove to a parole board that he or she is rehabilitated and poses no continued threat to public safety, and that the possibility of release be realistic and regularly considered.⁷³

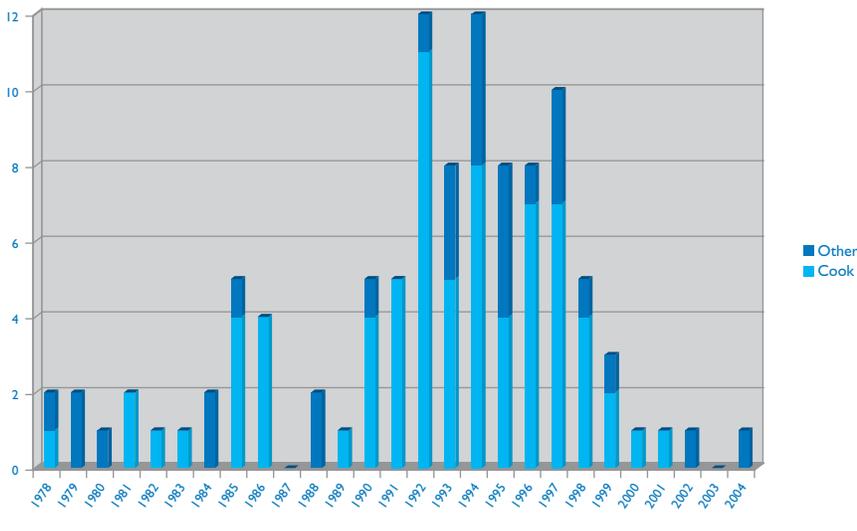
A NOTE ABOUT METHODOLOGY

This report is based on data gathered through Illinois Department of Corrections profiles, newspaper articles, published court decisions, surveys of those serving juvenile LWOP sentences, and in-person interviews with inmates, family members, and victims' families.* As part of our research, we sent surveys to all of the 103 individuals serving juvenile LWOP sentences and obtained a completed survey from or interviewed 83 individuals. Much of the information we gathered from the surveys and interviews was self-reported and not available through public records; we were therefore not able to verify all of the information we collected.

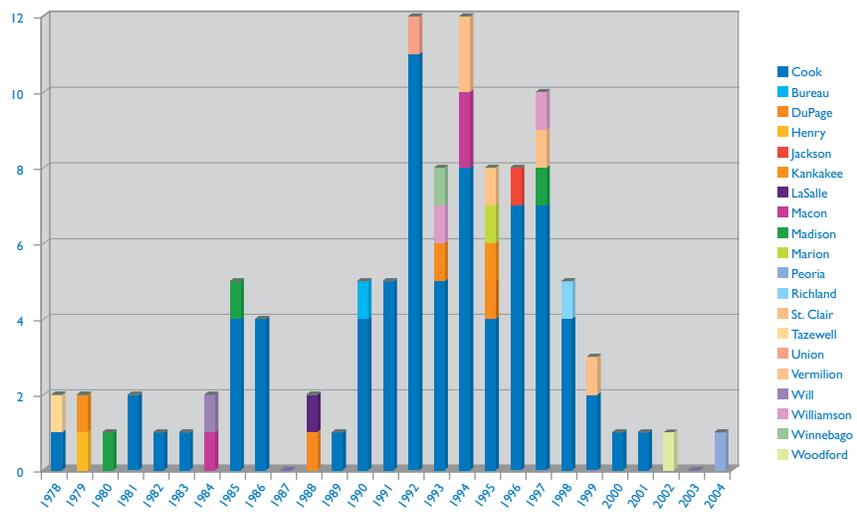
* We made every attempt to identify and interview every person who is serving a life sentence in Illinois for a crime committed as a juvenile. Despite our best efforts, however, it is likely that we missed some individuals who are serving this sentence. A few others declined to be interviewed. Thus, while this report provides information about the majority of juvenile lifers in Illinois, it does not reflect information about every person who may be serving a life sentence for a crime committed before he or she reached age 18.

73. Committee on the Rights of the Child, 2007, General Comment No. 10, CRC/C/GC/10, para. 27.

Number of Juveniles Sentenced to Life Without Parole In Illinois, by Year and County



Number of Juveniles Sentenced to Life Without Parole In Illinois, by Year and County



THOSE MOST AFFECTED BY JUVENILE LIFERS’ CRIMES

Prisoners’ Family Members

In addition to interviewing inmates serving juvenile LWOP, we contacted inmates’ family members to learn how the life without possibility of parole sentence had affected them. Although many of them were unreachable,⁷⁴ we were able to conduct some interviews. Those with whom we did speak told us how difficult it has been to cope with their family members’ sentences.

