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From the Administrator

The appropriateness of the death penalty for juveniles is the subject of intense debate despite Supreme Court decisions upholding its use. Although nearly half the States allow those who commit capital crimes as 16- and 17-year-olds to be sentenced to death, some question whether this is compatible with the principles on which our juvenile justice system was established.

This Bulletin examines the history of capital punishment and Supreme Court decisions related to its use with juveniles. It also includes profiles of those sentenced to death for crimes committed as juveniles and notes the international movement toward abolishing this sanction.

I hope that this Bulletin enhances our understanding of the issues involved in applying the death penalty to juveniles so that we may focus our energy and resources on effective and humane responses to juvenile crime and violence.

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Juveniles and the Death Penalty

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A primary purpose of the juvenile justice system is to hold juvenile offenders accountable for delinquent acts while providing treatment, rehabilitative services, and programs designed to prevent future involvement in law-violating behavior. Established in 1899 in Chicago, IL, in response to the harsh treatment children received in the criminal justice system, the first juvenile court recognized the developmental differences between children and adults and espoused a rehabilitative ideal. However, since the passage of revised death penalty statutes in the last quarter of the 20th century, and during recent periods of increased violent crime, a shift in the juvenile justice system toward stronger policies and punishments has occurred. This shift includes the waiver or transfer of more juvenile offenders to criminal court than in the past. Increasing numbers of capital offenders, including youth who committed capital offenses prior to their 18th birthdays, are now subject to "absolute" sentences, including the death penalty and life in prison without parole.

Currently, 38 States authorize the death penalty; 23 of these permit the execution of offenders who committed capital offenses prior to their 18th birthdays.[1] However, the laws governing application of the death penalty in those 23 States vary, and the variation is not necessarily tied to rates of juvenile crime. Since 1973, when the death penalty was reinstated, 17 men have been executed for crimes they committed as juveniles (see table 1), and 74 people in the United States currently sit on death row for crimes they committed as juveniles (Streib, 2000).[2]

Debate about the use of the death penalty for juveniles has grown more intense in light of calls for the harsher punishment of serious and violent

juvenile offenders, changing perceptions of public safety, and international challenges to the death penalty's legality. Proponents see its use as a deterrent against similar crimes, an appropriate sanction for the commission of certain serious crimes, and a way to maintain public safety. Opponents believe it fails as a deterrent and is inherently cruel and point to the risk of wrongful conviction. The constitutionality of the juvenile death penalty has been the subject of intense national debate in the last decade. Several Supreme Court decisions and high-profile cases have led to increased public interest and closer examination of the issues by academics, legislators, and policymakers.

This Bulletin examines the status of capital punishment in the sentencing of individuals who commit crimes as juveniles.[3] It examines the history of the death penalty, including the juvenile death penalty; provides a profile of those currently on death row; notes State-by-State differences in sentencing options; and reviews the use of the death penalty in an international context.

History of the Death Penalty

Approximately 20,000 people have been legally executed in the United States in the past 350 years (Streib, 2000). Executions declined through the 1950's and 1960's and ceased after 1967, pending definitive Supreme Court decisions. This hiatus ended only after States altered their laws in response to the Supreme Court decision in *Furman* v. *Georgia*,[4] a 5–4 decision that the death penalty, as imposed under existing law, constituted cruel and unusual punishment in violation of the 8th and 14th amendments of the U.S. Constitution. To decide eighth amendment cases, the Supreme Court uses an analytical framework that includes three criteria. A punishment is cruel and unusual if:

- It is a punishment originally understood by the framers of the Constitution to be cruel and unusual.
- There is a societal consensus that the punishment offends civilized standards of human decency.
- It is (1) grossly disproportionate to the severity of the crime or (2) makes no measurable contribution to acceptable goals of punishment.

In *Furman,* the Supreme Court ruled that the death penalty was arbitrarily and capriciously applied under existing law based on the unlimited discretion accorded to sentencing authorities in capital trials. As a result, more than 600 death sentences for prisoners then on death row were vacated.

In response, States began to revise their statutes in 1973 to modify the discretion given to sentencing authorities, and some States again began sentencing adult offenders to death. By 1975, 33 States had introduced revised death penalty statutes. These statutes went untested until *Gregg* v. *Georgia,*[5] a case in which the Supreme Court found, in a 7–2 decision, that the

Table 1. Executions of Juvenile Offenders, January 1, 1973, through June 30, 2000

Name	Date of Execution	Place of Execution	Race	Age at Crime	Age at Execution
Charles Rumbaugh	9/11/1985	Texas	White	17	28
J. Terry Roach	1/10/1986	S. Carolina	White	17	25
Jay Pinkerton	5/15/1986	Texas	White	17	24
Dalton Prejean	5/18/1990	Louisiana	Black	17	30
Johnny Garrett	2/11/1992	Texas	White	17	28
Curtis Harris	7/1/1993	Texas	Black	17	31
Frederick Lashley	7/28/1993	Missouri	Black	17	29
Ruben Cantu	8/24/1993	Texas	Latino	17	26
Chris Burger	12/7/1993	Georgia	White	17	33
Joseph John Cannon	4/22/1998	Texas	White	17	38
Robert A. Carter	5/18/1998	Texas	Black	17	34
Dwayne A. Wright	10/14/1998	Virginia	Black	17	26
Sean R. Sellars	2/4/1999	Oklahoma	White	16	29
Christopher Thomas	1/10/2000	Virginia	White	17	26
Steve E. Roach	1/19/2000	Virginia	White	17	23
Glen C. McGinnis	1/25/2000	Texas	Black	17	27
Gary L. Graham	6/22/2000	Texas	Black	17	36

Source: Streib, 2000.

death penalty did not *per se* violate the eighth amendment. The *Gregg* decision allowed States to establish the death penalty under guidelines that eliminated the arbitrariness of sentencing in capital cases. The following safeguards were developed to make sentencing more equitable:

- In death penalty cases, the determination of guilt or innocence must be decided separately from hearings in which sentences of life imprisonment or death are decided.
- The court must consider aggravating and mitigating circumstances in relation to both the crime and the offender.
- The death sentence must be subject to review by the highest State court of appeals to ensure that the penalty is in proportion to the gravity of the offense and is imposed even-handedly under State law.

