



Juvenile Life Without Parole Project:
*Using international law and advocacy
to give children a second chance*

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INTRODUCTION

This project delves into an under-recognized human rights problem in the United States – the imposition of life sentences without possibility of parole on children (JLWOP). JLWOP requires that a child remain in prison without release until death. Irrespective of whether the child poses a threat to society or has, or can be, rehabilitated, there is no opportunity for parole.

Each year in the United States, children as young as thirteen are sentenced to spend the rest of their lives in prison without opportunity for parole. Despite a global consensus that children cannot be held to the same standards of responsibility as adults, the United States allows children to be treated and punished the same as adults. Children are increasingly excluded from the protection of juvenile courts based on the nature of the offense, without any consideration of age, maturity or culpability of the child, and without taking steps to ensure their understanding of the legal system under which they are prosecuted.

Life sentences without possibility of parole have been renounced internationally as a violation of human rights in *The Convention on the Rights of the Child*, which specifically forbids sentences of life imprisonment for children under the age of eighteen. The United States stands alone in rejecting this article of the Convention and in the implementation of this sentence on adolescents convicted of crimes in the United States.

Three years ago the ACLU of Michigan began advocacy efforts after learning that over 300 Michigan children are currently serving these unforgiving sentences. This packet includes background information, research, a list of endorsing individuals and organizations of our efforts to eliminate this practice in the State of Michigan, and recommendations about what others can do to help this effort.

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Additional resources available upon request:

Petition to the Inter-American Commission on Human Rights
Pending Legislation

BACKGROUND

The initial work of the project documented the nature and extent of the problem in order to build the case for reform. The first year we conducted research and wrote a report, *Second Chances*, which quantified and described, for the first time, the numbers of juveniles serving life without parole in Michigan prisons and demonstrated the impact of draconian sentencing laws passed in the mid 1990s.

The report obtained significant media coverage and led to the formation of a coalition, Second Chances, to provide support for family and friends of incarcerated individuals.

We next convened a series of three focus groups in order to better inform the messaging and public relations approach. The resulting report found a fairly high level of prevailing support for reform and that mobilization would clearly require emotional and rational appeals to help constituents understand the issue and be willing to act upon those concerns. The challenge is to build a case for the severity of the impact, employ emotional appeals, personalize the issue with examples of young offenders who might have been an accessory, and clarify exactly how the law is structured in such a way as to eliminate judicial, parole board and other professional discretion completely.

Following the report's release, Human Rights Watch and Amnesty International conducted their own analysis which culminated in the release of a joint report and the initiation of a national campaign that they launched at the ACLU of Michigan headquarters in the fall of 2005. To read this report, go to: <http://www.amnestyusa.org/countries/usa/clwop/report.pdf>.

During the same time, a number of local efforts for reform emerged. State Senator Liz Brater (D-Ann Arbor) announced the introduction of a legislative package designed to prohibit the sentencing of an individual convicted of a crime before the age of 18 to imprisonment for life without the possibility of parole.

The Wayne State University Center for Urban Studies also conducted a poll concluding that there is strong public support for reform. In the state-wide poll, 72% of respondents said they believed adolescents under the age of 18 who commit violent offenses are strong candidates for rehabilitation.

We next began the *Michigan Collaborative on Juvenile Justice Reform* which has been meeting regularly for over a year. Collaborative members are institutions with missions that support advocacy on behalf of children's issues, ranging from issues of race, class, education, mental health, economic justice, and criminal justice and faith-based initiatives and includes Second Chances, Michigan Protection and Advocacy, Michigan Association for Children with Mental Disorders, Michigan Community Mental Health, U of M Institute for Social Research, CAPPs, Michigan Federation for Children and Families, American Friends, representatives from the State Universities, Office of the Children's Ombudsman, representatives from juvenile courts, faith organizations, and the Department of Health and Human Services. The Collaborative also

seeks to bring groups together to advocate for the upcoming campaign for the U.S. ratification of The Convention on the Rights of the Child and to have a presence at the summit in May, 2006.

We are now obtaining endorsements of local and national organizations. This effort to garner support is accompanied by a collaborative effort with Human Rights Institute at Columbia University who, with Deb LaBelle, filed a petition in the Inter-American Commission on Human Rights in February 2006 against the United States. We represent Kevin Boyd, Barbara Hernandez, Henry Hill, Patrick McLemore and Damion Todd, together with those adolescents who, while between the ages of 14 and 17 were sentenced as adults without consideration of their juvenile status, to the mandatory adult sentence of life in an adult prison without possibility of parole.

All of this work is undertaken in partnership with The Human Rights Working Group (HRWG) of the ACLU National Office which has as its mission to expand the ACLU's understanding and use of international human rights mechanisms and strategies throughout the country. The HRWG will serve as a bridge between the affiliates to share successful human rights strategies across states.

The Problem

Changes in U.S. law over the past 15 years which have increased the automatic treatment of juvenile offenders as adults, based solely on the alleged crime, have resulted in an explosion in the number of children sentenced to life without parole. Worldwide, 2,237 children have been sentenced to spend their lives in prison without any possibility of parole. 307 of those children are in Michigan.

The State of Michigan passed a combination of three legislature initiatives to increase punishment for youthful offenders. Prior to 1988, charges against children under 17 would be filed in juvenile court. Only 17 year olds were excluded from juvenile court jurisdiction. Michigan is 1 of only 13 states that automatically treat all 17 year olds as adults. 15 or 16 year olds could be waived to adult court jurisdiction only through a judicial waiver process, which required a hearing to determine whether waiver would serve the best interests of the child and the public. Life without parole sentences, which could only be imposed if a juvenile was waived by a judge to adult court, were relatively low.

In 1988, Michigan adopted an automatic waiver provision allowing prosecutors to bypass juvenile court by directly filing charges against 15 and 16 year olds, for certain offenses, in adult criminal court. Once convicted, a juvenile was still entitled to a hearing to determine whether juvenile or adult sentencing would best serve the interests of the child and the public. Many judges, faced with only two, widely disparate, options in murder cases – commitment to a juvenile facility until the age of 19¹ or mandatory life without parole – imposed life without parole sentences. The number of juvenile life sentences for crimes committed from 1988-96 rose to 18% of homicide cases from 7.5% between 1975-87.²

¹ Juvenile sentences can be extended to age 21 [??]

² *Second Chances*, *supra* note 4, at p. 10.

In 1996, Michigan expanded the direct file of charges against juveniles in adult courts to include 14 year olds. The legislature also required that all juveniles tried as adults, be sentenced as adults, including crimes that carried a mandatory life without parole sentence. 42 states allow children to be sentenced to life without possibility of parole, the majority exercising discretion by limiting the age at which a sentence of “life in prison until you die” is imposed, but Michigan is not one of them. Under current Michigan law, a child as young as 14 can be charged, tried, sentenced and incarcerated in an adult prison for life without any evaluation or assessment of how age may affect culpability, rehabilitative capacity, cognitive ability or public safety concerns. From 1997-2001, 23.5% of juvenile homicide cases resulted in life without parole sentences.

Michigan now has the second highest percentage of juveniles serving life without parole—Louisiana has the highest. The automatic, mandatory and permanent sentencing laws leave no room to reasonably assess the juvenile’s growth or maturity or to individually assess the need for continued incarceration.

The unfettered discretion entrusted to prosecutors in some states is particularly troubling given the racial disparities that have emerged. African-Americans constitute 60% of the youth offenders serving life without parole, while Whites constitute 29%. When the size of the African American youth population verses the White population is taken into account, African American youth serve life without parole sentences at a rate that is ten times higher than White youth.³

In Michigan, the state in which Petitioners were tried and convicted, there are currently 307 juvenile offenders serving life without parole sentences.⁴ The majority of juvenile lifers are minorities (221), and 211, or 69%, are African-American, who account for only 15% of Michigan’s youth population.⁵

These laws violate well established international standards explicitly prohibiting juvenile life without parole, a practice that is directly contrary to the American Declaration of the Rights and Duties of Man guaranteeing the right to special protection (Article VII), to be free from cruel infamous and degrading treatment (Article XXVI) and to due process (Article XXV).

The Solution

Passage of JLWOP reform legislation does not guarantee release. It only provides an opportunity for a parole board to evaluate whether the individual, now grown and matured, is a current threat to public safety. This legislation allows for a fair evaluation of those sentenced to life without parole for a crime committed when they were a minor. Further, the cost of incarcerating a juvenile for life—without ever evaluating whether they are truly a continued risk to society – is over \$1 million dollars per child.

With the support of key legislators, we will convene a hearing in the state capitol and bring in national experts to who will place their social science research within the context of international

³ *The Rest of Their Lives*, *supra* note **Error! Bookmark not defined.**, Section IV.

⁴ *Second Chances*, *supra* note 5 at 2.

⁵ *Second Chances*, *supra* note 5 at 6.

human rights norms. We will feature the petition pending before the Inter-American Commission on Human Rights, social science research on brain development, explain the evolution of these harsh Michigan laws, highlight the trends and practices in other states, and suggest specific reforms as necessary in Michigan.

A fair trial in the context of juvenile criminal justice must include safeguards to protect the special needs and interests of those persons under 18 years old that are accused of having committed a crime. At a minimum level, these safeguards must include different courts and justice systems to judge persons under 18 years old and adults, independently of the crime committed. Michigan's criminal system and laws do not provide adequate safeguards for these rights.

RESEARCH RESULTS

THE FOCUS GROUP AND MARKETING RESEARCH FINAL REPORT

June 2005

Comprehensive Report of Findings

Based upon research, values and the impact on individuals and families, it is the belief of the ACLU of Michigan that current Michigan laws should be amended to eliminate the mandatory sentence of life without parole for juveniles charged as adults and convicted of felony murder. To better understand attitudes and opinions likely to impact public support for legislative change, The Focus Group LLC, a Lansing, Michigan based marketing research firm, was hired to conduct a series of three focus groups for the ACLU of Michigan.

Research Objectives

The primary objectives of this research project were:

- 1) to assess prevailing knowledge levels regarding existing juvenile sentencing laws and their impacts on the lives of minors;
- 2) to identify key factors affecting support for (or opposition to) legislative change of mandatory sentencing laws affecting minors convicted as adults for committing a felony murder;
- 3) to evaluate the comparative persuasiveness of messages potentially useful in raising awareness and building support for legislative change.

Participant Profile

Each focus group was comprised of between 8 and 10 adults. The first group was conducted in Grand Rapids, the remaining two in Southfield. Both groups were gender balanced and relied upon recruiting screens to generate participants with the following profile:

- ages 30-70
- at least a high school degree
- minimal family income of \$50,000
- ½ or more had children under the age of 18
- no one employed in marketing research, public relations, law enforcement, child advocacy, or psychology
- no one who had a close friend, relative or themselves had been convicted or impacted by a felony offense involving a juvenile

Venue and Session Details

The Grand Rapid's group was conducted on the evening of June 1st, the Southfield groups on June 2nd. Participants were paid an honorarium of \$60. Each ninety-minute session was held in a marketing research facility with one-way mirrors. Both sessions were audio-tape recorded with professional, unedited transcripts generated from the tapes. Single-spaced, bold-faced italicized comments are found throughout this report to support our analysis and recommendations. Verbatims from the Grand Rapids participants are noted by the letters "GR" following direct

quotations; an “S” denotes comments from one of the Southfield based adults.) Members from the ACLU and their public relations team observed the discussion sessions.

Caveats / Research Limitations

Although we are confident that the perceptions we heard accurately reflect the views of both Grand Rapids and Southfield adults, focus groups inherently are not statistically valid and should be cautiously reviewed. Additionally, given that this project involved only three focus groups with a broad mix of participants, firm conclusions regarding any one specific research finding may not be reliable. Nevertheless, a great deal was gleaned from the focus groups that can shed insight into how Michigan adults might be persuaded to support legislative reform of existing juvenile sentencing laws.