Virginia C., Mark C.’s mother, told us she thinks about her son’s sentence “constantly.”⁷⁵ Joseph A.’s brother and sister-in-law said they felt “helpless” seeing Joseph struggle in prison, knowing there was nothing they could do for him.⁷⁶ Anabel P., Jaime H.’s mother, told us she still cries all the time over the loss of her son and that her life “can never go back to normal” as long as he is incarcerated.⁷⁷

Like the inmates, the family members also said it was difficult to visit because the prisons are far away. Mark C.’s mother, for example, visited her son every week when he was in Joliet, Illinois, just one hour from her Chicago home. Now that he

74. As mentioned earlier in this report, many of the individuals we spoke with have parents who are deceased or addicted to drugs or alcohol, or they have lost touch with their families.
 75. Illinois Coalition for the Fair Sentencing of Children, interview with Virginia C., in Illinois, November 9, 2007.
 76. Illinois Coalition for the Fair Sentencing of Children, interview with David and Sue Fuentes, in Illinois, December 1, 2007.
 77. Illinois Coalition for the Fair Sentencing of Children, interview with Anabel P., in Illinois, December 11, 2007.

The actions of the inmates described in this report created enormous pain for the victims' families, who must deal with the loss of a loved one for the rest of their lives.

is in Pontiac, she is not often able to visit him.⁷⁸ Evelyn W., Joseph W.'s mother, said that although she has trouble getting to Pontiac, she makes a point of visiting him every year for his birthday. When she visits, they have a routine: She puts her hand on the glass, then he puts his hand on the glass and she tells him she loves him. "Joseph has so much to offer the world," she told us, adding that she just "wants him to be able to come home."⁷⁹

Victims' Family Members

The actions of the inmates described in this report created enormous pain for the victims' families, who must deal with the loss of a loved one for the rest of their lives. For many, the anguish never ends. In assessing how best to create a meaningful review of juvenile LWOP sentences, it is essential to consider how these crimes and their aftermaths affect the victims' families.

Not surprisingly, the opinions of victims' families about life sentences for juveniles vary. In a recent Human Rights Watch Report on juvenile LWOP in California,⁸⁰ which profiled five family members of victims murdered by teenagers, opinions ranged from unwavering support for life without parole without any consideration of age to the belief that the juveniles involved in the murder of their family member should be considered for release after a passage of time. The variation is most painfully apparent in cases of intra-family murders, which place family members at nearly irresolvable odds over the issue of parole for a relative who killed another relative.

As disclosed in reports, published statements, and our own discussions with the families and friends of victims of juvenile homicides, the issues that the families of victims are most concerned with include fear for personal or public safety; the minimum length of time that a juvenile offender should serve before he or she is given any consideration for release; the desire for notice and the opportunity to

participate and be heard at any hearing that might result in release; anguish at the prospect of having to appear and potentially re-appear before the Prisoner Review Board or any releasing authority in order to object to release; and frustration or a sense of betrayal at the prospect of release, no matter how remote, of an offender whose original sentence to life was promoted as providing a victim's family member with satisfaction or peace of mind.

It will be a challenge to design any modification to life sentences imposed for juvenile murder that will satisfy the concerns of all victims' family members, even as it is clear that some victims' family members want the issue of life without parole sentences to be revisited. We are hopeful that many of these issues can be addressed, however, by limiting the frequency with which a prisoner is allowed to request review or appear for a hearing; ensuring notice of hearings to all concerned parties; providing family members the option of participating; giving assurances that all facts, including those pertaining to the crime and those pertaining to the prisoner's conduct in prison, will be considered by the reviewing authority; permitting the use of videotaped victim impact statements which can be used so that family members need not testify on multiple occasions; and employing an initial screening process before an individual becomes parole-eligible that does not require the presence of victims' family members.

The concerns of some victims' family members will be met if it is understood that, even with modifications to current law to permit review of life sentences imposed for juvenile crime, some juvenile offenders will spend the rest of their lives in prison and will never be able to come home.

Most importantly, an open process that takes into account the opinions and sentiments of victims' family members as well as the lesser culpability of juvenile offenders and the fundamental standards of human rights, is critical to the fair resolution of the juvenile LWOP issue.