By 1995, 38 States and the Federal Government had enacted statutes authorizing the death penalty for certain forms of murder.

History of the Juvenile Death Penalty

Thomas Graunger, the first juvenile known to be executed in America, was tried and found guilty of bestiality in 1642 in Plymouth Colony, MA (Hale, 1997). Since that execution, 361 individuals have been executed for crimes committed when they were juveniles (Streib, 2000).

The Supreme Court decided its first juvenile case—*Kent* v. *United States*,[6] in which it limited the waiver discretion of juvenile courts—in 1966. Initially, juvenile courts had enjoyed broad discretion in deciding when to waive cases to criminal court. However, waiver decisions were not consistent across States, and legislatures began to reform the process by standardizing judicial decisionmaking. *Kent* held that juveniles were entitled to a hearing, representation by counsel, access to information upon which the waiver decision was based, and a statement of reasons justifying the waiver decision. The court also laid out a number of factors that the juvenile court judge must consider in making the waiver decision (Evans, 1992), including:

- The seriousness and type of offense and the manner in which it was committed.
- The sophistication and maturity of the juvenile as determined by consideration of his or her homelife, environmental situation, emotional attitude, and pattern of living.
- The juvenile's record and history.
- The prospects for protecting the public and rehabilitating the juvenile.

Juveniles were thus guaranteed certain rights, but they still potentially faced the same punishments, including capital punishment, as adults in the criminal justice system.

In the 1980's, the Supreme Court was repeatedly asked to rule on whether the execution of a juvenile offender was permissible under the Constitution. *Eddings* v. *Oklahoma*[7] was the first case the Supreme Court agreed to hear based on the defendant's age (Eddings was 16 at the time he murdered a highway patrol officer). Without ruling on the constitutionality of the juvenile death penalty, the Court vacated the juvenile's death sentence on the grounds that the trial court had failed to consider additional mitigating circumstances. *Eddings* was important, however, because the Court held that the chronological age of a minor is a relevant mitigating factor that must be considered at sentencing. Justice Powell, in writing for the majority, stated:

> [Y]outh is more than a chronological fact. It is a time of life when a person may be the most susceptible to influence and psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.[8]

The Supreme Court rejected five requests between 1983 and 1986 to consider the constitutionality of imposing the death penalty upon a juvenile (Jackson, 1996). It was not until 1987, in *Thompson* v. *Oklahoma*,[9] that the Supreme Court agreed to consider this specific issue. The 5–3 decision vacated the defendant's death sentence (at the age of 15, Thompson had participated in the murder of his former brother-in-law). However, only four justices agreed that the execution of a 15-year-old would be cruel and unusual punishment under all circumstances (*per se*). Applying the standard eighth amendment analysis, Justices Stevens, Brennan, Marshall, and Blackmun opined that the execution would constitute

cruel and unusual punishment because it was inconsistent with standards of decency and failed to contribute to the two social goals of the death penalty—retribution and deterrence. Justice O'Connor concurred, but pointed out that Oklahoma's death penalty statute set no minimum age at which the death penalty could be imposed. Sentencing a 15-year-old under this type of statute violated the standard for special care and deliberation required in capital cases. The outcome of the decision was that a State's execution of a juvenile who had committed a capital offense prior to age 16 violated *Thompson* unless the State had a minimum age limit in its death penalty statute (Jackson, 1996).

The next year, in *Stanford* v. *Kentucky*[10] and *Wilkins* v. *Missouri,*[11] the Supreme Court expressly held, in a 5–4 decision, that the eighth amendment does not prohibit the death penalty for crimes committed at age 16 or 17. In both cases, the Supreme Court upheld the death penalty sentence. While the *Thompson* plurality used the three-part analysis (see page 2) to determine if sentencing a juvenile offender to the death penalty constituted cruel and unusual punishment, the *Stanford* plurality did not. The *Stanford* plurality rejected the third part of the test, namely, that the punishment is disproportionate to the severity of the crime and makes no measurable contribution to the deterrence of crime.

In *Stanford,* the Court considered the evolving standards of decency in society as reflected in historical, judicial, and legislative precedents; current legislation; juries' and prosecutors' views; and public, professional, and international opinions. The Court based its determination of evolving standards of decency on legislative authorization of the punishment. The dissenting judges argued that the record of State and Federal legislation protecting juveniles because of their inherent immaturity was not relevant in constituting a national consensus. The justices also found that public opinion polls and professional associations were an "uncertain foundation" on which to base constitutional law. In the end, the Court found that capital punishment of juveniles ages 16 or 17 did not offend societal standards of decency.

Profile of Youth Affected

Since the series of Supreme Court decisions upholding the use of the death penalty for juveniles, juvenile offenders have received the sentence of death fairly consistently, at least during the past 20 years. Since 1973, 196 juvenile death sentences have been imposed. This accounts for less than 3 percent of the almost 6,900 total U.S. death sentences. Approximately two-thirds of these have been imposed on 17-year-olds and nearly one-third on 15- and 16-year-olds (see table 2).

The rate of juvenile death sentencing was initially somewhat erratic, fluctuating in the years following *Furman* v. *Georgia* (1972), but became more consistent in the mid-1980's. The rate dropped somewhat in the late 1980's, possibly because of cases pending before the Supreme Court (Streib, 2000).

In the 1990's, however, the annual rate returned to a consistent 2–3 percent of all sentences, despite the dramatic increase in juvenile arrests for murder that occurred between 1985 and 1995.