Research Findings

Initial “Vote” / Prevailing Attitudes

After participant and moderator introductions, we asked participants to consider a situation involving a call from their local State Representative or Senator asking whether the constituent would support legislation designed to eliminate mandatory sentencing of life in prison without the possibility of parole for juveniles prosecuted as adults. (Participants wrote down a ‘vote’ on a scale from 1 to 5, with 5 imply strong opposition to change, and 1 implying strong support. Participants then verbally shared their votes noting the key reason for their ratings but were encouraged NOT to deeply explore relevant issues at this time.) At the conclusion of the focus group session, we then asked the participants to reflect upon this initial vote and note if it remained the same and if not, what was it that they had learned that affected any change in their level of support.

Building on this ‘vote’ exercise designed to introduce the discussion topic and assess support or opposition to legislative amendment, we moved into a deeper exploration of prevailing knowledge levels and inherent values. Specifically, to help gauge how much participants currently know about juvenile sentencing laws and how they might react *today* if asked to support legislative reform, we asked them to consider a hypothetical scenario involving a 15 year old breaking into a home to commit a theft, is surprised and kills a household member. We then followed up asking participants what they think *should* and *would* likely happen to the juvenile. Additionally, we asked what else they might want to know about the juvenile and incident and why these answers to these questions were important.

In both Grand Rapids and Southfield, a few participants were strongly opposed to any legislative reform or believed that the offender in our scenario deserved the harshest possible punishment, a few were adamant that change was warranted and that the offender in our ‘case study’ deserved some leniency and the majority were indecisive regarding legislative change and were neither extremely punitive nor forgiving of a juvenile offender.

- ❖ **Opposed to Change / Extremely Punitive** - Those opposed to change identified a few key reasons why they think mandatory sentencing laws for juveniles should remain as they are.

Some noted that the **severity of the crime justifies the punishment**. Essentially they argue that taking a life justifies (ideally) the death penalty and as that's not available, life (forever) in prison.

“I am a lot more hardcore than that. I believe that when a person takes another person’s life that the only thing that will pay for that life is a life. Whether it is a life sentence or a death sentence that is immaterial. He needs to pay for his crime. Not blame it on something else like his environment or his upbringing. He needs to take responsibility for his crime and pay for it. The only thing that pays for a life is a life.”
GR)

Others argued that **age is irrelevant**. Basically they note that teens have the motivation and ability to commit crimes that lead to murder so should expect the consequences from such serious decisions.

A few noted that **many offenders can never be rehabilitated** so should remain indefinitely incarcerated. At least one or two participants in each group described a sociopath personality they either were aware of from television (be it a TV show or news) or the media or simply from their imaginations that they thought was so far gone as to be incapable of ever being rehabilitated.

“My wife had a lot of psychiatric nursing and a lot of substance abuse nursing. The thing you see time and time again with people is very few of us change in reality. But once you go down that path it seems like you end up going back to that path. So I don’t think that rehabilitating these people and maybe the setting isn’t correct in these facilities. But I don’t think that you can send someone through. You can give them all the counseling and cram it in them but at the end of the day you still have a killer. Once a person kills one person, the second one ends up being not as difficult. That is why you see these guys that go out and rape women and kill them. Before they are done they have gone through 30 people. Unfortunately once they do that you should just get them off the street.” **GR**

- ❖ **Indecisive** – Most of our participants were somewhere in the middle on what they think should happen to juveniles convicted of murder. In many cases, they sensed that they did not fully understand nor had really considered the issue. In other issues they were conflicted; on one hand they believed in harsh penalties for serious crimes, on the other, forgiveness, circumstances or the belief that people can change made them ambivalent.
- ❖ **Support Change** - As noted, a few participants in each group started strongly in favor of amending existing sentencing laws. These participants self-generated a few key reasons why they advocated eliminating mandatory sentencing of life in prison without parole of juvenile offenders. (Later in the focus groups, we offered a number of possible messages that might be used to argue either support or opposition to legislative reform.

All of the reasons identified by our participants were explored in greater detail as well as additional messages of support.)

Circumstances surrounding the life of the juvenile or the crime itself justified revisiting mandatory sentencing for several supporters. Our participants easily visualized the juveniles and readily accepted that many probably came from troubled homes, were poorly educated, had few positive role models or may have been involved in drugs. *“There was no mention of motive. Was there a reason why he targeted this person? Those are things I would ask. Was it just random?” GR*

The **possibility of rehabilitation** rendered the possibility of life without parole unpalatable to many participants. Again, it was believed that most people can make mistakes – even tragic ones – and through counseling, age and maturity, spiritual influence and other efforts grow into a person with redeeming qualities. This perception that a second chance is warranted is especially justifiable given the young age of the offenders impacted by the targeted legislation.

DO YOU AGREE THAT SOMEONE CONVICTED AT 15 SHOULD BE LOOKED AT LATER TO SEE IF THEY ARE REHABILITATE-ABLE? *“Yes.” (Several respondents agreed.) “It depends on their background of their parents. What their parents are like. I think they can be yes.” GR*

The **age of juvenile offenders** was considered a key factor to others. They did not believe that a teenager fully understood their actions and should therefore not be penalized to the extent currently possible. Anecdotally, almost all of our participants either described how they had changed themselves or how immature their own children or other teens they knew, were. In fact, a few argued that despite signs of increasing maturity at a young age, many teens were in many ways less street savvy, fully conscious of their actions than were teens in the past.

“Someone that is 15 years old and has a serious mental problem. They don’t know the difference between right and wrong. Killing someone is not right. They should be sentenced as an adult and spend the rest of their life in jail.” GR

“They know right and wrong but they don’t know the permanency of their actions.” GR

Current Knowledge / Assumptions

To help us better understand why adults support or oppose legislative reform and why they believe the juvenile offender in our scenario should be punished to the degree advocated, we ‘tested’ how much they currently know about existing laws and the impact of the laws on juvenile offenders. With few exceptions we found that our participants knew very little about Michigan’s sentencing laws.

- ❖ **Impact** - They were surprised that more than 300 juvenile offenders have been sentenced to life in prison without parole. They also were not at all aware that teens sentenced as

adults were placed in prisons with ‘adult’ convicted felons. (Do note though that periodic intense media coverage of some crimes does inform citizens into knowing that increasingly juveniles are charged as adults. They just don’t fully understand the cumulative impact.)

“I don’t think it happens.” “None.” (Several respondents agreed that basically no one is sentenced as a juvenile to life without parole.) “Miniscule.”...“Never heard of a case.”...“Wasn’t there something ten years ago?” GR

- ❖ **Judicial Process** – Virtually no one understand that prosecutors (exclusively) have the discretion to charge juveniles as an adult. Many were upset that any one individual – especially someone who might be politically motivated – had such autonomous control over the life of an individual. Instead, they assumed that a panel of experts involving psychiatrists, child care professionals, legal experts etc. probably weighed in to provide a judgment whether a juvenile should be tried as an adult.

“That is the one person that should be able to make the life and death decisions...I don’t mean life or death. Freedom or life without parole. Making a decision like that all by yourself you get personalities. Someone has a dog bite and his wife made him sleep in the car. Or her husband hit her. Too many individual things come into play. Maybe there should be a panel. Prosecutor, judge and an intermediary.” GR

“Giving up the possibility of parole doesn’t mean that isn’t going to happen. They are going to go before some review board and they will look at all the things this person did.” GR

- ❖ **Sentencing Restrictions** - Few if any participants realized that if a juvenile offender charged with murder is convicted, judges have no option but to sentence the offender to life in prison without the possibility of parole. This was particularly bothersome to all but our most hardcore adults. Learning that no matter how stable, productive, potentially ‘safe’ the convicted juvenile might become in later years is essentially irrelevant was a seriously persuasive argument for legislative change.

“I am shocked.” ...“I am stunned. I would not have believed that.” GR

Messages in Support or Opposition

1. **U.S. is the Exception** - We argued that the International Convention on the Rights of the Child prohibits life without parole for juveniles and the U.S. is alone among Western countries in allowing sentencing as it does. In opposition we suggested that ‘*who cares what other countries do...*’... Although participants did reflect for a moment about this argument, in almost no case was it found persuasive. Basically, what other countries do just doesn’t really matter much. (One or two participants did note that it would be interesting to learn what other *states* do. Their suggestion was to study the history of

other state's experiences in the hopes of learning whether juveniles convicted of murder can indeed be rehabilitated and returned to society safely.

- 2. Comprehension** - Juveniles don't fully understand the consequences or impact on their own lives or the lives of their victims and families. In fact recent brain research confirms that human brains are not fully developed until after age 18. They also can't fully understand the legal system and may not act in their own best defense. Opponents would likely argue that if you're old enough to do the crime, you can do the time and that juveniles today are more adult than in the past. This had mixed reactions. Many bought the logic that teens really don't understand the consequences of their actions, others were adamant that a teen in 2005 is more sophisticated than a teen in the past and that age just doesn't matter much to them when it comes to crimes involving murder.

“There is a perception out there that because kids can play games on a computer that they are smart. I think kids are dumber today in a lot of ways. There are a lot of people out there that don't use common sense. Part of that is because of the way we are raising kids. When I grew up back in the 50's kids worked. Their day was a farmer. They had jobs to do. You see the kids today and their job is to walk the mall.”
GR

“They act much more adult. But mentally are they really?” GR

- 3. Circumstances Matter** - We argued that juveniles (or anyone!) should not be punished solely on the crime without taking into consideration family background, personal circumstances and the specifics of the crime. Opponents to change might argue that the crimes are so horrific and that families deserve finality. This was quite persuasive. Tied to the fact that judges are required to sentence juveniles convicted of murder to life without parole without consideration of the circumstances and that juries may in fact not hear the circumstances, the idea that all criminals are equal in their 'guilt' simply did not fly. They know that poverty, abuse, drugs, neglect and other factors often negatively impact youths and make it more likely that they'll end up involved in criminal activity. For the most part, people are sensitive to individual circumstances and also fully differentiate between murders involving a robbery gone bad, a fight that ends up with death and a pre-meditated, particularly brutal killing.

“Was the child abused?” ... “There are always other factors involved. Family history. You see how the kid was raised.” GR

“There is a tendency now days to shift the blame from the perpetrator to the parents or to society or to teachers.” ...“The parents are the role model but the person who did the crime is the one that is responsible for the crime. Not anybody else in society.” ...“If they are able to make that decision then are they responsible....” GR

“Again it goes back to circumstances. Some people are advanced over others. You can take ten people and they won't all score the same on the same test even though they have been through the same class. People differ. They differ physically and mentally.”
GR

“My first reaction was I didn’t want the law changed when I came in here. But now I don’t know.” ...WHY?... “At that young of an age (15 or 16) I think there is a pretty good chance of rehabilitating.” GR

4. **Poor Financial Decision** – It costs about \$35,000 annually to incarcerate a felon. A lifetime sentence can cost taxpayers more than \$1 million. Life sentences without parole are a bad financial decision given the cost relative to the benefit to society. Naysayers would suggest that although the costs are indeed high, they’re secondary to the benefit of saving even one life and that justice is warranted at any financial cost. Like some other potential messages, this had minimal resonance. It was not that our participants would not like saving the enormous costs associated with a lifetime of incarceration, instead, they note that if even one life is saved, then it’s worth the cost.
5. **Discretion (Prosecutorial and Judicial Options)** - In this argument we noted that although prosecutors can autonomously choose to charge a juvenile as a adult, once charged and convicted, judges have no option but to sentence the convicted juvenile to life in prison without the possibility of parole. Others note that even if convicted and so charged, the governor can always commute any sentence. As described above when discussing ‘circumstances’ the apparent lack of decision-making authority in the hands of judges, mental health professionals, parole boards and others was considered surprising and outrageous.