78. Illinois Coalition for the Fair Sentencing of Children, interview with Virginia C., in Illinois, November 9, 2007.

79. Illinois Coalition for the Fair Sentencing of Children, interview with Evelyn W., in Illinois, November 9, 2007.

80. Human Rights Watch, *When I Die They'll Send Me Home: Youth Sentenced to Life in California*, Vol. 20, No. 1(G) 5 (January 2008)



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CHAPTER 4:

ILLINOIS AND THE ORIGINS OF THE JUVENILE JUSTICE SYSTEM

Prior to 1899, all children in conflict with the law in the United States were treated the same as adults; there was no court set up specifically for children. In 1899, the nation's first juvenile court was established in Illinois, and other states began to follow shortly thereafter. The juvenile justice system was founded on the idea that childhood is a distinct phase of life, that juveniles are less culpable for crimes and more amenable to rehabilitation than adults,⁸¹ and that rehabilitation, not punishment, is the proper way to handle deviant—even grave—behavior among youth.⁸² Eventually, the system which began in Illinois—in which most children accused of crimes were removed from adult courtrooms, adult jails, and adult poorhouses—became a nationwide standard, and an international model. In fact, Illinois pioneered one of the nation's most durable and effective legal reforms—the juvenile court.

In 1903, just four years after the establishment of the first juvenile court, Cook County began transferring children to its adult court system for trial and sentencing. In 1906, Illinois lawmakers decided that boys in conflict with the law all would be treated as adults. For those under 17 years old, however, transfer was reserved only for the most serious offenders, and children were not sentenced to life without possibility of parole with any regularity.

This remained true until the late 1970s, when, in response to perceived increases in both juvenile and adult crime, state legislators began touting “tough on crime” positions. In 1996, Congressman Bill McCollum warned a House of Representatives subcommittee to “brace yourself for the coming

81. Hillary J. Massey, *Disposing of Children: The Eighth Amendment and Juvenile Life Without Parole After Roper*, 47 B.C. L. Rev. 1083 (September 2006).

82. Wayne A. Logan, *Proportionality and Punishment: Imposing Life Without Parole on Juveniles*, 33 Wake Forest L. Rev. 681, 685 (1998).



Photo by Steve Liss; used with his permission.

generation of ‘super-predators’⁸³ in this country. The mood washed across the nation, and punishment for children who committed serious crimes became much more severe.⁸⁴ In fact, by 1994 there was no wave of youth crime, and no emerging generation of superpredators. In the years between 1986 and 1993, the small number of gun homicides committed by youth tripled—but that tragic rise was only temporary. In the next decade, youth crime plummeted,⁸⁵ including violent youth crime. Still, the notion that there was a juvenile superpredator crime wave took root in the media, among politicians, and with the public. Legislatures across the US began lowering the minimum age for adult criminal court jurisdiction, authorizing automatic transfer from juvenile to adult court for increasing numbers of specified alleged crimes, giving prosecutors greater discretion to file charges against children in adult court, and incarcerating juvenile prisoners in adult prisons.⁸⁶

States also increased the rate at which they sentenced children to life without the possibility of parole. From 1962 to 1981, an average of two juvenile life without parole sentences were handed down per year in the US.⁸⁷ In 1989, the number of child offenders who received life sentences climbed to 50, reaching an all-time high of 152 in 1996.⁸⁸ Although the total number of extreme sentences handed down per year has since decreased, annually the rate at which children receive this sentence is at least three times higher than it was 15 years ago, and it is again on the rise.⁸⁹ For example, in 1990, 2,234 children were convicted of murder nationwide and 2.9 percent of them received life sentences. In 2000, only 1,006 children were convicted of murder, but the rate of those who were sentenced to life more than tripled, to 9.1 percent.⁹⁰

As in the rest of the country, in Illinois, several failed policies led to a major increase in the sentencing of children to life. In 1978, Illinois abolished its parole system in favor of a determinate sentencing scheme with life without possibility of parole as a mandatory sentence

83. Human Rights Watch, *No Minor Matter: Children in Maryland's Jails* (November 1999) (quoting House Committee on Economic and Educational Opportunities, Subcommittee on Early Childhood, Youth and Families, *Hearings on the Juvenile Justice and Delinquency Prevention Act*, Serial No. 104-68, 104th Cong., 2d sess., 1996, p. 90 (statement of Rep. Bill McCollum, chairman, Subcommittee on Crime, House Judiciary Committee)).

84. *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, Human Rights Watch and Amnesty International, 3 (2005).

85. *Id.* at 15.

86. *Id.* at 17.

87. *Id.* at 31.

88. Since 1996, the number of children sentenced to life without possibility of parole has been decreasing annually. By 2003, the number of child offenders receiving the sentence was 54. *Id.* at 31.

89. *Id.* at 32.

90. *Id.*

In Illinois, several failed policies led to a major increase in the sentencing of children to life.

for those convicted of more than one homicide. In 1982, Illinois passed its first automatic transfer statute, whereby children charged with certain crimes would automatically be tried as adults, regardless of their culpability in the crime. Additionally, the late 1980s and 1990s saw a huge increase in children being charged under the Illinois accountability statute, which both in trial and sentencing treats accomplices exactly the same as the principal actors in the crime. Under the combination of the accountability statute, the mandatory sentencing laws, and the automatic transfer provision, juveniles charged as accomplices are held accountable and sentenced as principals without regard to their age or level of involvement in the crime. Often this means they are held accountable for actions of adult principals.