Of the 196 juvenile death sentences imposed since 1973, 74 (or 38 percent) remain in force and 105 (54 percent) have been reversed. Of the 17 executions that have occurred since 1973, 4 took place this year. Many juveniles are well into adulthood by the time they face execution. The length of time on death row has ranged from 6 to 20 years (Streib, 2000).

As of June 2000, 74 adults, ranging in age from 18 to 41 years old, remain on death row for crimes committed as juveniles:

- All 74 offenders are male.
- Seventy-three percent committed their crimes at age 17.
- Sixty-three percent are minorities.
- They are on death row in 16 different States.
- They have been on death row for periods ranging from a few months to more than 21 years.

Of their victims, 80 percent were adults, 64 percent were white, and 53 percent were female. Texas, with 24 offenders on death row who committed their crimes as juveniles, holds 34 percent of the national total of such offenders (Streib, 2000).

Little information exists to characterize juvenile capital offenders beyond bare demographics.

Table 2. Death Sentences Imposed for Crimes Committed as Juveniles, 1973–2000

Year	Total Death Sentences*	Juvenile Death Sentences (Age at Crime) 15	16	17	Total	Percentage of Juvenile Sentences as Portion of Total Sentences
1973	42	0	0	0	0	0.0%
1974	149	1	0	2	3	2.0
1975	298	1	5	4	10	3.4
1976	233	0	0	3	3	1.3
1977	137	1	3	8	12	8.8
1978	187	0	1	6	7	3.7
1979	152	0	1	3	4	2.6
1980	174	2	0	3	5	2.9
1981	229	0	2	6	8	3.5
1982	268	0	1	13	14	5.2
1983	254	0	4	3	7	2.8
1984	283	3	0	3	6	2.1
1985	268	1	1	4	6	2.2
1986	299	1	3	5	9	3.0
1987	289	1	0	1	2	0.7
1988	291	0	0	5	5	1.7
1989	263	0	0	1	1	0.4
1990	252	1	3	4	8	3.2
1991	264	1	0	4	5	1.9
1992	289	0	1	5	6	2.1
1993	291	0	1	5	6	2.1
1994	321	0	4	13	17	5.3
1995	322	0	2	9	11	3.4
1996	317	0	4	6	10	3.2
1997	274	0	4	4	8	2.9
1998	285	0	4	7	11	3.9
1999	300†	0	3	6	9	3.0
2000	150†	0	0	3	3	2.0
Total	**6,881†**	**13**	**47**	**136**	**196**	**2.8**

Note: Adapted from Streib, 2000.
* Data for this column were taken from Snell, 1999.
† Estimates as of June 2000.

Although the 1976 *Gregg* decision established that the court must consider mitigating circumstances, capital offenders are often represented by public defenders or other appointed counsel who often do not have the time or resources to adequately investigate mitigating factors such as psychiatric history, family issues, and mental capacity. Thus, a complete profile of capital offenders is difficult to obtain, because detailed information about them is seldom available.

The few researchers who have examined this information have added to the profile of juveniles sentenced to the death penalty. In the mid-1980's, Lewis and colleagues (1988) conducted diagnostic evaluations of 14 (40 percent) of the 37 juvenile offenders on death row in the United States.[12] Through these comprehensive assessments, Lewis and colleagues found that all 14 had sustained head injuries as children. Nine had major neuropsychological disorders, 7 had had psychotic disorders since early childhood, and 7 had serious psychiatric disturbances. Seven were psychotic at the time of evaluation or had been diagnosed in early childhood. Only two had IQ scores above 90 (100 is considered average). Only three had average reading abilities, and another three had learned to read on death row. Twelve reported having been brutally abused physically, sexually, or both, and five reported having been sodomized by relatives.

Many of these factors, however, had not been placed in evidence at the time of trial or sentencing and had not been used to establish mitigating circumstances:

> The time and expertise required to document the necessary clinical information were not available. Furthermore, the attorneys' alliances were often divided between the juveniles and their families. [O]n several occasions, attorneys who chose to make use of our evaluations requested that we conceal or minimize parental physical and sexual abuse to spare the family. . . . Brain damage, paranoid ideation, physical abuse, and sexual abuse, all relevant to issues of mitigation, were

either overlooked or deliberately concealed (Lewis et al., 1988:588).

In most cases, Lewis and colleagues found that the inmates and their families did not want to acknowledge past abuse or mental illness. Only 5 of the 14 inmates underwent any pretrial psychiatric evaluation, and the research team found these evaluations to be both incomplete and inaccurate. In many instances, the defendants were represented by public defenders or court-appointed attorneys who were insufficiently prepared for trial.[13]

Amnesty International found similar results. In 9 of 23 juvenile cases it examined, lawyers handling later appeals identified mitigating evidence that had not been presented at the trial or sentencing hearing (Amnesty International, 1991). A case in point is Dwayne Allan Wright, who was executed October 14, 1998, in Virginia's Greensville Correctional Center for a crime he committed at age 17.[14] The court nominated a clinical psychologist, whom the defense accepted, only to find out later that the psychologist was the author of a study that concluded that mental illness and environment are not mitigating factors in the commission of crimes and that "criminals act because they develop an ability to 'get away with' their crimes and 'live rather well' as a result" (Amnesty International, 1998:30).

The research of Robinson and Stephens (1992) corroborated that of Lewis and colleagues. Robinson and Stephens applied 5 descriptive categories to 91 juveniles who had been sentenced to death between 1973 and 1991. The categories were based on mitigating circumstances that had been established by the evidence and were in addition to "youth"—a mitigating factor established in *Eddings* v. *Oklahoma*. Robinson found that:

- Almost half of those sentenced had troubled family histories and social backgrounds and problems such as physical abuse, unstable childhood environments, and illiteracy.
- Twenty-nine suffered psychological disturbances (e.g., profound depression, paranoia, self-mutilation).
- Just under one-third exhibited mental disability evidenced by low or borderline IQ scores.
- More than half were indigent.
- Eighteen were involved in intensive substance abuse before the crime.