“That is not compelling.”...“That is one of the constitutional rights but it doesn’t happen very often.” GR

“If they changed the law, couldn’t the judge still give that person, the juvenile life without parole?” GR

6. **Ability to Rehabilitate (Second Chances)** - We suggested that at least some juvenile offenders can be rehabilitated and therefore deserve a second chance but that mandatory sentence never allows a subjective review by a parole board. Others suggest that many criminals can never be rehabilitated; they’re simply too dangerous to ever release again into society. Additionally they might argue that the possibility of a harsh sentence serves as a deterrent. This is tricky although potentially a powerfully persuasive argument to justify sentencing reform. Nearly everyone we met with believes that most people can be rehabilitated. The challenge though is two- fold. First, they question whether there is much in the way of professional counseling and other services currently available to juvenile convicts to provide the needed rehabilitation and other therapy. Additionally, and significantly, they want assurances that for those few sociopaths that simply can never be rehabilitated to a degree that they can be considered safe to re-enter society, they want assurances that these individuals can be kept locked away for the rest of their natural lives. The key: don’t confuse eliminating mandatory life in prison with eliminating the *possibility* of life without parole.

“I disagree. People can (be rehabilitated).”...“If it is a drug or alcohol problem then a lot of them can be.” GR

“I am looking at it differently. You are convicted and sentenced. You go through all the appeals. I don’t have a problem with life without parole. I have the problem with mandatory sentencing laws that says that if you are found guilty this is the sentence that must happen. My concept of justice is justice tempered with mercy.” GR

“I am a different person than I was when I was 16. He is a different person than he was when he was 16. I would think after doing all that time or being in work camps rather than just sitting around and rotting, but hopefully when they are in their 50’s they are a different person too.” GR

“I would hate to take away the option. I doubt many would rehabilitate. But for the individual that does it for themselves and turns their life around, I would hate that they don’t have the possibility to be released.” GR

7. **Accessories Also Charged** - Whether the juvenile actually pulled the trigger (or otherwise directly committed the murder) if even an accessory to a crime involving a murder, they can still be charged and sentenced to life without parole. This surprised and irritated many of our participants though may not be the strongest argument to use. (This does not mean that as part of a multi-point campaign, that it could not be an effective message element.)

“They don’t have control over the other person that they are with.”...“He may not have known that that other person would go as far as they did.”...“It may have been just a robbery then there was a murder. The accessory may not have had the intent of a murder.” GR

Legislative Reform Efforts: Words and Spokesperson

One of our minor goals was to explore whether certain words and terms would prove more persuasive. We also attempted to identify spokespersons or organizations that might prove credible in building a case.

- ❖ **“Life”** - Although not one of our planned terms to discuss, we learned that to many, ‘life’ in prison is often construed as a finite term. For example, many assumed that if sentenced to life, you probably served 15 -20 years. Instead, the ACLU and partners should make it clear that life in prison without parole means ‘until the end of your natural life’ or something comparable.
- ❖ **“Juveniles” versus “Teens”**- Knowing the importance of positioning messages in a way that stir emotions, we explored alternative terms to describe those convicted of murder aged 18 or less. We heard some decisive results. First off, the word ‘juvenile’ should be avoided. Juvenile implies either ‘delinquent’ or

immature. Juvenile does not conjure up an image of a vulnerable, pitiable teenager. The word teenager was more neutral, less loaded with assumptions. Teens described an age group not necessarily attached to strong negative associations. Youths, children and kids were terms considered much softer but not necessarily be construed as totally believable. The vision of a 17 old physically mature male who committed a heinous crime did not jive with a 'youth' or a 'kid'.

“Juveniles you relate to delinquent right away.” ...“Sometimes you say juvenile behavior. He is still 40 and he gets drunk and moons a passing train. That is juvenile behavior.” GR

“Children will draw the most emotion.” “Youth. It is all a matter of perception.” “Youth isn’t a bad word.” GR

- ❖ **Spokespersons** - Increasingly people are skeptical of anyone they don't personally know and wary of all organizations' motives. This makes it difficult to identify credible spokespersons or groups. Parents or relatives of victims were considered credible advocates of legislative change. It was believed that if they could forgive the perpetrator then others should be somewhat sympathetic. Likewise, judges, wardens, prosecutors who are more intimate with both the crime and impact on the lives of criminals were considered good message sources. Interestingly, clergy were not considered particularly strong as message sources. It was believed that they have their own personal or professional opinions and that these opinions are not necessarily any less biased than anyone else's.

“If you had judges and victims together to form a coalition you would have some impact.” GR

“I don't think you could find an unbiased group. You are always looking at what is on their agenda to push this. That is a pretty hard thing to crack. Judges are too close to the political scene. Look at all the polls. People don't trust politicians or attorneys.” GR

“We all hold preachers in esteem. But they tend to think with their hearts instead of their heads. We wouldn't have the impact the way they would. They can sway more people because of their position even though their swaying could be in the wrong direction.” GR

Recommendations and Concluding Comments

From both the message testing and other discussion efforts, a number of recommendations can be suggested to help build support for pressure to effect legislative change of existing sentencing laws impacting juveniles. Some of the most important lessons learned were to clearly build a case for the severity of the impact, to build on emotional appeals, personalize the issue with

examples of young offenders who might have been an accessory, who came from a troubled home and to clarify exactly how the law is structured in such a way as to eliminate judicial, parole board and other professional discretion – FOREVER. It's also critically important to note that changing the law will not prevent the incarceration of an individual considered unsafe for society no matter how many decades have passed since the crime. Most importantly though, the public is open to believing that most people deserve a second chance. They just need to know that with current laws, second chances are simply not possible for hundreds of youths in Michigan.

It's important to remember that the primary purpose of this research effort was not to convince this selected, small group of adults to support legislative reform. But rather the more important goal was to get a sense of the initial position of average people on this issue and to explore what the key issues are that impact existing attitudes and what messages might effectively persuade support for legislative change.

It is also important to note that results of the initial vote demonstrate a fairly high level of prevailing support for reform without any persuasive effort. Nevertheless, getting average people to take action on issue without serious prompting is extremely challenging. A legislator who receives fifty phone calls or letters in a short time frame (that don't appear to be part of a coordinated campaign) will likely feel overwhelmed and compelled to address the issue. In our focus groups, we clearly had a few participants who were highly motivated to take action. If these residents were any indication of how others might react, it is entirely possible that the ACLU and other organizations could mobilize support to pressure legislators to amend existing sentencing laws. This mobilization will clearly require an extensive and effective public persuasion effort relying both on emotional and rational appeals to help constituents understand the issue and find it meaningful enough to contact their State Representatives and Senators to demand change.

“It is such a difficult issue. I would say I had other things to do (if asked to actively promote legislative reform). But when I hear that it is a mandatory thing, no possibility of parole then that is not fair. That is not right. Especially if they are an accessory.” GR

Life Without Parole
for Those Sentenced as Youths:
Public Opinion in Michigan

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Appendix: Survey Questions

I. Executive Summary

Michigan is one of 19 states that allow children of any age to be tried and punished as adults. Trying youth as adults opened the door to imposing sentences of life without the possibility of parole, particularly in Michigan and 26 other states that have mandatory sentencing. More than 300 youths have been sentenced to life without parole (LWOP) in Michigan and are serving these sentences in adult facilities. Michigan ranks third in the number of youth sentenced to LWOP and is second only to Louisiana in the rate of juveniles age 14-18 serving sentences of LWOP.

Researchers at the Wayne State University School of Social Work teamed up with survey experts at the Center for Urban Studies (CUS) to ask Michigan constituents their opinions. Each year, the center conducts a general population statewide survey of Michigan residents 18 and older. This year's survey included several questions related to juvenile sentencing policies. The survey was conducted during the spring and summer of 2005 and consists of 750 completed interviews.

The researchers found that only 5 percent of residents supported Michigan's current law regarding juveniles serving life without parole in adult facilities. The majority believed "blended" sentences that included both juvenile and adult sanctions were more acceptable. Moreover, Michigan citizens were strongly opposed to juveniles 16 and younger being housed with adults in correctional facilities and believed that juveniles were strong candidates for rehabilitation.

Michigan residents are unequivocal in their belief that youths should be held accountable for their violent crimes, but that it should be in a manner that recognizes the physiologic, psychological and emotional capabilities of the youths, understanding that these capabilities differ from that of adults. These findings seem to support alternative sentencing arrangements and changes to Michigan's current policies and legislation.

Life Without Parole for Those Sentenced as Youths: Public Opinion in Michigan

II. Introduction

Michigan is one of 19 states that allow children of any age to be tried and punished as adults. In Michigan, those 14 years and older will serve their sentences in adult facilities. These youths convicted as adults are subject to mandatory sentences of life without parole (LWOP) – thereby imprisoning them in adult facilities for the remainder of their natural lives. More than 300 youths (n=306) have been sentenced to LWOP and are serving their sentences in Michigan’s adult prisons. Michigan is second only to Louisiana in the rate of youths 14-18 serving LWOP and third (behind Louisiana and Pennsylvania) in the number of juveniles sentenced to LWOP (Amnesty International/Human Rights Watch, 2005).

Frequently it is believed that there is a public mandate to be “tough on crime,” yet there are often conflicting messages when it comes to youths. Data is scarce on answers to specific questions such as, “Does the public agree with LWOP for juveniles?” This paper explores this issue and public sentiment in Michigan to determine if citizens agree or disagree with current state laws.

III. Background

Beginning in the 1980s, the United States experienced an increase in violent crime committed by both adults and adolescents (National Center for Juvenile Justice, 2004). Although the increase was greater among adults, terms such as “super predator” were indicative of the anxiety and concern about rising juvenile crime rates. States began committing to changes in juvenile sentencing policies that were harsher and more punitive. By 1997, all but three states (Nebraska, New York and Vermont) changed laws that made it easier to try children in adult courts (US Department of Justice, Office of Juvenile Justice Delinquency and Prevention, 1999), and by 2005, all states had the capacity to try youths as adults (Amnesty International/Human Rights Watch, 2005).

Trying youths as adults opened the door to imposing the punishment of life without possibility of parole for children in 42 states - 27 of which have mandatory sentencing policies that do not allow any judicial discretion (Amnesty International/Human Rights Watch, 2005). Many states have a minimum age at which this sentence can be given (for example, ages range from 12 years in Colorado to 16 in California), however in 14 states, there is no minimum age at which juveniles can be tried as adults and sent to prison for natural life — Michigan is one of them (American Civil Liberties Union [ACLU]-MI, 2004).

Public Opinion

Public opinion about punishment and corrections has a tendency to be both progressive and punitive, because citizens want the justice system to be successful in its diverse missions — protecting public safety and rehabilitating the wayward (Cullen, Fisher & Applegate, 2000). Questions about public opinion regarding life without parole have to date focused on adult offenders; respondents have been asked for opinions on the possibility of LWOP as an alternative to the death penalty for those who were eligible to receive it. When asked a single

question asking if they accept the death penalty for murderers, support ranged from 64 percent to 86 percent in 12 states (Bowers, Vandiver, & Dugan, 1994). However, when faced with four sentencing alternatives (for example, LWOP; life with parole possible after 25 years, etc.), support for the death penalty declined substantially (Bowers, Vandiver, & Dugan, 1994).