The case of 15-year-old Marshan A. provides one illustration of this phenomenon. Marshan was charged as an unarmed accomplice alongside a co-defendant who shot and killed two individuals. First, under the Illinois accountability statute, Marshan was charged with and convicted of the two murders, even though he was not armed. Because he was 15 years old and charged with murder, Illinois law then required that he be transferred from juvenile to adult court; the judge had no discretion in the matter. Once under the adult court sentencing scheme, when Marshan was convicted of the crime of murder, it was mandatory that he would be sentenced to life without possibility of parole. The convergence of these three independently drafted laws means that some children, engaged in a minor way in crimes that became far worse than they might ever have anticipated, must spend the rest of their lives in prison.

JUVENILE LWOP STATISTICS

Individuals Sentenced to LWOP as Juveniles in Illinois: BY AGE AT TIME OF OFFENSE

AGE		
Age 14	4	4%
Age 15	12	12%
Age 16	37	36%
Age 17	50	49%
Total	103	

Individuals Sentenced to LWOP as Juveniles in Illinois: BY RACE

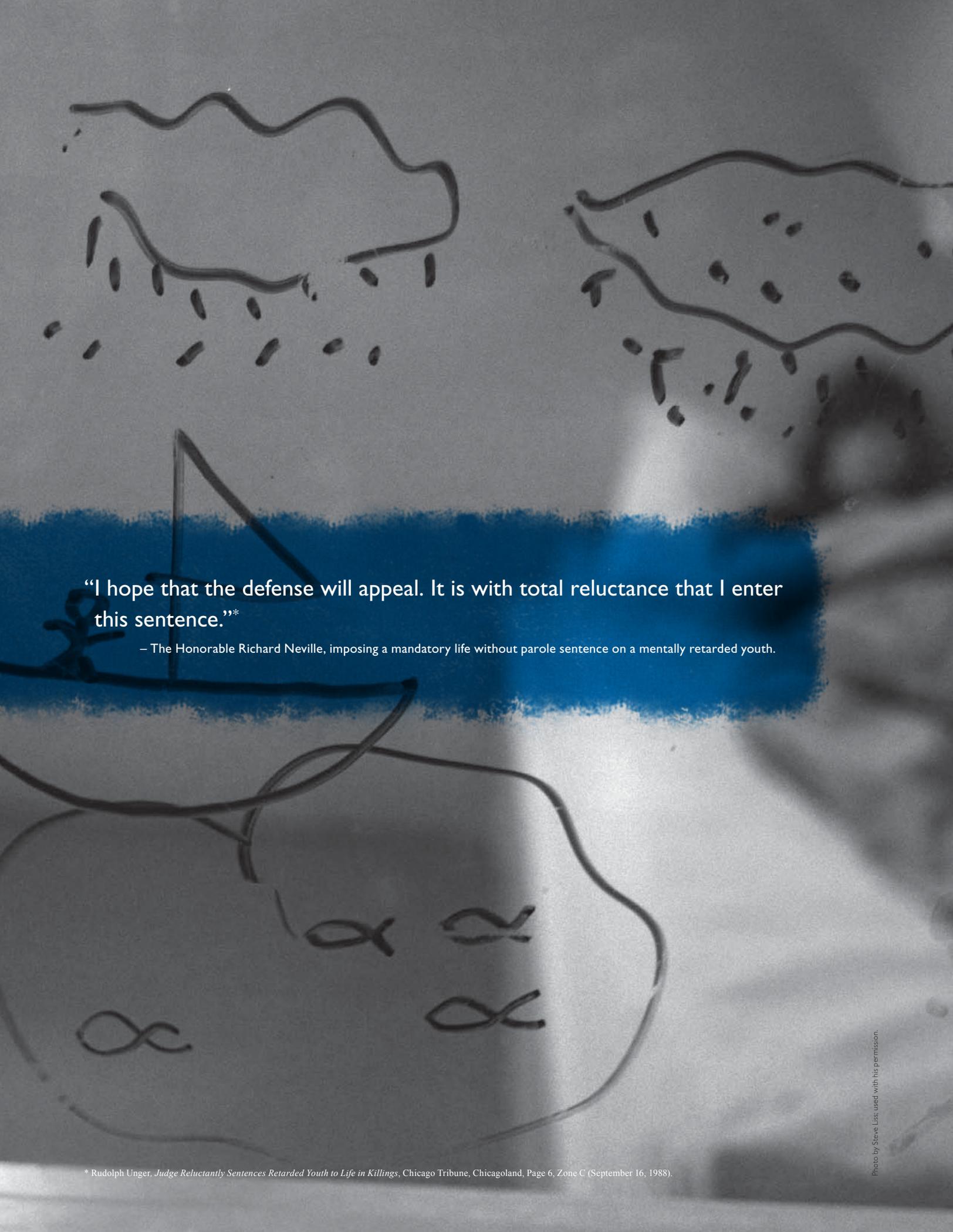
RACE		
African American	74	72%
Latino	10	10%
Caucasian	19	18%
Total	103	