Juveniles sentenced to death share varying combinations of these mitigating circumstances, in addition to their youthful age. In 61 of the 91 cases (67 percent), one or more factors in addition to "youth" was present.

State-by-State Differences in Sentencing Options

Twenty-two States—more than half of the 38 jurisdictions authorizing the death penalty—have imposed the death penalty on offenders who committed capital offenses before age 18 (see table 3). Since 1973, Alabama, Florida, and Texas have used the penalty more than other jurisdictions. Of the juveniles sentenced to the death penalty, all 21 Hispanic offenders were sentenced in Arizona, Florida, Nevada, and Texas. Ten of the eleven cases in Louisiana involved African American offenders, and all Oklahoma offenders were white. There were four cases of female offenders, one each in Alabama, Georgia, Indiana, and Mississippi. The 13 youngest offenders, who were age 15 at the time of their crimes, came from 10 different States (Streib, 2000).

The States have responded differently to the requirement imposed by *Thompson* (see pages 3–4). The Supreme Court of Louisiana held that *Thompson* prevents 15-year-old offenders from being executed in that State (*State* v. *Stone*[15] and *Dugar* v. *State*[16]). The same is true for Alabama (*Flowers* v. *State*[17]), Florida (*Allen* v. *State*[18]), and Indiana (*Cooper* v. *State*[19]). The Florida Supreme Court ruled that the Florida Constitution also prohibits the death penalty for 16-year-olds (*Brennan* v. *State*[20]) (Streib, 2000).

Currently, 38 States and the Federal Government have statutes authorizing the death penalty for certain forms of murder. In 16 of those jurisdictions (40 percent), offenders must at a minimum be age 18 at the time of the crime to be eligible for that punishment (see table 4). Five jurisdictions (13 percent) have a minimum age of 17. Nineteen jurisdictions (47 percent) use age 16 as the minimum age. In 7 of these jurisdictions, age 16 is expressed in the statute; in the other 12, age 16 has been established by court ruling (American Bar Association, 2000).

Table 3. State-by-State Breakdown of Juvenile Death Sentences, 1973–2000

Rank	State	Race of Offender			Sex of Offender		Age at Crime			Total Juvenile Sentences	Total Juvenile Offenders
		Black	Latino	White	M	F	15	16	17		
1	TX	23	16	10	49	0	0	0	49	49	48
2	FL	8	1	21	30	0	3	9	18	30	25
3	AL	11	0	10	20	1	1	9	11	21	20
4	MS	6	0	6	11	1	0	5	7	12	11
5	LA	10	0	1	11	0	2	5	4	11	11
6	GA	4	0	6	9	1	1	0	9	10	7
7	NC	5	0	2	7	0	1	0	6	7	6
7	OK	0	0	7	7	0	1	3	3	7	6
7	SC	3	0	4	7	0	0	3	4	7	7
8	OH*	5	0	1	6	0	0	1	5	6	6
8	PA	5	0	1	6	0	1	2	3	6	6
9	AZ	0	3	2	5	0	0	2	2	5	5
9	VA	3	0	2	5	0	0	2	3	5	5
10	MO	2	0	2	4	0	0	2	2	4	4
11	IN	2	0	1	2	1	1	0	2	3	3
11	KY	1	0	2	3	0	1	0	2	3	3
11	MD*	2	0	1	3	0	0	0	3	3	2
12	AR	2	0	0	2	0	1	1	0	2	2
12	NV	1	1	0	2	0	0	2	0	2	2
13	NE*	1	0	0	1	0	0	1	0	1	1
13	NJ*	1	0	0	1	0	0	0	1	1	1
13	WA*	0	0	1	1	0	0	0	1	1	1
Total		**95**	**21**	**80**	**192**	**4**	**13**	**47**	**135**	**196**	**182**

Note: Adapted from Streib, 2000.
* State statute no longer allows the death penalty for offenders who commit capital offenses before age 18 (American Bar Association, 2000).

Significant State legislative activity concerning the death penalty occurred in 1999.[21] Both Nebraska and Illinois mandated a comprehensive evaluation of the death penalty. Although the Governor of Nebraska vetoed a proposed moratorium on executions, legislation was enacted that called for a comprehensive study to determine whether the death penalty is applied fairly. The Governor of Illinois ordered an evaluation after 13 death row inmates in the past few years were found not guilty when their cases were reexamined. Legislatures in Connecticut, Maryland, Missouri, Montana, North Carolina, and Pennsylvania saw the introduction—but not the passage—of legislation calling for moratoriums on the death penalty or authorizing studies of its use. In 1999, 12 of the 38 States that currently have the death penalty saw the introduction of bills to abolish it—8 more States than in the previous year (American Bar Association, 2000).

In 1999, many States also were involved in reassessing their use of the death penalty for juveniles. Montana's legislature approved legislation that barred the imposition of the death penalty on offenders who were under age 18 at the time they committed capital offenses. Similar bills were introduced in Indiana, Pennsylvania, South Carolina, South Dakota, and Texas. Bills that called for the expansion of the death penalty to juvenile offenders ages 16 and 17 were rejected in several States, including California (American Bar Association, 2000).