Because the US Supreme Court, in two separate cases, has outlawed the death penalty for those 17 and younger (*Thompson v. Oklahoma* & *Roper v. Simmons*), LWOP is the most severe punishment a juvenile can receive. Historically, public opinion favored trying youths who commit serious crimes in the adult system. When faced with the choice of more lenient punishment in a juvenile court or trying a juvenile who committed a serious crime in adult court, two-thirds of survey respondent's chose the adult court option (Maguire & Pastore, 1995).

However, similar to polling about adult offenders, when more specific questions are asked, the response is tempered. Schwartz (1992), in another national study, found that about a third of the sample agreed that a "juvenile convicted of a crime should receive the same sentence as an adult, no matter what the crime." Furthermore, respondents supported transfer to adult court for youths who were 17 and older (Schwartz, 1992).

Current data on public opinion regarding LWOP for juveniles is scarce. A recent poll in Colorado found that 74 percent of the 500 people surveyed preferred sentences other than LWOP for juveniles who were accomplices in homicides (there were no questions pertaining to public opinion for the juvenile who committed the murder) (RBI Strategy & Research, 2005). Similarly, 79 percent were in favor of giving juveniles — even those committing violent offenses — the opportunity to complete exhaustive rehabilitation and then be granted parole at 21 if successful, or be sent to adult prison if they are unsuccessful or violate parole.

In general, public opinion supports the belief that juveniles can be rehabilitated. In a national survey of attitudes toward juvenile crime, Schwartz, Guo & Kerbs (1993) found that the public does not support the punishment paradigm for youth. In their study, 78 percent of those surveyed favored a treatment and rehabilitative approach to delinquency. In addition, Steinhart (1988) found that California residents would rather youths be sentenced to specialized treatment or counseling instead of harsh punishments such as confinement. Together, their conclusions suggest that youths have not yet become hardened criminals, and thus have rehabilitative capabilities.

However, these previous studies suggest public sentiment about the processing of juveniles convicted of criminal offenses, but do not answer the current question regarding public opinion of juveniles serving LWOP in adult prisons. Therefore, the current study focuses on one state (Michigan), that has the third-highest number, and the second highest rate, of individuals sentenced to LWOP as juveniles and was the focus of a recent ACLU (2004) report highlighting the issue.

IV. Methods

Questions were formulated by researchers based on the aforementioned studies and the lack of information and research on the subject. The questions elicited public sentiment on current

juvenile sentencing policies and individuals' beliefs regarding youths and crime. The questions were submitted to the Center for Urban Studies (CUS) in a competitive process to include them in a statewide survey of Michigan citizens in spring and summer 2005. Each year, the center conducts a general population survey of Michigan residents 18 and older, using random digit dialing techniques to create a representative sample of Michigan residents. This round of the survey consists of 750 completed interviews and has a response rate of 25%. The survey includes a number of individuals in each county that are in proportion to the state's population. Demographics of respondents match state demographics on race, socio-economic status, and education. However, as in other surveys, females were over-represented among the respondents. Data analyses account for this over-representation by analyzing the findings as a total and then by gender and other social indicators to determine if there are differences among subgroups. The following chart (Table 1) describes the demographics of the respondents.

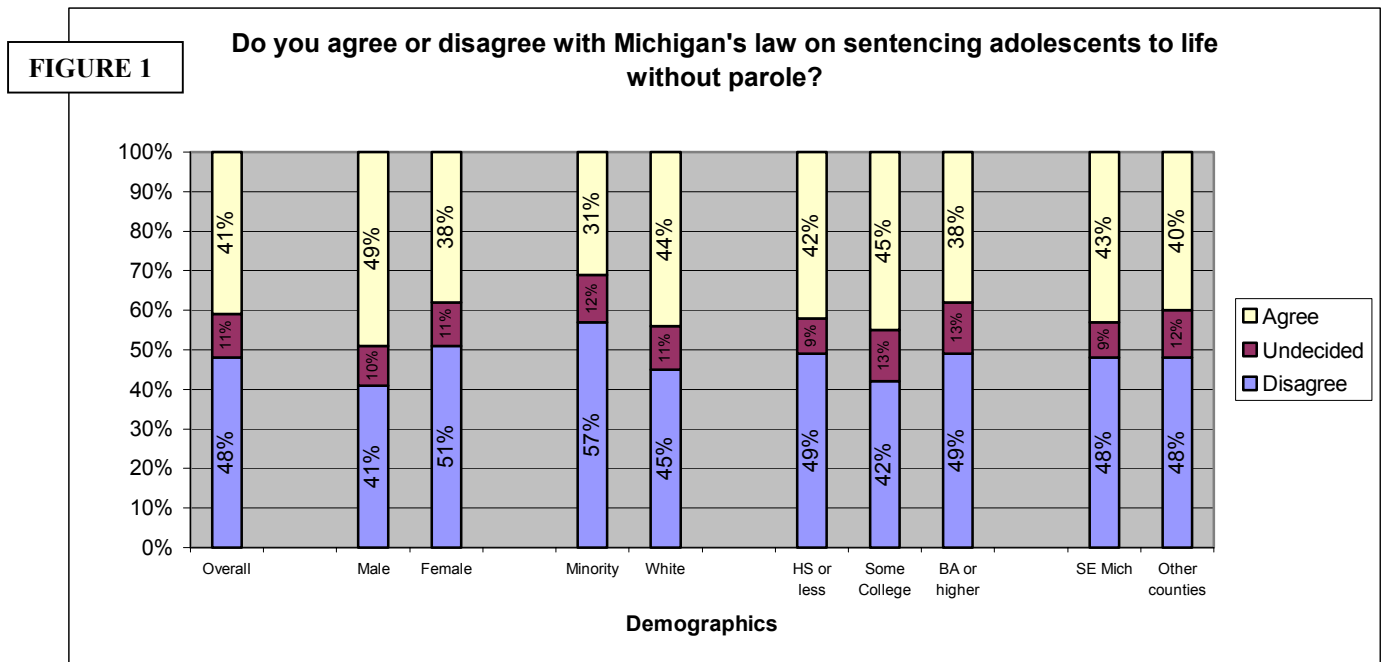
Table 1: Demographic Characteristics of Survey Respondents

Demographic Characteristic	Percent of Respondents (N=750)
Gender	
Male	36.0
Female	64.0
Race	
White	79.5
African American	16.1
Latino	1.5
Other	2.9
SES	
20,000 or less	33.3
21,000–40,000	30.0
41,000–60,000	20.1
61,000+	16.6
Education	
High school or less	44.5
Some college	20.7
BA or higher	34.8
Age (Median)	50.09 (s.d. 16.8)
18–30	13.2
31–50	38.5
51–65	29.7
65+	18.6
Marital Status	
Married/cohabitating	56.6
Never married	20.5
Formerly married	23.0

V. Findings

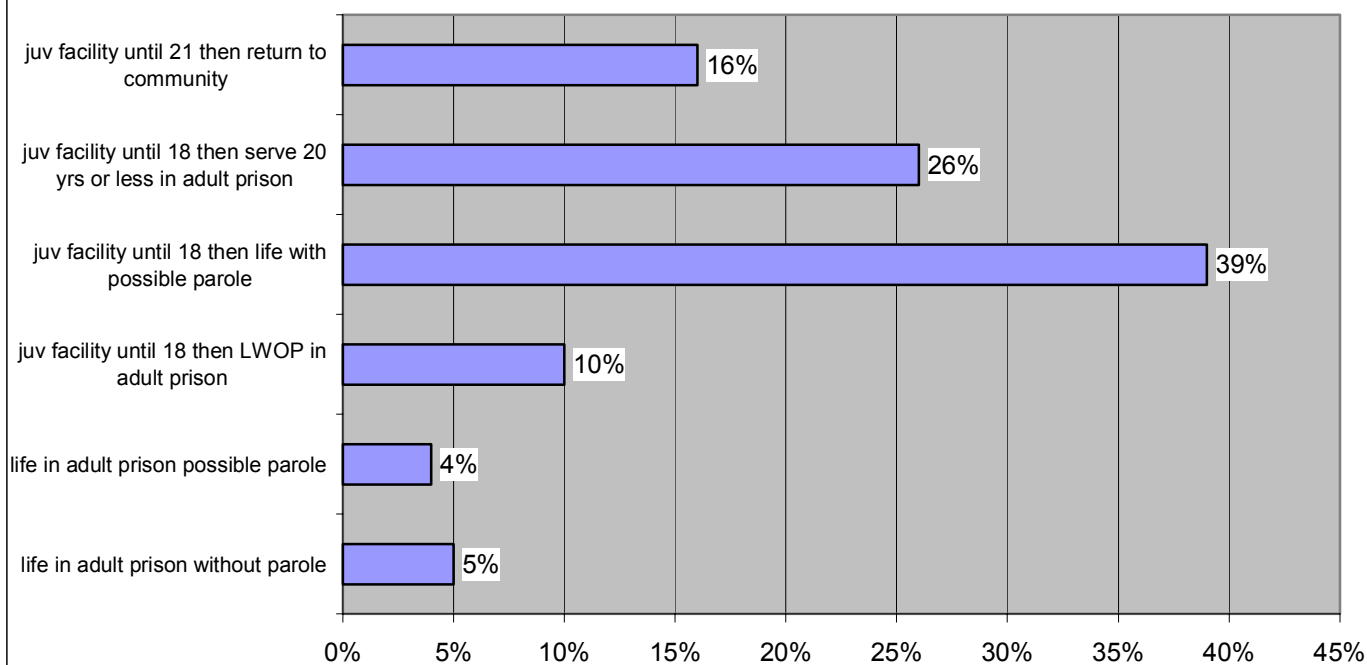
When asked, “Do you agree or disagree with Michigan’s law sentencing adolescents to life without parole?”, 41 percent agreed with the policy. Males (49 percent), whites (44 percent) and those with some college (but not college graduates) were more likely to agree than the general population⁶ (See Figure 1 below).

However, when given a choice between various types of punishment an adolescent convicted of a homicide should receive, only 5 percent of the sample believed that it should be life within an adult prison without the possibility of parole — Michigan’s current sentencing policy —and only



4 percent believed that it should be life in adult prison with a possibility of parole (see Figure 2). Of the six choices given, the most popular response (39 percent) indicated that youths convicted of homicide should be sentenced to a juvenile facility until 18 and then serve life with the possibility of parole.

⁶ Differences between males and females on the question of agreement about Michigan’s policy about sentencing adolescents to life without parole were statistically significant ($\chi^2(df)=8.72$; $p=.003$), as are differences between minorities and whites ($\chi^2(df)=8.65$, $p=.003$).