Individuals Sentenced to LWOP as Juveniles in Illinois: BY COUNTY

COUNTY		COUNTY	
Bureau	1	Peoria	1
Cook	73	Richland	1
DuPage	3	St. Clair	4
Henry	1	Tazewell	1
Jackson	1	Union	1
Kankakee	2	Vermilion	1
LaSalle	1	Will	1
Macon	3	Williamson	2
Madison	3	Winnebago	1
Marion	1	Woodford	1

MANDATORY VERSUS DISCRETIONARY JUVENILE LWOP SENTENCES IN ILLINOIS

JLWOP		
Mandatory	81	79%
Discretionary	21	20%
Unknown	1	1%
Total	103	



“I hope that the defense will appeal. It is with total reluctance that I enter this sentence.”*

– The Honorable Richard Neville, imposing a mandatory life without parole sentence on a mentally retarded youth.

* Rudolph Unger, *Judge Reluctantly Sentences Retarded Youth to Life in Killings*, Chicago Tribune, Chicagoland, Page 6, Zone C (September 16, 1988).

CHAPTER 5:

NATIONAL AND INTERNATIONAL TRENDS

NATIONAL TRENDS

In 2005, the United States Supreme Court held, in *Roper v. Simmons*, that subjecting juveniles to the death penalty was contrary to “evolving standards of decency.”⁹¹ In doing so, the Court reaffirmed its longstanding position that, when dispensing justice, the legal system should hold children to a different standard than the one imposed on adults. “When a juvenile offender commits a heinous crime,” the Court explained, “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.”⁹²

In the wake of the *Roper* decision, lawyers, activists, and lawmakers in several states began to question whether life without parole sentences for children fit with the ideals set forth in the decision. In Kansas, legislators have passed a bill which exempts children from life sentences.⁹³ Colorado recently passed legislation that prohibits life without parole for juveniles and provides for a mandatory review hearing 40 years from the time of sentencing.⁹⁴ Florida also considered (but did not pass) legislation that would have banned juvenile life without the possibility of parole.⁹⁵

Michigan is also working on changing its law. The state legislature recently re-introduced legislation that would prospectively prohibit sentencing a juvenile to life in prison without possibility of parole and that would grant inmates who have served at least 10 years of a juvenile life sentence the chance for parole.⁹⁶ This legislation would give juveniles sentenced to life the opportunity to show a parole board that they have been rehabilitated and deserve a second chance. A Nebraska legislator also recently introduced legislation which would enable inmates sentenced to life for crimes they committed when they were between 16 and 18 a chance at parole after 25 years, and those younger than 16 a chance at parole after 20 years.⁹⁷ Finally, California is taking steps to alter its law. The California Senate’s Public Safety Committee passed the Juvenile Life Without Parole Reform Act (Senate Bill 999), which would replace life sentences for children with a sentence of 25 years to life, contingent on the person’s rehabilitative ability.⁹⁸

91. *Roper v. Simmons*, 543 U.S. 551 (2005).

92. *Id.* at 555.

93. *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, Human Rights Watch and Amnesty International, 89 (2005).