Table 4. Status of the Death Penalty, by American Jurisdiction

Death Penalty, Minimum Age 18 (Total = 15 States and Federal (civilian))	Death Penalty, Minimum Age 17 (Total = 5 States)	Death Penalty, Minimum Age 16 (Total = 18 States and Federal (military))
California*	Florida†	Alabama*
Colorado*	Georgia*	Arizona‡
Connecticut*	New Hampshire*	Arkansas‡
Illinois*	N. Carolina*	Delaware‡
Kansas*	Texas*	Idaho‡
Maryland*		Indiana*
Montana*		Kentucky*
Nebraska*		Louisiana‡
New Jersey*		Mississippi‡
New Mexico*		Missouri*
New York*		Nevada*
Ohio*		Oklahoma‡
Oregon*		Pennsylvania‡
Tennessee*		S. Carolina‡
Washington*		S. Dakota‡
Federal* (civilian)		Utah‡
		Virginia‡
		Wyoming*
		Federal* (military)

Sources: Streib, 2000. Data on States with a minimum age of 16 were taken from American Bar Association, 2000.
* Express minimum age in statute.
† Minimum age required by Florida Constitution per Florida Supreme Court in *Brennan* v. *State,* 754 So. 2d 1 (Fla. 1999).
‡ Minimum age required by the Constitution per the Supreme Court in *Thompson* v. *Oklahoma,* 487 U.S. 815 (1988).

International Context

With increasing globalization and a developing world economy, it is difficult not to look beyond the borders of the United States to the practices of other nations. In deciding *Stanford,* for example, the Supreme Court considered the international context in determining evolving standards of decency.

International law has expressly determined that the death penalty, specifically, the death penalty and life imprisonment without possibility of release for crimes committed while a juvenile, is a human rights issue (see pages 10–12 for a discussion of life imprisonment without possibility of release (parole)). According to Amnesty International, since the adoption of the Declaration of Human Rights 50 years ago, more than half of the world's countries have abolished the use of the death penalty (Amnesty International, 1998). Table 5 lists the documented executions of offenders in other countries who were under age 18 at the time of execution for the period 1985–95. However, the extent of the international use of the death penalty for juveniles is largely unknown. If age at the time of crime had been used, rather than age at execution, the numbers would be greater. Undocumented cases would also increase the global number.

The United States has not adopted several international bans on the juvenile death penalty. Introduced on March 23, 1976, the United Nations' (U.N.'s) International Covenant on Civil and Political Rights (ICCPR) states that the "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age" (article 6(5)). The United States signed the ICCPR in October 1977, although the Supreme Court had recently, in *Gregg* v. *Georgia*, permitted States to resume use of the death penalty. At the time of signing, the Federal Government expressly reserved the right to impose the death penalty for crimes committed while under age 18. Eleven countries objected to the United States' reservation and, in 1995, the U.N.'s Human Rights Committee, which monitors compliance with the ICCPR, asked the United States to withdraw the reservation (Amnesty International, 1998). In 1998, the United States was again asked to withdraw its reservation, this time by the U.N. Special Rapporteur on extrajudicial, summary, or arbitrary executions, but the United States declined to do so.

Article 37(a) of the U.N. Convention on the Rights of the Child (CRC) states that "neither capital punishment nor life imprisonment without possibility of release shall

Table 5. Documented Executions of Juvenile Offenders in Foreign Countries, 1985–1995

Country	Name of Offender	Age at Execution	Date of Execution
Bangladesh	Mohammed Sleim	17	February 27, 1986
Iran	Kazem Shirafkan	17	1990
	Three unnamed males	16, 17, 17	September 29, 1992
Iraq	Five Kurdish males	15–17	November–December 1987
	Eight Kurdish males	14–17	December 30–31, 1987
Nigeria	Matthew Anu	18	February 26, 1989
Pakistan	One male	17	November 15, 1992
Saudi Arabia	Sadeq Mal-Allah	17	September 2, 1992
Yemen	Nasser Munir Nasser al'Kirbi	13	July 21, 1993

Source: Streib, 1999.

be imposed for offences committed by persons below eighteen years of age."[22] China, which has long upheld the death penalty and historically executed more people annually than any country in the world, changed its laws in 1997 to conform to article 37(a) of the CRC. President Clinton signed the CRC in 1995 with a reservation to article 37(a). The Senate has not yet ratified the CRC. Of 154 U.N. members, the United States and Somalia are the only 2 countries that have not yet ratified the CRC.

Sentencing and Program Options

Although researchers have begun to analyze and evaluate the effects of programming on serious, violent, and chronic juvenile offenders, few programs target juvenile capital offenders *per se*. A literature search of the National Criminal Justice Reference Service (NCJRS) database reveals scant research on programs for juvenile capital offenders. One effective program is Texas' Capital Offender Program, which originated in 1988 at the Giddings State Home and School. This structured, intensive, 16-week program helps small groups of juvenile capital offenders gain access to their emotions through role-playing. The goal of this empathy training program is to address offenders' emotional detachment and inability to accept responsibility for their crimes. Each participant is required to reenact the crime committed, first as the perpetrator and then as the victim, in addition to other scenes from their lives (Matthews, 1995). A qualitative evaluation found the program to be effective. The youth unanimously believed that the program gave them insight into their own and others' feelings. A quantitative study would yield more information about the long-term effectiveness of this program.

The development of sentencing and program options for juvenile capital offenders is difficult in light of the lack of knowledge about this small population. With greater attention paid to assessing juvenile capital offenders, correctional facilities could more effectively provide programs that address offenders' needs. An additional difficulty is the difference in how the courts handle juvenile capital offenders. Some young offenders are kept in juvenile court, while others are transferred to criminal court. These offenders face a variety of sentencing patterns, depending primarily on State law, the local and national political climate, and the skills of defense counsel.

A review of individual juvenile and adult death penalty cases often reveals years of trauma and deprivation prior to the commission of capital offenses. Public investment in early intervention programs for children at risk of abuse, academic support for low-functioning students, and positive involvement with caring adults will go a long way toward eliminating violent crimes, including capital offenses and the resulting sentences that drain the Nation's resources—both human and financial.