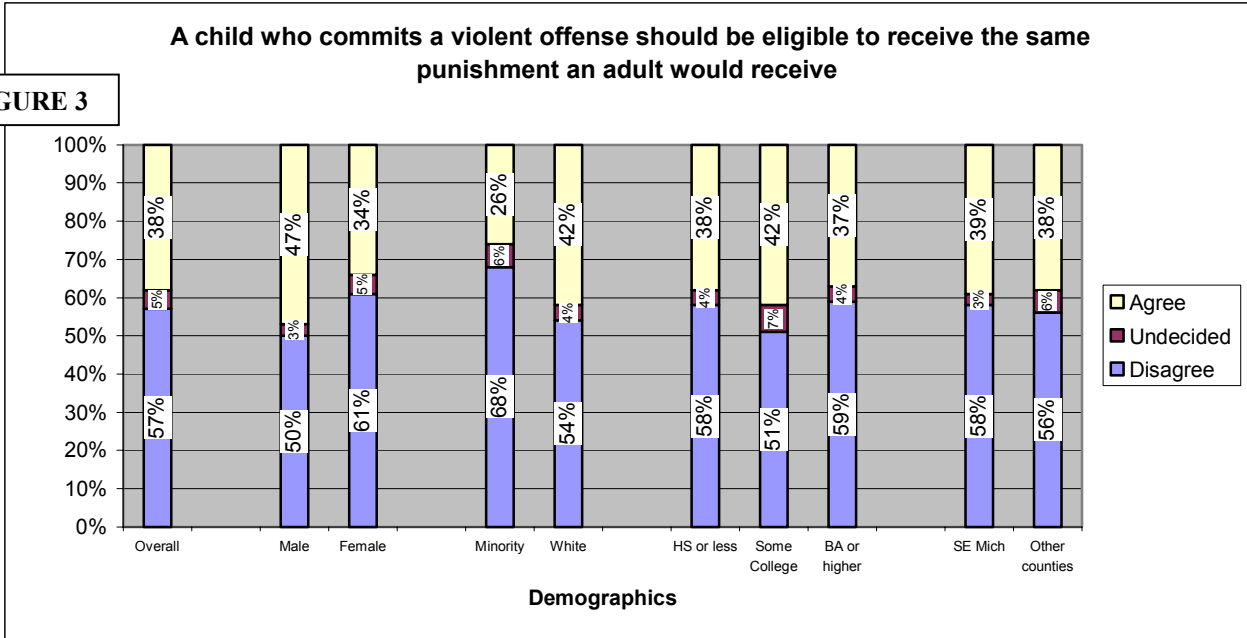
FIGURE 2**Which punishment for adolescents convicted of homicide?**

Respondents seem inclined to choose among three options that included the youths first be sentenced to a juvenile facility until 18 and then serve additional time in an adult prison (ranging from LWOP, to possible parole, to 20 years). These three options accounted for the majority (75 percent) of the respondents. A final option — youths sentenced to a juvenile facility until 21 years old and then released to the community — was supported by 16 percent of the sample.

When asked their opinion of the question, “Should a child who commits a violent offense be eligible to receive the same punishment an adult would receive for committing the same offense?”, 57 percent of Michigan residents disagreed. Females (61 percent) and minorities (68 percent) were most likely to disagree.⁷ (See Figure 3 below).

⁷Statistically significant differences in the belief that a child should receive the same punishment as an adult for the same offense between men and women ($\chi^2(df)=10.10$; $p=.001$) and minorities and whites ($\chi^2(df)=11.64$, $p=.001$).

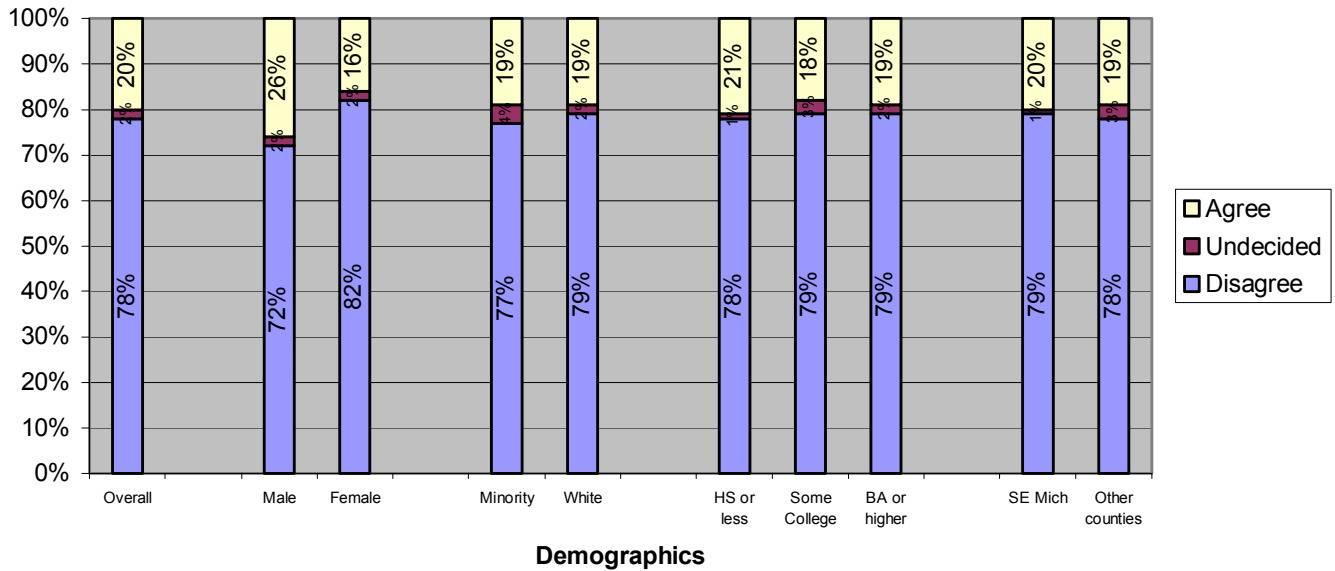
FIGURE 3



In a follow-up question, Michigan citizens reported their belief that youths should not be sentenced to adult facilities. When asked if 14-, 15- and 16-year-olds should be sentenced to adult facilities, 78.3 percent of the respondents disagreed with little variation based on race, education or geographic location. In fact, the only statistical difference was between men and women, with women (82 percent) more likely to disagree than men (72 percent).⁸ (See Figure 4 below).

Michigan residents strongly support the possibility of rehabilitation for juveniles. Seventy-two percent of respondents agreed that adolescents under 18 years of age were strong candidates for rehabilitation. This finding did not vary across gender, race, education or geographic location. (See Figure 5 below).

⁸ Women were more likely than men to believe that those 16 and under should not be imprisoned in adult facilities ($\chi^2(df1)= 10.59, p=.001$).

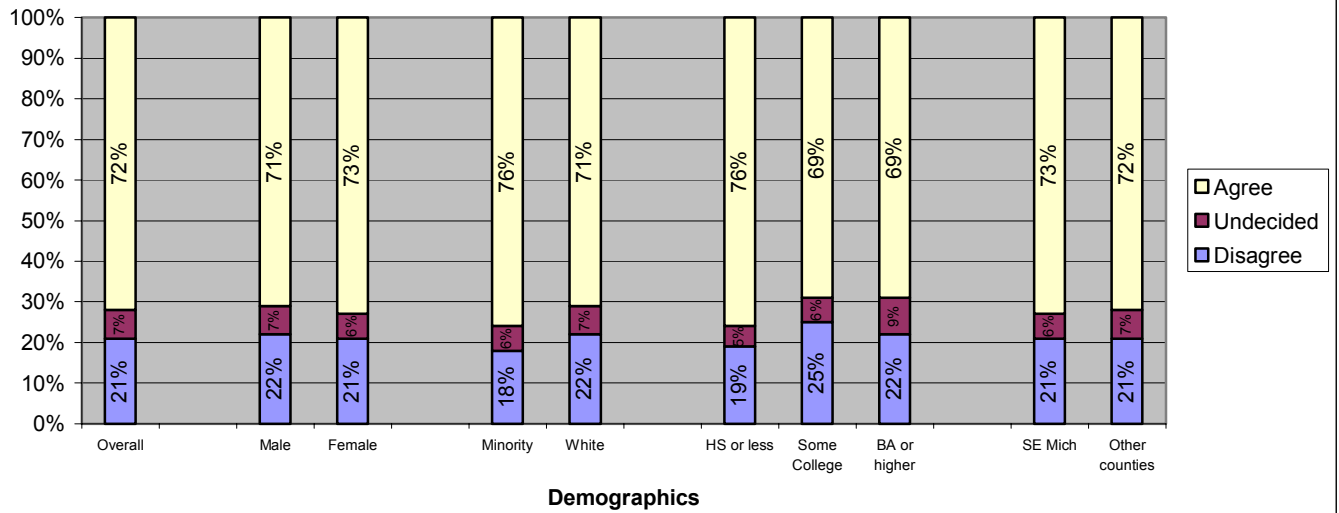
FIGURE 4**Adolescents 14, 15, and 16 years old who commit violent crimes should be eligible to be imprisoned in adult prisons**

Data also suggested that the public perceives adolescents as different from adults. First, in the area of responsibility, the majority of respondents (71 percent) felt that youths between the ages of 12 and 17 were not as responsible as adults (Figure 6 below). As above, there were no statistical differences among the various subgroups in their disagreement of an adolescent's ability to be as responsible as an adult.

In addition, 80 percent of those surveyed agreed that youths' ability to control their impulses and understand the consequences of their actions should be taken into account when considering a punishment for committing a violent offense (See Figure 7 below). Again, there was no statistical variability among subgroups (gender, race, education or location) in their belief regarding the importance of considering youths' developmental stage.

Adolescents under the age of 18 who commit violent offenses are strong candidates for rehabilitation

FIGURE 5



Adolescents between the ages of 12 and 17 are as responsible as adults

FIGURE 6

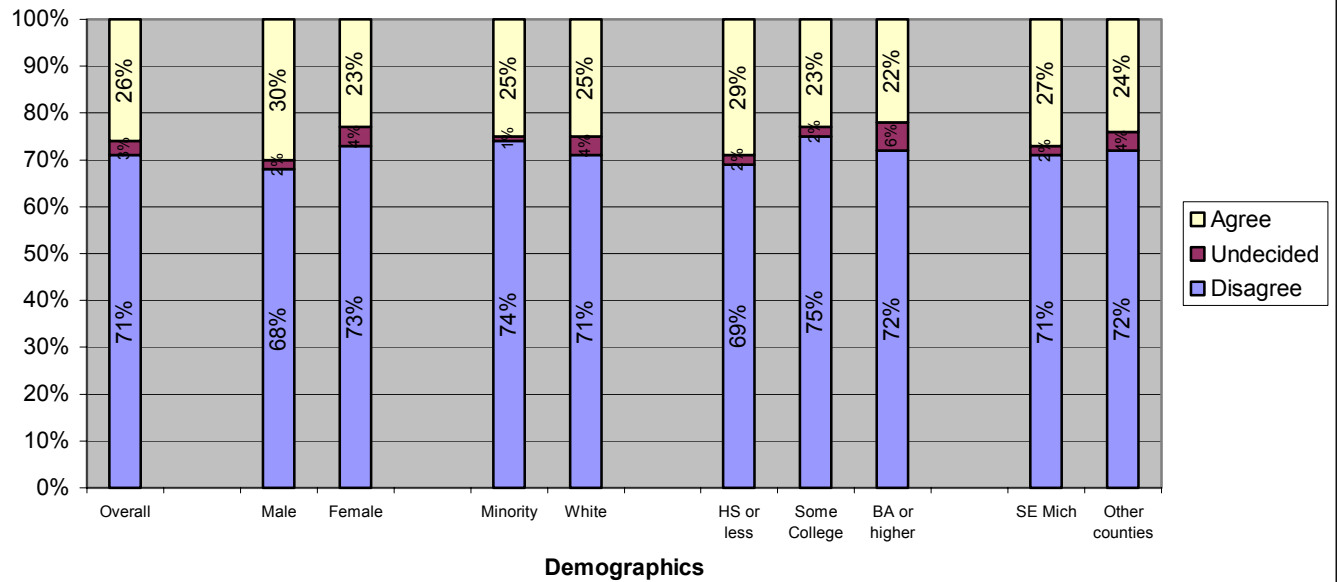
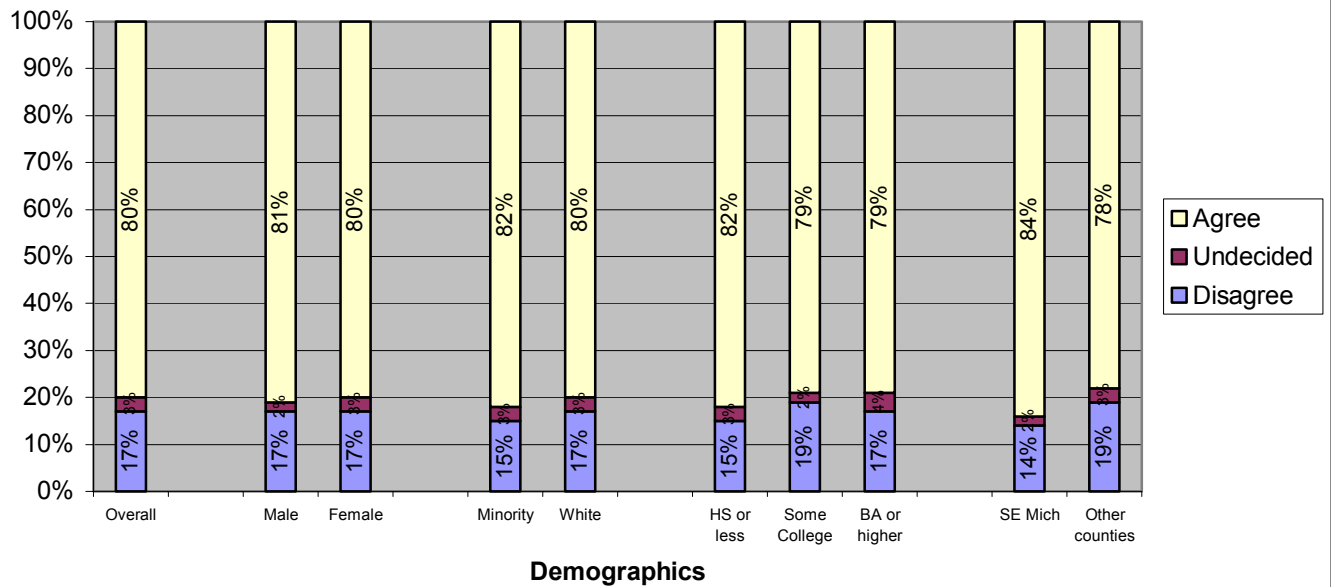