94. C.R.S.A. § 17-22.5-104 (IV) (2006).

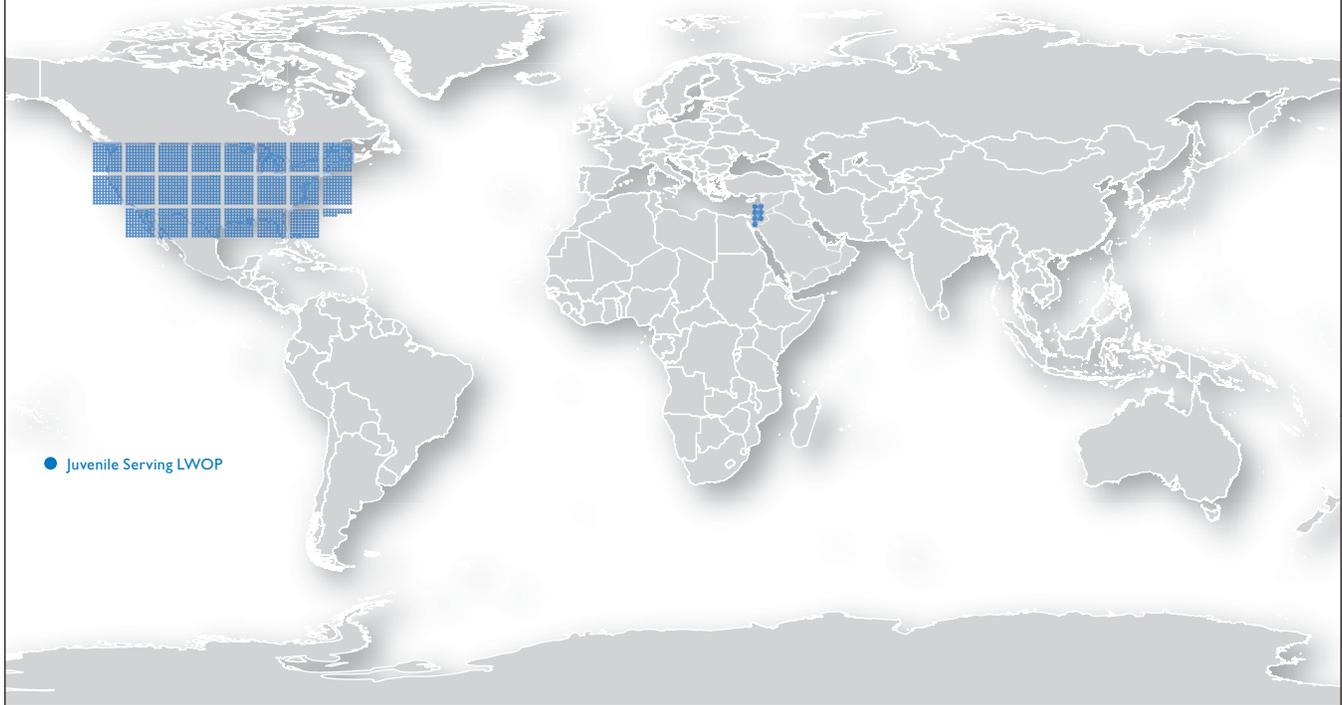
95. Hillary J. Massey, *Disposing of Children: The Eighth Amendment and Juvenile Life Without Parole After Roper*, 47 B.C. L. Rev. 1083, 1086 (September 2006).

96. Brian McVicar, *Fight for Juveniles’ Second Chance Renewed—Bill Would Prohibit Sentences Without Chance of Parole*, Capital News Services, Lansing State J. Apr. 1, 2007.

97. LB 843, Nebraska State Legislature, www.nebraskalegislature.gov (January 10, 2008).

98. Human Rights Watch, *California Takes Step to End Life Without Parole for Children—Subcommittee Approves Senate Bill 999*, Apr. 17, 2007, available at: <http://hrw.org/english/docs/2007/04/17/usdom15726.htm>.

Juvenile LWOP per Country



The tide is turning in the court system as well. In sentencing a 13-year-old to life with the possibility of parole, the Nevada Supreme Court characterized life without parole as a “denial of hope; 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.”⁹⁹ The Supreme Court of Kentucky abolished the sentence in 1968, stating: “it is impossible to make a judgment that a fourteen-year-old youth, no matter how bad, will remain incorrigible for the rest of his life.”¹⁰⁰ And the Supreme Court of Indiana has found exceptionally long prison sentences constitutionally impermissible for children.¹⁰¹

THE REST OF THE WORLD

There are currently 2,381 child offenders serving life without possibility of parole in the United States, including at least 103 serving life sentences in Illinois. In the rest of the world, the total number of children serving life sentence is 7. All of them are in a single

country—Israel.¹⁰² Life without parole sentences are explicitly banned for both juveniles and adults in Austria, Ireland, Japan, Switzerland, Sweden, the United Kingdom, and Canada (which requires access to the parole system 5 to 10 years after a child has been sentenced).¹⁰³ In Canada, the most serious penalty for youth offenders is life imprisonment. However, the individual becomes eligible for parole within 5 to 10 years.¹⁰⁴ Further, the sentence can only be imposed if the offender was transferred to adult court and then convicted of first or second degree murder.¹⁰⁵

The Convention on the Rights of the Child (CRC), cited by the Supreme Court in *Roper*, prohibits sentences of life without parole for juveniles outright.¹⁰⁶ In February 2007, the Committee on the Rights of the Child reinforced this prohibition in a General Comment, reminding member states: “No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children

99. *Naovarath v. State*, 105 Nev. 525, 779 P.2d 944, (Nev. 1989).

100. *Workman v. Kentucky*, 429 S.W.2d 374, 378 (Ky. 1968).

101. See *Towbridge v. State*, 717 N.E.2d 138 (Ind. 1999).

102. Center for Law and Global Justice, University of San Francisco School of Law, *Sentencing Our Children to Die in Prisons*, i (November 2007).