In recent years, various innovative and effective interventions have been developed to prevent juvenile delinquency. Minimizing risk factors and maximizing protective factors throughout the developmental cycle from birth through adolescence can give all youth a better chance to lead productive, crime-free lives. Early intervention programs and services for juveniles engaged in high-risk and minor delinquent behaviors are significantly reducing the number of juveniles penetrating the juvenile and criminal justice systems. Many interventions geared toward

Life in Prison Without Possibility of Release

The justice system's recent shift toward stronger punishment policies has been marked not only by increased use of the death penalty but by increases in the number of offenders—including juveniles who committed offenses prior to their 18th birthdays—being sentenced to life in prison without the possibility of parole.

Only Washington, DC, Indiana, and Oregon expressly prohibit courts from imposing life without parole on offenders younger than age 16 at the time of their offense (Logan, 1998). A few States effectively disallow a sentence of life without parole for such offenders by setting a minimum age for waiver or establishing sentencing limitations. Several States fail to indicate whether life without parole can be imposed on those younger than age 16, and some States do not use the sentence at all.

The overwhelming majority of American jurisdictions, however, allow life without parole for offenders younger than age 16. Some even make it mandatory for defendants convicted of certain offenses in criminal court. In Washington State, offenders as young as age 8 can be sentenced to life.[1] In Vermont, 10-year-olds can face the sentence.[2]

Assessing the Constitutionality of Life in Prison Without Parole: Supreme Court Standards

The eighth amendment to the U.S. Constitution prohibits punishment that is cruel and unusual. The Supreme Court has interpreted this prohibition to mean that punishment must be proportional to the crime for which it is imposed.[3]

Proportionality analysis in cases involving life without parole has been far less clear than in cases involving the death penalty. Beginning in the 1980's, the Supreme Court decided several cases focusing on the constitutionality of life sentences. In the first of these, *Rummel* v. *Estelle*,[4] the Court upheld the constitutionality of a mandatory life sentence (with the possibility of parole) imposed under a Texas recidivist law. Holding that the State legislature knew best how to punish recidivists, the Court held that findings of disproportionality with respect to sentence length should be "exceedingly rare."[5] Three years later, in *Solem* v. *Helm*,[6] the Court reached a different result. Finding a sentence of life without parole disproportionate, the Court in *Solem* squarely rejected the State's argument that proportionality analysis does not apply to terms of imprisonment.

The Court identified three objective factors for courts to consider when analyzing proportionality:

- The gravity of the offense and the harshness of the penalty.
- Sentences imposed on other criminals (for more and less serious offenses) in the same jurisdiction.
- Sentences imposed (for the same offense) in other jurisdictions.[7]

Unlike *Rummel,* the three-part test announced in *Solem* revealed the Court's willingness to undertake a detailed analysis of the proportionality of a sentence's length.

The Supreme Court's consideration of the constitutionality of life without parole 8 years later (in *Harmelin* v. *Michigan*[8]) provided little clarification of the applicable standards. A majority of the sharply divided Court rejected the petitioner's claim that life without parole was an unconstitutional sentence for the offense committed. Two members of the majority, however, held that proportionality analysis did not even apply outside the context of death penalty cases. Three justices (concurring separately) disagreed with this conclusion. Applying the first prong of *Solem,* these justices held that life without parole was not grossly disproportionate to the serious crimes the petitioner had committed. The other two factors (intrajurisdictional and interjurisdictional comparisons), they held, applied only in "the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality."[9] The four dissenting justices agreed that the eighth amendment

contains a proportionality requirement and found that it had been violated by the petitioner's life sentence.[10]

Despite disagreement among the justices, the decision in *Harmelin* includes two important holdings: (1) the eighth amendment's proportionality analysis applies to capital and noncapital cases, and (2) in cases involving statutorily mandated minimum sentences (even life without parole), courts or other sentencing authorities need not consider mitigating factors such as age (Logan, 1998).

Cases Involving Juveniles

Challenges of sentences of life without parole have met with limited success in State courts and almost no success in Federal court in cases involving juvenile offenders[11] (Logan, 1998). Most Federal courts have adopted a restrictive view when comparing the crime committed and the sentence imposed (the first factor of the *Solem* test), focusing almost exclusively on the seriousness of the offense committed without considering offender culpability and individual mitigating circumstances (Logan, 1998).[12] The Ninth Circuit Court of Appeals in *Harris* v. *Wright,*[13] for example, upheld a mandatory life sentence for a 15-year-old convicted of murder, finding that "youth has no obvious bearing" on proportionality analysis.[14] It also held that although capital punishment must be treated specially, "mandatory life imprisonment without parole is, for young and old alike, only an outlying point on the continuum of prison sentences."[15] Like any other prison sentence, the court held, "it raises no inference of disproportionality when imposed on a murderer."[16] Following the Supreme Court's ruling in *Harmelin*, the *Harris* court held that a detailed analysis of proportionality was necessary only in the rare case in which "'a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality.'"[17]

State courts have been somewhat more flexible and willing to consider individual factors affecting an offender's culpability than Federal courts. In California, for example, a court reviewing life without parole must consider circumstances of the offense (e.g., motive, consequences, and extent of the defendant's involvement) and characteristics of the defendant (e.g., age, prior offenses, and mental capacity).[18] California courts also must compare the challenged punishment with sentences imposed within and outside the State, as required by the second and third prongs of the *Solem* test.[19] Courts in Kansas similarly consider the nature of the offense, the "character of the offender," and the *Solem* comparative factors.[20]

Invalidating a mandatory life sentence imposed on two 14-year-olds convicted of rape, the Kentucky Supreme Court in *Workman* v. *Kentucky*[21] held that courts retain the power to determine whether "an act of the legislature violates the provisions of the Constitution." Although the court upheld the Kentucky law mandating life without parole for those convicted of rape as applied to adults, it held that a "different situation prevails when punishment of this stringent a nature is applied to a juvenile."[22] Under all the circumstances of the case, the court held that life without parole for two 14-year-olds "shocks the general conscience of society today and is intolerable to fundamental fairness."[23]