FIGURE 7**Adolescents' ability to control their impulses and understand the consequences of their actions should be taken into consideration**

However, Michigan residents were less inclined to support the notion that peer pressure should be taken into account when deciding on a punishment (Figure 8). Overall, 52 percent disagreed with taking peer pressure into account when deciding upon a sentence for youths. Interestingly, those with more education were less likely to believe that peer pressure should be considered⁹.

Finally, Michigan residents believed that other circumstances should be considered when deciding punishment. Sixty-three percent disagreed that adolescents abused as children should receive the same sentence as an adult for committing a violent offense. Although this finding did not differ based on race, education or location, women were more likely to disagree than were men¹⁰ (See Figure 9).

⁹ Those with more education were less likely to believe that peer pressure should be taken into account when deciding punishment ($\chi^2(df 2) = 12.31; p=.002$).

¹⁰ Women were more likely to disagree than men that adolescents abused as children should be sentenced the same as adults ($\chi^2(df 1) = 7.94; p=.005$).

FIGURE 8

Peer pressure should be taken into consideration when deciding the punishment for an adolescent

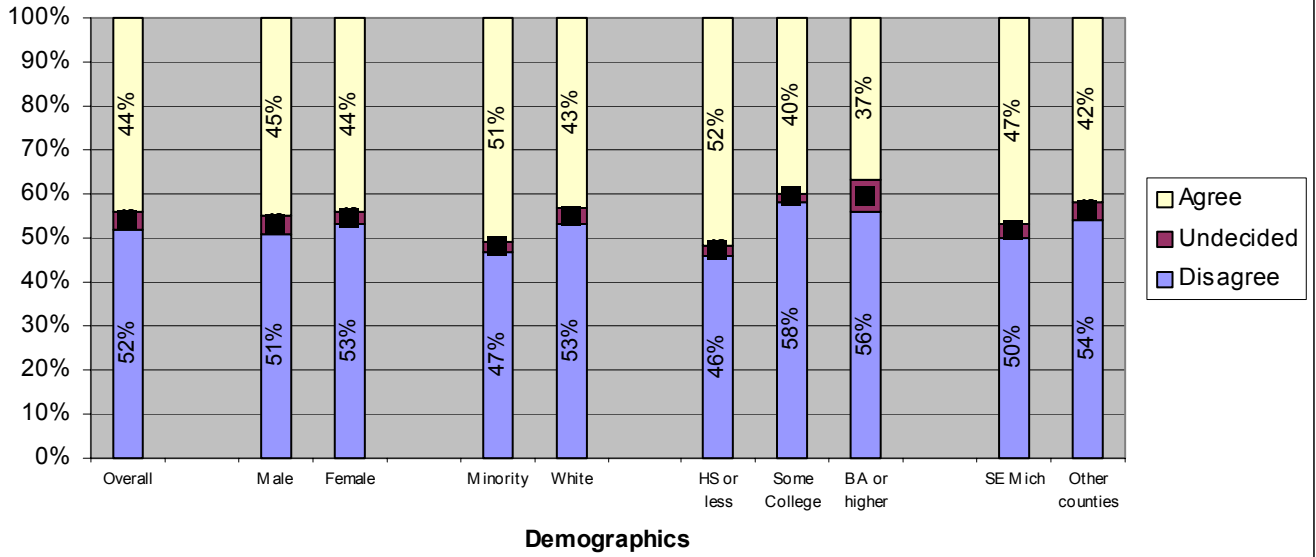
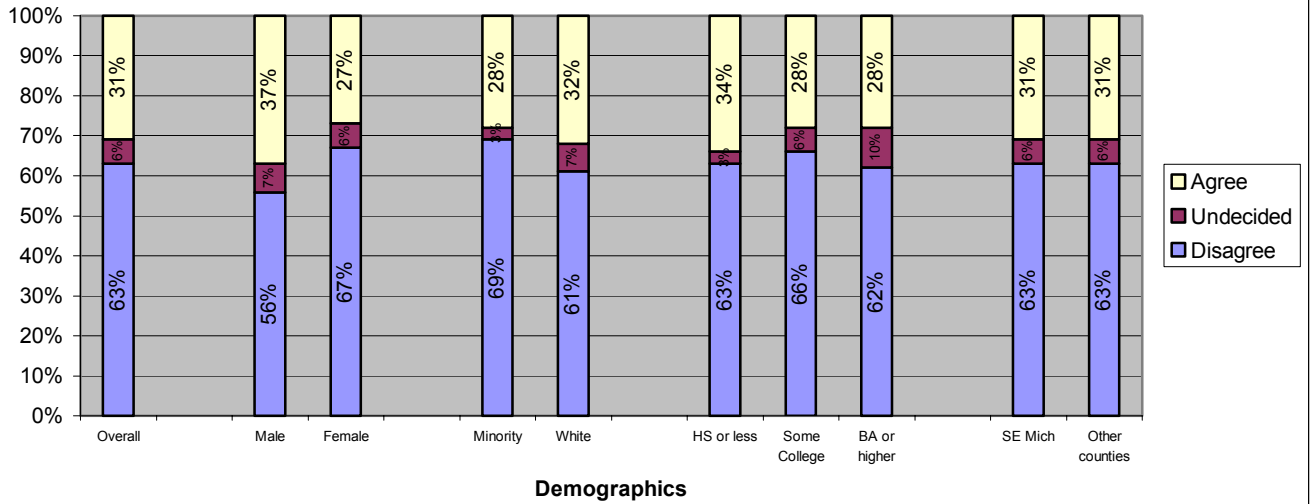


FIGURE 9

Adolescents abused as children should receive the same sentence as adults for committing violent offenses



VI. Discussion

In summary, this study surveyed 750 Michigan residents with a series of questions on state issues, some of which were regarding their views of sentencing juveniles convicted of violent offenses. We found that the majority of those surveyed does not agree with current policy in the state of Michigan, and when given the ability to choose among several options, only 5 percent of the sample of state's residents believed that LWOP in an adult facility was an appropriate sentence.

Michigan citizens felt strongly that adolescents 16 and younger do not belong in adult correctional facilities. Nearly 80 percent of respondents believed that adolescents 14, 15, and 16 should not be imprisoned in adult prisons. Perhaps most important, more than 72 percent believed adolescents under the age of 18 who commit violent offenses are strong candidates for rehabilitation.

To further illuminate the views of Michigan citizens, we asked them about adolescents in general and about housing juveniles in adult facilities. We found that only 26 percent of Michigan residents believe that adolescents between the ages of 12 and 17 years old are as responsible as adults. Furthermore, only 17 percent opposed considering the adolescents' developmental ability to control impulses and understand the consequences of their actions when it comes to sentencing. Similarly, Michigan residents also thought that abuse histories should be taken into account. More specifically, only 31 percent believed that adolescents abused as children should receive the same sentence as an adult for committing a violent offense. Conversely, Michigan residents seemed somewhat divided on whether peer pressure should be considered (44 percent agree, 52 percent disagree, and 4 percent undecided).

Although it is clear that Michigan residents want some distinctions between adult and juvenile offenders, they also feel strongly that youths should be held accountable for their violent crimes. Nearly 75 percent of respondents thought that youths who commit homicide should be initially housed in a juvenile facility and then transferred to an adult facility after age 18 to serve a lengthier sentence.

Like all random digit dialing surveys, there is a limitation regarding the possible sample. Those without telephones, or those who choose to use cellular versus landlines, would be excluded from the possible population of those surveyed. Similarly, those who choose to respond, versus those who do not, may differ from one another. One difference was the over-representation of women among those who were interviewed. We have taken care to analyze the data for each question by gender (as well as other social indicators) as a way to compensate for this overrepresentation.

The US Supreme Court abolished the death penalty as a legal sanction for anyone convicted of a crime as a juvenile – initially for those 15 and younger (*Thompson v. Oklahoma*) and more recently for those 16 and 17 years old (*Roper v. Simmons*). One of the strongest arguments in support of this abolition came from the American Psychological Association (APA) in the form

of an Amici Curiae Brief submitted on behalf of Christopher Simmons (APA, 2004). The brief summarizes recent behavioral and neuropsychological research on the developmental differences between adults and youths 17 and younger, stating, “Developmentally immature decision-making, paralleled by immature neurological development, diminishes an adolescent’s blameworthiness. Regarding deterrence, adolescents often lack an adult’s ability to control impulses and anticipate the consequences of their actions” (p. 2). These same findings appear applicable to the discussion of juveniles sentenced to life without parole and are reflected in the public opinion findings.

This statewide survey of public opinion represents a unique opportunity for citizens to convey their beliefs and feelings regarding current sentencing policies for youths convicted of violent crimes. This is particularly salient in a state that is among the top three in the nation for instituting life without parole for youths convicted of violent crimes. This data demonstrates Michigan residents believe that youths who commit violent crimes can be rehabilitated, that they do not support the practice of juveniles being housed in adult facilities, and more important, that they do not support the sentence of LWOP in adult prisons for youths convicted of homicide.

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- For more information about this study contact Dr. Sheryl P. Kubiak, Wayne State University School of Social Work, Thompson Home, 4756 Cass Ave., Detroit, MI 48202

BUILDING SUPPORT FOR REFORM

BUILDING SUPPORT FOR REFORM

The ACLU-M has now developed an extensive grassroots network of committed citizens trained to advocate for reform. Partners include social justice organizations, service providers, religious leaders, and leaders in the legal community. We also have an influential presence in related coalitions working for juvenile justice reform and child advocacy. For example, the Juvenile Waiver Work Group, convened initially by the Director of the Department of Corrections, has been meeting for over three years to improve the juvenile justice system in Michigan. The Michigan Collaborative for Juvenile Justice Reform, a large coalition of public and private service providers, is advocating for more effective practices in the juvenile justice system. This year, the ACLU of Michigan also began working with the Criminal Defense Attorney's of Michigan which has opened up a vast connected network in the legal community that gives us increased access to judges and policy makers.