103. *Second Chances – Juveniles Serving Life Without Parole in Michigan Prisons*, 21 (2004).

104. Committee on the Rights of the Child, 1994, State Party Report: Canada, CRC/C/11/Add.3, para. 351.

105. *Id.*

106. Convention on the Rights of the Child art. 37, para 1, Nov. 20, 1989.

As in the rest of the nation and the rest of the world, there is a growing consensus in Illinois that life without possibility of parole sentences are unacceptable for children.

the possibility of release should be realistic and regularly considered.”¹⁰⁷ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) require that detention of children should be limited to the shortest length of time necessary to protect society, and imposed only as a last resort,¹⁰⁸ and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Riyadh Guidelines) require children to be treated humanely and sentenced in proportion to their age at the time of the offense. The International Covenant on Civil and Political Rights, to which the United States is a party, requires that in sentencing children states must “take account of their age and the desirability of promoting their rehabilitation”¹⁰⁹—a practice that by definition cannot be done when, as in Illinois, life without the possibility of parole sentences are mandatory for most youthful offenders.

Indeed, outside of the United States the practice of handing down juvenile life sentences has become so rare that it is now illegal as a matter of customary international law.¹¹⁰

TRENDS IN ILLINOIS

As in the rest of the nation and the rest of the world, there is a growing consensus in Illinois that life without possibility of parole sentences are unacceptable for children. In 2004, Illinois lawmakers began to seriously question the unfairness and unintended consequences of automatically trying youth as adults, and provided judges with discretion in some cases to return youth to juvenile court. In 2006 and 2007, the legislature recognized its failed policies with regard to juvenile sex offender registration and passed laws that acknowledged the rehabilitative potential of children charged with

sex offenses.¹¹¹ In 2006, Illinois also established a new Department of Juvenile Justice, which will act separately from its adult corrections counterpart, and will focus on appropriate treatment for children in conflict with the law. The legislature has commissioned a report on further improvements that need to be made to state statutes that call for the transfer of children from juvenile to adult court. The report is due to be released in August 2008. And, as mentioned earlier in this report, several Illinois courts have questioned the constitutionality of the Illinois juvenile LWOP laws. In 2005, the Illinois Supreme Court reduced the life sentence of a 15-year-old after finding that his sentence was grossly disproportionate to the crime he committed. Two Illinois Circuit Courts recently relied on that 2005 decision to grant new sentencing hearings to individuals serving life without parole sentences in Illinois.

Building on these reforms, in January 2008 the Illinois legislature introduced legislation that would abolish life without parole sentences for child offenders.

107. Committee on the Rights of the Child, 2007, General Comment No. 10, CRC/C/GC/10, para. 27.

108. UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 17.1, 1985; UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) at 201, 1990.

109. International Covenant on Civil and Political Rights art. 14, para. 4, Dec. 16, 1966.

110. See, e.g., *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, Human Rights Watch and Amnesty International, 107-108 (2005).

111. See, e.g., Sex Offender Reg-Delinquent, Pub. Act No. 095-0513, SB 1509 (effective date 6/1/2008).



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CHAPTER 6:

CONCLUSION AND RECOMMENDATIONS

In 1899, Illinois established the nation's first juvenile court and became recognized as the country's leader in juvenile justice reform. The principles which guided the establishment of the first court were simple: because children are still developing and are inherently capable of rehabilitation, and because they are categorically less culpable than adults, the justice system should focus on sanctioning and reforming rather than solely punishing those children who commit crimes.

Over 100 years later, Illinois continues to be guided by these same principles—in most cases. The practice of sentencing children to life without parole is a unique departure from that philosophy and an aberration in our system. We urge Illinois to once again lead this country by formally abolishing the practice of sentencing children to life without possibility of parole.

We ask that legislators, policy makers, prosecutors, and defense attorneys open a dialogue with children's advocates, as well as victims' families, in working toward a solution to this problem.

As an initial matter, we recommend several concrete steps:

For legislators:

- Pass legislation that would set the age of the child at the time of his or her offense plus one year as the maximum amount of time a child would serve before having the opportunity to appear before a parole board. In other words, if a 15-year-old commits a serious offense, he or she would become eligible after 16 years, a 16-year-old would be eligible after 17 years, and so on.
- Apply this new legislation retroactively to all Illinois children sentenced to life for committing a crime when under the age of 18.
- Include victim notification provisions in any legislation passed, and provide safeguards to minimize the impact of parole hearings on victims' families.
- Eliminate all mandatory life sentences for juveniles from the Illinois sentencing scheme, and instead give judges the discretion to determine whether a given sentence is appropriate for a particular child.
- Require that age be considered as a factor in every stage of criminal and juvenile court proceedings.