In *Naovarath* v. *State*,[24] a case involving the constitutionality of a life sentence imposed on a 13-year-old convicted of murder, the Supreme Court of Nevada undertook a similarly close examination of offender characteristics. Proportionality analysis, the court in *Naovarath* held, required consideration of the convict's age and his likely mental state at the time of the crime.[25] Finding the sentence cruel and unusual, the court held that "children are and should be judged by different standards from those imposed upon mature adults."[26]

Other State courts have been less willing to consider a juvenile's age when assessing the constitutionality of life sentences. The Washington State Court of Appeals in *State* v. *Massey*,[27] for instance, affirmed a life sentence for a 13-year-old convicted of murder, holding that proportionality analysis should not include consideration of the defendant's age, "only a balance between the crime and the sentence imposed."

continued on next page

State law in Illinois requires a mandatory life sentence for any defendant convicted of killing more than one person (even if convicted as an accomplice).[28] The Illinois Supreme Court has not, as yet, addressed the constitutionality of the sentencing law as applied to juveniles convicted as accomplices in murder trials (Hanna, 2000).

Endnotes

[1] *State* v. *Furman,* 853 P.2d 1092, 1102 (Wash. 1993).

[2] VT. STAT. ANN. tit. 13, § 2303 (Supp. 1997) and VT. STAT. ANN. tit. 33, § 5506 (1991).

[3] *Weems* v. *United States,* 217 U.S. 349, 367 (1910) ("It is a precept of justice that a punishment for crime should be graduated and proportioned to the offense").

[4] 445 U.S. 263 (1980).

[5] *Rummel,* 445 U.S. at 272.

[6] 463 U.S. 277 (1983).

[7] *Solem,* 463 U.S. at 291–292.

[8] 501 U.S. 957 (1991).

[9] *Harmelin,* 501 U.S. at 1005 (Kennedy, J., concurring).

[10] *Harmelin,* 501 U.S. at 1013 (White, J., dissenting).

[11] Data on life without parole cases involving juveniles currently are not being collected.

[12] *See, e.g., United States* v. *Simpson,* 8 F.3d 546, 550 (7th Cir. 1993) ("'[A] particular offense that falls within legislatively prescribed limits will not be considered disproportionate unless the sentencing judge has abused his discretion'"), quoting *United States* v. *Vasquez,* 966 F.2d 254, 261 (7th Cir. 1992).

[13] 93 F.3d 581 (9th Cir. 1996).

[14] *Harris,* 93 F.3d at 585. *See also Rodriguez* v. *Peters,* 63 F.3d 546, 568 (7th Cir. 1995) (refused to consider age of 15-year-old offender in challenge of life sentence's constitutionality).

[15] *Harris,* 93 F.3d at 585.

[16] *Harris,* 93 F.3d at 585.

[17] *Harris,* 93 F.3d at 583, quoting *Harmelin,* 501 U.S. at 1005 (Kennedy, J., concurring).

[18] *People* v. *Hines,* 938 P.2d 833, 443 (Cal. 1997), *cert. denied,* 118 S. Ct. 855 (1998).

[19] *People* v. *Thongvilay,* 72 Cal. Rptr. 2d 738, 749 (Cal. App. 1998).

[20] *State* v. *Scott,* 947 P.2d 466, 470 (Kan. Ct. App.), *aff'd in part, rev'd in part.* No. 75,684, 1998 WL 272730 (Kan. May 29, 1998).

[21] 429 S.W.2d 374, 377 (Ky. Ct. App. 1968).

[22] *Workman,* 429 S.W.2d at 377.

[23] *Workman,* 429 S.W.2d 374, 378 (Ky. 1968).

[24] 779 P.2d 944 (Nev. 1989).

[25] *Naovarath,* 779 P.2d at 946.

[26] *Naovarath,* 779 P.2d at 946–47. *See also People* v. *Dillon,* 668 P.2d 697, 726–27 (Cal. 1983) (reversing life sentence imposed on 17-year-old, noting youth's "unusual" immaturity).

[27] 803 P.2d 340, 348 (Wash. Ct. App. 1990).

[28] In all 50 States, juveniles charged with acting as accomplices to murder may be transferred to criminal court. Unlike Illinois, however, 34 States provide judges discretion when deciding on an appropriate sentence for such offenders.

serious and chronic juvenile offenders have had positive effects on subsequent reoffense rates.[23] Graduated sanctions systems, designed to place sentenced juveniles—especially serious, violent, and chronic offenders—into appropriate treatment programs while protecting the public safety, are being implemented in jurisdictions across the country. These programs and services recognize that children are malleable and that research-based interventions are able to affect the lives of juvenile offenders positively and constructively while helping to reduce the number of young people who commit crimes that can put them on death row or subject them to life in prison without possibility of release.

Conclusion

Individuals who were juveniles at the time they committed a capital offense continue to be sentenced to the death penalty in the United States. Although the number of juvenile offenders affected by the death penalty is small, these offenders serve as a focal point for often highly politicized debates about the constitutionality of the death penalty, public safety, alternatives available to judges and juries in determining the fates of these youth, and, most crucial, the effectiveness of the juvenile justice system in safeguarding the due process rights of youth.

Endnotes

[1] These States are Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, and Wyoming.

[2] The data in this Bulletin are current as of June 2000 and, with the exception of the sidebar on pages 10–12, are taken from *The Juvenile Death Penalty Today,* a report that first appeared in 1984 and has been issued 57 times by Dean and Professor of Law Victor L. Streib at the Claude W. Pettit College of Law at Ohio Northern University in Ada, OH (Streib, 2000). Streib states that the reports "almost invariably under-report the number of death-sentenced juvenile offenders due to

Prevention and Early Intervention Programs

OJJDP is committed to interrupting the cycle of violence through prevention and early intervention programs such as nurse home visitation, mentoring, and family support services.