In the coming year, the ACLU-M will work with the Michigan Coalition of Human Rights, children's rights organizations, attorneys specializing in international and children's law, religious entities, and civil rights organizations to build the base of support for reform. To engage in this effort, the ACLU-M will create and use specialized materials, conduct human rights trainings, and expand the base of allies.

LEGISLATIVE SUMMARY

As a result of the ACLU of Michigan report *Second Chances – Juveniles Serving Life without Parole in Michigan*, Senator Liz Brater and Representative Paul Condino introduced bills in December, 2005 in both the House and Senate that would reform the laws mandating life sentences for certain juvenile offenders. Throughout 2005-2006, the ACLU of Michigan worked tirelessly to bring awareness and education to the issue we refer to as JLWOP. We hosted three advocacy training sessions for our grassroots group called Second Chances and presented the issue to numerous organizations in order to build a strong coalition of support. The advocacy sessions are video taped and linked to the Second Chance website (www.secondchancelegislation.org). Our advocacy materials are available on the website as well.

In May, 2006 the ACLU hosted luncheon briefing for elected officials and administrators in Lansing. In addition to participation by many of our coalition partners, Rosemary Sarri, Professor Emerita of Social Work from the University of Michigan School of Social Work, presented her research on the adolescent brain. Sheryl Pimlott Kubiak, PhD, from the Wayne State University School of Social Work, presented her polling data on Michigan citizens' attitudes about sentencing juveniles to life in prison with no possibility of parole. The polling data reveals that Michigan citizens are in favor of reforming these harsh sentencing laws.

With our coalition partners and grassroots activists adequately trained, we organized a lobby day in the state capitol in September, 2006. Over 100 people participated in a briefing session at the state capitol building before meeting with their elected official to relate their personal story of a loved one incarcerated under Michigan's inhumane JLWOP law and to advocate for changes to the treatment of juvenile offenders in Michigan. Unfortunately, neither the House nor Senate Judiciary Committees held hearings on the bills, and the legislation ultimately lapsed.

With the new legislative session starting in 2007, Lansing experienced a leadership shift which resulted in Representative Paul Condino being appointed the powerful Chair of the House Judiciary Committee. Both Senator Brater and Representative Condino re-introduced JLWOP reform bills and we are assured a hearing on the legislation in the fall of 2007. This year, the ACLU of Michigan developed a strong bond with the Criminal Defense Attorney's of Michigan, which has opened up a vast connected network in the legal community that gives us increased access to judges and policy makers.

Our years of advocacy and education efforts laid important ground work for legislative reform. The ACLU conducted additional advocacy training sessions throughout the winter of 2007 and has a lobby day planned for June 20, 2007. Through compiled feedback of all our contacts made by the grassroots groups we have established a useful database of those policy makers whom we have influenced. Our efforts generated a substantial amount of media which worked to spread awareness to the general public. This provides necessary support or "voter backing" for policy changes.

Summary of Pending Legislation

- **HB 4403/SB 28:** These bills amend Michigan’s Probate Code, which determines the factors that allow a juvenile to be treated as an adult, to prohibit a juvenile from being sentenced to life in prison without the chance for parole;
- **HB 4404/SB 6:** These bills amend Michigan’s Criminal Procedure, which determines the crimes for which a juvenile may be treated as an adult, to prohibit a court from sentencing a juvenile to life in prison without the possibility of parole;
- **HB 5514/SB 91** These bills amend Michigan’s Corrections Code to require the parole board to consider these factors when deciding if a juvenile, who has served 10 years of his/her sentence, may be released on parole:
 - The individual’s age and maturity at the time of the offense
 - The individual’s degree of participation in the offense
 - The nature and severity of the offense
 - The individual’s history of juvenile or criminal offenses
 - The individual’s likelihood to commit further offenses
 - Any other relevant information
- **HB 4402/SB 40:** These bills amend Michigan penal code to prohibit sentencing juveniles to lifetime imprisonment without the possibility of parole.

QUESTION AND ANSWER - WAIVERS

Question: How does the mandatory waiver process for sentencing of juveniles work?

Answer: Every state has some form of waiver. Some states have more than one type of waiver statute, which gives the prosecutor several options when deciding whether a juvenile should be tried in adult criminal court.

A. Judicial Waiver

More than **40** jurisdictions have enacted judicial waiver laws. Typically, **statutes enumerate certain matters the juvenile court judge is required to consider in making this determination.** The following are the factors:

1. the seriousness of the alleged offense and whether it was committed in an aggressive;
2. violent or premeditated manner;
3. whether the alleged offense was against persons or property, with the weight leaning more toward waiver if it was against a person;
4. the prosecutorial merit of the complaint;
5. the sophistication, maturity and prior record of the offender;
6. the need for public safety; and
7. the chance of rehabilitation of the juvenile through current available treatments.¹¹

Additional factors considered are: where the offense is related to gang activity; [1] if it was committed on school property or at any school-related event and whether other students were put in danger; [2] the alleged offender's relationship to the victim [3] and the impact on him or her; [4] the potential for rehabilitation if the jurisdiction provides parenting or family counseling; [5] whether the juvenile can develop sufficient life skills to become a contributing member of society; [6] whether the child is mentally ill or mentally retarded; [7] and catchall provisions, in which judges must also consider any other relevant factors or evidence that bear on the transfer decision. [8]

The judicial waiver statutes differ in other ways. Sometimes the law gives the judges complete discretion to transfer, at least as long as the evidence supports the decision. [9] Other statutes require transfer if a certain number of factors weigh in favor of it. [10] **Most mandate that juveniles be a certain age and be charged with certain offenses before a judge is allowed to consider transferring a juvenile to adult court.** [11] Others use presumptions if certain factors are present or weigh specific factors differently. [12] In Florida a child may choose voluntary waiver to criminal court. [13]

In addition, the states use a wide age range in their judicial waiver statutes. The most common age for transfer is fourteen years old, [14] although several states permit transfer for juveniles who are twelve [15] or thirteen years old. [16] Three states--Texas, Indiana, and Vermont--allow juveniles who committed offenses when they were as young as ten to be transferred to adult court under very limited circumstances. [17]

¹¹ [Kent v. United States, 383 U.S. 541, 566-67 \(1966\).](#)

Although the judicial waiver hearing is held prior to the determination of guilt, it is like a sentencing hearing. [18] The juvenile court judge is determining whether the child, if convicted, should receive a sentence under the juvenile code or under the penal code. It is the most critical decision facing a child in juvenile court.

B. Prosecutorial Waiver

Many states allow prosecutors to file certain cases in either juvenile court or adult court. Most statutes specify the minimum ages, in some cases as young as twelve, [19] **and list the specific charges that will allow a prosecutor to file adult charges,** [20] some adding that the prosecutor can charge the child in adult court only if he or she has previously been adjudicated a delinquent and committed to a state institution. [21] Therefore, the statutes are limited by age, offense, and prior adjudication in juvenile court; however, within those parameters the prosecutors' charging decisions are completely discretionary, unconstrained by procedural due process protections.

Some states have both discretionary and mandatory prosecutorial waiver depending on the age, crime, and previous history of the juvenile. [22] If a juvenile is of a certain age and charged with any one of a litany of felonies, such as arson, robbery, or murder, the prosecutor may file directly in adult court. [23] In these states, prosecutors are required to file charges directly in criminal court when the juvenile is sixteen or seventeen, currently being charged with specific felonies, and has been previously adjudicated delinquent for committing one of several felonies. However, to the extent that the waiver decision depends on the current charges, the prosecutor is ultimately making the determination of whether to waive regardless of the statutory wording that filing in adult court is mandatory.

C. Legislative Waiver

Legislative waiver, also known as statutory exclusion, is similar to prosecutorial waiver. Some statutes require a child of a certain age to be tried in criminal court if he or she has previously been adjudicated a delinquent without reference to the current charges. **This is a true legislative waiver statute as there is no room for prosecutorial discretion.**

Currently, at least twenty states allow for legislative waiver. These statutes set the age at which transfer becomes automatic as early as thirteen [23] **and as late as seventeen.** [24] In Pennsylvania, there is no age minimum; any juvenile charged with murder or criminal homicide is automatically transferred. [25]

Endnotes

- [1]. The courts will consider whether "the juvenile committed the alleged offense while participating in, assisting, promoting or furthering the interests of a criminal street gang, a criminal syndicate or a racketeering enterprise." [Ariz. Rev. Stat. Ann. § 8-327 \(1999\)](#). [Stout v. Commonwealth](#), 44 S.W.3d 781, 786, 786 n.15 (Ky. Ct. App. 2000) ("[T]he factor... concerning gang participation, was added to the list effective July 15, 1998.").
- [2]. The courts will consider "[w]hether the alleged offense was committed on school property, public or private, or at any school-sponsored event, and constituted a substantial danger to other students." [Miss. Code Ann. § 43-21-157 \(2004\)](#).
- [3]. [Ohio Rev. Code Ann. § 2152.12\(D\)\(3\) \(West 2005\)](#).
- [4]. [Ariz. Rev. Stat. Ann. § 8-327\(D\)\(7\) \(1999\)](#); [Md. Code Ann., Cts. & Jud. Proc. § 3-817\(c\)\(2\)\(iii\) \(Lexis Nexis Supp. 1999\)](#); [Colo. Rev. Stat. Ann. § 19-2-518 \(4\)\(b\)\(VIII\) \(West 2005\)](#); [42 Pa. Cons. Stat. Ann. § 6355\(a\)\(4\)\(iii\)\(A\) \(West 2000\)](#).
- [5]. [D.C. Code Ann. § 16-2307\(e\)\(6\) \(Lexis Nexis 2001\)](#).
- [6]. [Idaho Code Ann. § 20-508\(8\)\(f\) \(2004\)](#).
- [7]. [N.D. Cent. Code § 27-20-34\(1\)\(c\)\(4\)\(c\) \(Supp. 2005\)](#); [42 Pa. Cons. Stat. Ann. § 6355\(a\)\(4\)\(iv\) \(West 2000\)](#).
- [8]. See, e.g., [Haw. Rev. Stat. § 571-22\(c\)\(8\) \(LexisNexis 1993 & Supp 2004\)](#); [N.M. Stat. Ann. 1978 § 32A-2-20\(C\)\(8\) \(West 2004\)](#).
- [9]. See, e.g., [Ala. Code § 12-15-34 \(d\)-\(f\) \(West 2005\)](#) (stating that although a juvenile judge has the discretion whether or not to transfer a child to criminal court, the judge must consider several factors when making this decision and provide written findings including probable cause that the allegations are true). But see Barry C. Feld, [The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes](#), 78 *J. Crim. L. & Criminology* 471, 491 (1987) (positing that the Kent guidelines do not really provide objective guidelines for juvenile judges, giving them unlimited discretion in deciding when to transfer juveniles to criminal court).
- [10]. [Mont. Code Ann. § 41-5-1606\(2\) \(1999\)](#).
- [11]. [705 Ill. Comp. Stat. Ann. 405/5-805 \(2\)\(3\) \(2005\)](#).
- [12]. It is interesting to note, for example, that the Utah judicial waiver statute initially appears to provide for automatic transfer, however, every juvenile is entitled to a hearing and it is within the judge's discretion to keep him or her in juvenile court. See [Utah Code Ann. § 78-3a-602 \(2002 & Supp. 2005\)](#).
- [13]. [Fla. Stat. Ann. § 985.226 \(1\) \(West 2001\)](#). Presumably children choose this option because they believe they would receive a lesser punishment in criminal court. This can occur if the child is charged with a relatively minor offense. In criminal court the statutory limits may be quite low. In juvenile court, however, children can be sent to state training schools for their majority even if the offense is not serious. In [re Gault](#), 387 U.S. 1, 29 (1967), the offense with which the child was charged would have been punishable in criminal court by no more than two months in jail or a fine, whereas in juvenile court he was sentenced to incarceration until the age of majority [twenty-one]. Since Gerald Gault was fifteen, it meant that he received a six year sentence. *Id.*
- [14]. See, e.g., [Kan. Stat. Ann. § 38-1636\(a\)\(2\) \(2000\)](#); [N.D. Cent. Code § 27-20-34 \(1\)\(c\)\(1\) \(Supp 2005\)](#); [Minn. Stat. Ann. § 260B.125 \(West 2003\)](#); [Mich. Comp. Laws Ann. § 712A.4\(1\) \(West 2002\)](#); [Wis. Stat. Ann. § 938.18\(1\)\(a\)\(1\) \(West 2000\)](#).