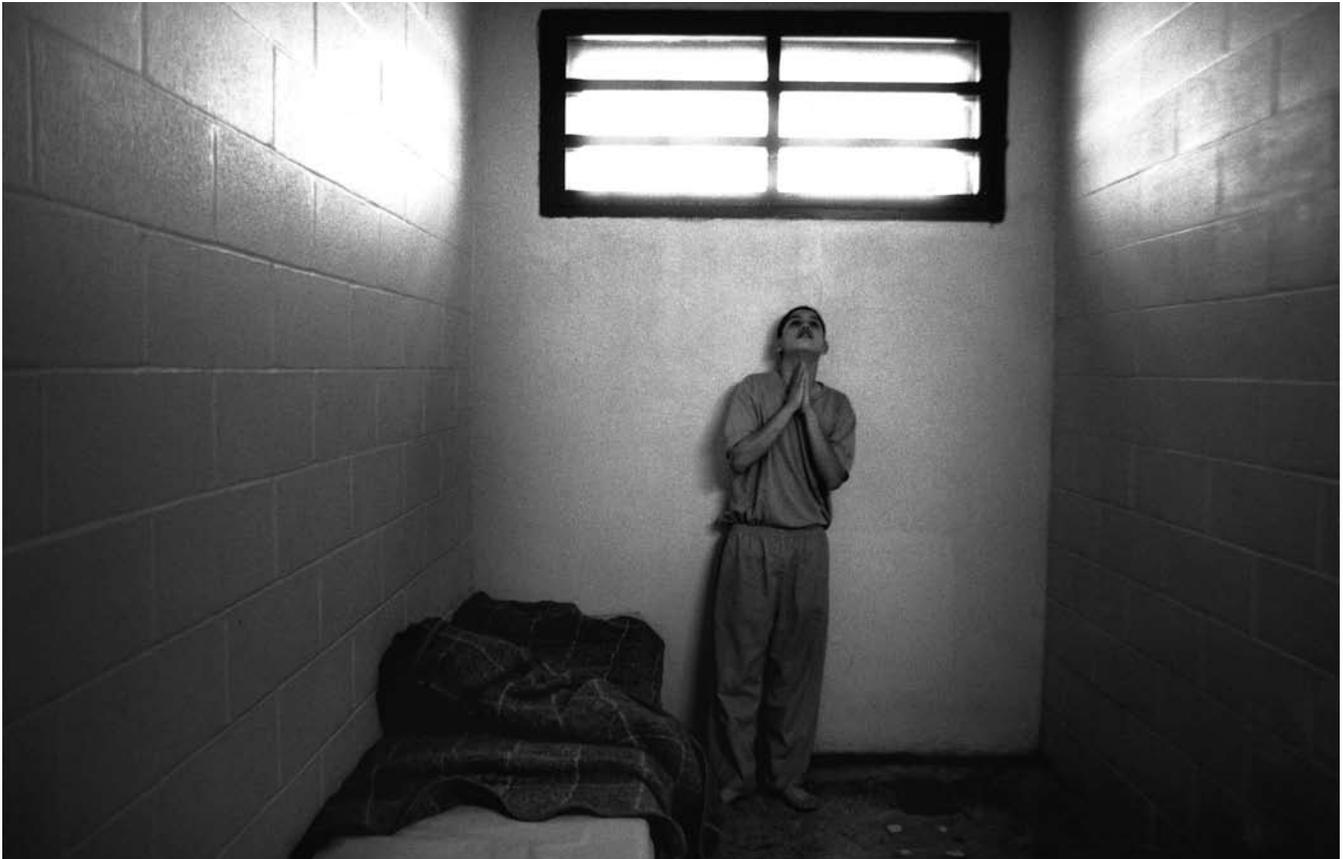


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For the Illinois Supreme Court:

- Grant Petitions for Leave to Appeal filed by any person who has received a life sentence for a crime committed while under the age of 18.
- Create a mechanism whereby every child sentenced to life automatically is entitled to full review of his or her direct appeal by the Illinois Supreme Court, without having to file a Petition for Leave to Appeal.

For practitioners:

- Educate judges, prosecutors, and defense attorneys in adolescent development and the differences between children and adults.
- Make representation of children who are eligible for life sentences a specialized practice area, much in the way that death penalty defense is specialized.

February 2008

The Illinois Coalition for the Fair Sentencing of Children includes:

- American Civil Liberties Union of Illinois
- DLA Piper
- Human Rights Watch, Chicago Committee
- John Howard Association of Illinois
- Juvenile Justice Initiative
- Law Office of the Cook County Public Defender
- Children and Family Justice Center, Bluhm Legal Clinic,
Northwestern University School of Law
- Edwin F. Mandel Legal Aid Clinic, University of Chicago School of Law

Please read more about the Coalition at <http://www.law.northwestern.edu/cfjc/jlwop>

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