Prenatal and Early Childhood Nurse Home Visitation

OJJDP is supporting implementation of the Prenatal and Early Childhood Nurse Home Visitation Program in six high-crime, urban areas. The program sends nurses to visit low-income, first-time mothers during their pregnancies. The nurses help women improve their health, making it more likely that their children will be born free of neurological problems. Several rigorous studies indicate that the nurse home visitation program reduces the risks for early antisocial behavior and prevents problems that lead to youth crime and delinquency, such as child abuse, maternal substance abuse, and maternal criminal involvement. Recent evidence shows that nurse home visitation even reduces juvenile offending.

Adolescents whose mothers received nurse home visitation services more than a decade earlier were 60 percent less likely than adolescents whose mothers had not received a nurse home visitor to have run away, 55 percent less likely to have been arrested, and 80 percent less likely to have been convicted of a crime. When the program focuses on low-income women, the public costs to fund the program are recovered by the time the first child reaches age 4, primarily because of the reduced number of subsequent pregnancies and related reductions in use of government welfare programs. By the time children from high-risk families reach age 15, the cost savings are four times the original investment because of reductions in crime, welfare expenditures, and healthcare costs and because of taxes paid by working parents.

Youth Mentoring

Another effective intervention is to enlist caring, responsible adults to work with at-risk youth in need of positive role models. Big Brothers/Big Sisters (BB/BS) mentoring programs, for example, have been matching volunteer adults with youth to help youth avoid the risky behaviors that compromise their health and safety. A 1995 study of BB/BS programs, conducted by Public/Private Ventures of Philadelphia, PA, revealed positive results. Mentored youth reported being 46 percent less likely to begin using drugs, 27 percent less likely to begin drinking, and approximately 33 percent less likely to hit someone than were their nonmentored counterparts. In addition, BB/BS programs had a positive effect on mentored youth's success at school.

OJJDP's Juvenile Mentoring Program (JUMP) provides one-to-one mentoring for youth at risk of delinquency, gang involvement, educational failure, or dropping out of school. Among its many objectives, JUMP seeks to discourage use of illegal drugs and firearms, involvement in violence and gangs, and other delinquent activity and encourage participation in service and community activity. The JUMP national evaluation will play an important role in expanding the body of information about mentoring. Preliminary evaluation findings reveal that both youth and mentors view the experience as positive.

difficulty in obtaining accurate data" (p. 2). However, the juvenile execution data are complete, the annual juvenile death sentencing data are almost (95 percent) complete, and the data for juvenile offenders currently on death row are fairly (90 percent) complete. The report is available online at www.law.onu.edu/faculty/streib/juvdeath.htm.

[3] Although 10 States classify all individuals age 17 or older as adults and 3 other States classify all individuals age 16 or older as adults for purposes of criminal responsibility (Snyder and Sickmund, 1999), this Bulletin refers to all individuals under age 18 at the time that a criminal offense was committed as "juveniles."

[4] 408 U.S. 238 (1972).

[5] 428 U.S. 153 (1976).

[6] 383 U.S. 541 (1966).

[7] 455 U.S. 104 (1982).

[8] 455 U.S. 104, 116.

[9] 487 U.S. 815 (1988).

[10] 492 U.S. 361 (1989).

[11] 492 U.S. 361 (the *Stanford* v. *Kentucky* and *Wilkins* v. *Missouri* cases were consolidated).

[12] These diagnostic evaluations involved psychiatric, neurological, psychological, neuropsychological, educational, and electroencephalographic (EEG) examinations. Dr. Dorothy Lewis and colleagues conducted psychiatric interviews with the offenders; obtained detailed neurological histories; corroborated those histories when possible through physical examinations, record reviews, and specialized tests such as the EEG; performed neurological and mental status examinations; determined whether offenders had been physically and/or sexually abused as youth through lengthy interviews; performed neurometric quantitative EEG's; and conducted neuropsychological and educational testing using tests such as the WAIS, Bender-Gestalt test, Rorschach Test, Halstead-Reitan Battery of Neuropsychological Tests, and Woodcock-Johnson Psycho-Educational Battery.

[13] For more information on inadequate legal representation, see *A Broken System: Error Rates in Capital Cases 1973–1995,* which states that the most common errors found in capital cases are "(1) egregiously incompetent defense lawyering (accounting for 37% of the state post-conviction reversals) and (2) prosecutorial suppression of evidence that the defendant is innocent or does not deserve the death penalty (accounting for another 16–19 percent, when all forms of law enforcement misconduct are considered" (Liebman, Fagan, and West, 2000:5).

[14] See *Wright* v. *Angelone,* No. 97–32 (4th Cir. July 16, 1998).

[15] 535 So. 2d 362 (La. 1988).

[16] 615 So. 2d 1333 (La. 1993).

[17] 586 So. 2d 978 (Ala. Ct. Crim. Ap. 1991).

[18] 636 So. 2d 494 (1994).

[19] 540 N.E.2d 1216 (Ind. 1989).

[20] 754 So. 2d 1 (Fla. 1999).

[21] A report issued by the American Bar Association in January 2000 details recent legislative, judicial, and executive branch activity relating to the death penalty (American Bar Association, 2000).

[22] G.A. Res. 44/25, annex, 44 U.N. GAOR, Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989).

[23] Lipsey and Wilson (1998:338) report that in a meta-analysis of 200 studies of intervention with serious offenders, the best programs "were capable of reducing recidivism rates by as much as 40%" and that the "average" intervention reduced recidivism rates by approximately 12 percent. See also Office of Juvenile Justice and Delinquency Prevention, 1998.

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Coordinating Council Members

As designated by legislation, the Coordinating Council's primary functions are to coordinate all Federal juvenile delinquency prevention programs, all Federal programs and activities that detain or care for unaccompanied juveniles, and all Federal programs relating to missing and exploited children. The Council comprises nine statutory members and nine practitioner members representing disciplines that focus on youth.

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