- [15]. See, e.g., [Mont. Code Ann. § 41-5-1602\(1\)\(b\)\(ii\) \(2005\)](#).
- [16]. [Miss. Code Ann. § 43-21-151\(3\) \(2004\)](#); [N.C. Gen. Stat. § 7B- 2200 \(2004\)](#); [705 Ill. Comp. Stat. Ann 405/5-805\(3\)\(a\) \(West 1999 & Supp. 2005\)](#).
- [17]. [Tex. Fam. Code Ann. § 54.02\(j\)\(2\)\(a\) \(Vernon 2002\)](#); [Ind. Code Ann. § 31-30-3-4\(3\) \(Lexis Nexis 2003\)](#); [Vt. Stat. Ann. tit. 33, § 5506\(a\) \(2001\)](#).
- [18]. [Mont. Code Ann. § 41-5-206 \(2005\)](#).
- [19]. [Ariz. Rev. Stat. Ann. § 13-501B \(2001 & Supp. 2005\)](#); [Mich. Comp. Laws § 769.1 \(Supp. 2005\)](#).
- [20]. [Mass. Gen. Laws. Ann. ch. 119 § 54 \(West Supp. 2005\)](#). In Massachusetts, direct filing in criminal court may occur if the juvenile is between fourteen and seventeen.
- [21]. [Fla. Stat. Ann. § 985.227 \(West Supp. 2005\)](#).
- [22]. See [Ark. Code Ann. § 9-27-318\(g\) \(2002 and Supp. 2005\)](#); [Colo. Rev. Stat. § 19-2-518\(4\)\(b\) \(West 2005\)](#); [Haw. Rev. Stat. § 571-22\(b\) \(1993 & Supp. 2004\)](#).
- [23]. Mississippi mandates transfer for juveniles as young as thirteen who are charged with a crime punishable by life or death or for any act attempted or committed with the use of a deadly weapon. [Miss. Code Ann. § 43-21-151\(1\) \(2004\)](#). Maryland also requires transfer of a juvenile who is charged with a crime punishable by life or death, but the minor must be at least fourteen. [Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03 \(Lexis Nexis 2002 & Supp. 2004\)](#).
- [24]. Montana, for example, only allows for automatic transfer if a juvenile is seventeen and is accused of committing one of a long list of offenses, such as rape, murder, assault on a peace officer, aggravated assault, aggravated burglary or robbery, possession of dangerous drugs, or the use of threat to coerce criminal street gang membership. [Mont. Code Ann. § 41-5- 206 \(2003\)](#).
- [25]. [42 Pa. Cons. Stat. Ann. § 6355 \(West 2000\)](#).

WHAT CAN YOU DO?

- 1) Join over 30 individuals and organizations listed below are out speaking up for reform. See the attached statement and return to 60 W. Hancock, Detroit, MI 48201.

American Friends Service Committee
Bishop Gumbleton
Buddhist Peace Fellowship-SE Michigan Chapter
Campaign 4 Youth Justice
Center for Children’s Law and Policy
Church Women United
Emmaus House of Saginaw, Inc
Holy Cross Children’s Services-Lansing
Indigent Defense Counsel-National Association of Criminal Defense Lawyers
Metropolitan Organizing Strategy Enabling Strength of Michigan (M.O.S.E.S)
Michigan Association for Children with Emotional Disorders
Michigan Battered Women’s Clemency Project
Michigan Council on Crime and Delinquency
Michigan County Social Services Association

Michigan Federation for Children and Families
Michigan League of Human Services
Michigan Protection and Advocacy Services
Michigan’s Children
Motivators Parent Child Advocacy Group
National Association for the Advancement of Colored People-Detroit Chapter
National Juvenile Justice Network
Parent Child Advocacy Group
Penal Reform International
Prison Legal Services of Michigan
Rose Hill Center
Second Chance Legislation
Student Advocacy Center
Pickett Fences Ministries
Progressive Jewish Alliance
St. Leo Church
Team for Justice
The Battered Women’s Clemency Project
The Moorish Science Temple of America
The Student Advocacy Center of Michigan
Washington Heights UMC

Letter of Support

The individuals and organizations below strongly oppose the imposition of life without parole on children who have committed crimes while still minors. As part of an ongoing campaign to eliminate this practice, we support legislation that will amend the Michigan law that has condemned more than 300 juveniles to life sentences in adult prisons without parole. It is the harshest sentence available in Michigan for any crime. Nearly half (146) of the 307 persons in Michigan affected by this law were sentenced for crimes committed when they were 16 years old or younger. Under current law, the sentence is mandatory and neither judges nor juries have any discretion to consider the age of the children as a mitigating factor or issue proportional sentences.

Many juveniles sentenced under the current law received far longer sentences than adult co-defendants who were principal actors. When it comes to condemning children to die in prison, Michigan ranks second in the entire world. Life sentences without parole for children are widely considered a violation of international law, including the International Convention on the Rights of the Child, and basic human rights standards and principles. As concerned individuals and

organizations, we support immediate reform to eliminate this sentence and provide a second chance through parole eligibility for those serving this sentence both in Michigan and throughout the country.

Organization:

Contact Person:

Address:

Phone number:

Email:

- 2) Write a letter to your legislator asking them to support the bills.
- 3) Invite us to make a presentation.

RESOURCES

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Visit our website at www.aclumich.org



DESIREE COOPER: Judge says violent kids need second chances, October 19, 2006

BY DESIREE COOPER

FREE PRESS COLUMNIST

Balancing a victim's rage against a child's promise is what Eugene Arthur Moore does every day.

As an Oakland County Probate Court judge since 1966, he's witnessed the horror that violent teens can wreak upon victims' families. And he's also seen how troubled kids can turn their lives around.

He hopes one of them will be Nathaniel Abraham who, at 11, fatally wounded another teenager in 1997. Abraham was tried under a draconian Michigan law that made it possible for a child of any age to be tried and sentenced as an adult for murder.

"There was definitely a feeling back then that kids were becoming too dangerous and we needed to lock them up and throw away the key," said Moore on Tuesday after speaking at a juvenile justice symposium convened by the Skillman Center for Children.

But the long-feared generation of super predators has not materialized. In 1994, 1,968 Wayne County youth were arrested for violent crimes, including murder and forcible rape, compared to 413 arrests in 2004, according to the FBI. The numbers followed a national downward trend.

Hope is put to the test

Refusing to bow to pressure, Moore didn't throw away the key in the Abraham case. Instead of sentencing the boy as an adult, he sentenced him as a juvenile, ensuring his release in January, when he turns 21 -- whether he's rehabilitated or not.

Signs are promising. In preparation for his release, Abraham's been gradually stepped down from maximum security at the W.J. Maxey Training School near Whitmore Lake to a halfway house in Bay City. On Monday, he appears before the judge for one of his last progress reports.

Gambling on a payoff

It now costs about \$150,000 annually to house a boy at Maxey, compared to \$50,000 a year to send him to Harvard University. A purely punitive mentality, said Moore, has become too expensive.

"The pendulum is beginning to swing back," he said Tuesday. "There's now an understanding that working for the successful rehabilitation of criminals is not only cheaper, but it's the way to give society the best protection."

It can't be easy to hold that view when a young criminal has destroyed your life, but Moore has. His nephew, a Texas college student, was carjacked a few years ago. The perpetrator put Moore's nephew and a passenger in the trunk of the car, then drove it into a lake, drowning the two young men.

"Things like that shake your faith," said Moore, whose family did not seek the death penalty. "But it's amazing to me that outside of very serious cases, most victims don't talk about revenge, but about urging me to do what will make us safe.

"When Nate is released, the issue will not be whether or not I was right, but whether or not the juvenile system is working," said Moore. "If he's successful, maybe we can learn what we did right -- for the sake of the other kids who are in the system."

And for our sake, too.

Contact **DESIREE COOPER** at 313-222-6625 or dcooper

@freepress.com.

Detroit Free Press

Aug 15, 2006

Editorial

Juvenile lifer law needs fair hearing

Michigan's notorious juvenile lifer law has rightly drawn fire from human rights groups worldwide, including Amnesty International and Human Rights Watch. Last month, a coalition of 142 U.S.-based groups even declared that the state's policy, which permits mandatory life sentences for certain teen-age offenders, violates international treaties.

At the very least the law contradicts science, common sense, legal tradition and public opinion. A bill sponsored by state Sen. Liz Brater, D-Ann Arbor, would fix the worst abuses of the law, but it has been locked up all year in the Senate Judiciary Committee. Committee Chairman Alan Cropsey, R-DeWitt, told the Free Press last week that, while he had "dozens of red flags" about Brater's bill, he was open to giving it a public hearing. Cropsey should do so now while there's still time for legislators to act this term. In Michigan, more than 300 juveniles have been sentenced to life without parole -- one of the highest such numbers in the nation. Brater's bill would not release any of them. It would simply give them a chance at parole after they had served at least 15 years. That's a reasonable change, consistent with brain-imaging research that shows -- surprise -- that teenagers are more impulsive and unstable than adults, even without the abuse and neglect that many young offenders have faced. Juveniles don't have the same legal rights and responsibilities as adults because they lack the maturity and judgment to handle them. Nor should they generally pay the same consequences for crimes. That's partly why a conservative U.S. Supreme Court threw out the death penalty for juveniles. A recent Wayne State University survey suggested that only 5% of state residents support the current Michigan law. Brater's bill offers the best hope of bringing Michigan's juvenile law into the 21st Century. Cropsey should allow it a fair hearing.



May 10, 2006

By Ben Lefebvre

Men in Black

Cedric Biggs usually spends his nights sleeping in Detroit's Hart Plaza and his days sitting on a stoop in the Greektown restaurant district, where he shakes a Styrofoam cup at passersby, hoping to catch a few coins.

As long as the sun is out, he says, there's typically no hassle. It's when twilight approaches that he begins to look around nervously, because that's when the private security crew area panhandlers have dubbed the "men in black" shows up for work.

"They wear black khakis, black jackets and black hats," he says. "You can't be on Greektown property. They get into physical altercations with [panhandlers]. They grab 'em, take them off. They work with the police standing right there not doing something."

The alleged assailants are members of an eight-man security squad hired by the Greektown Merchants Association in the fall of 2005 after the Police Department reduced the number of officers patrolling the area.

Panhandlers claim the guards became more aggressive in the weeks leading up to the city's Super Bowl celebration in February, and that the rough stuff has continued since then.

So far this year three panhandlers have filed complaints alleging that they've been battered by members of the security team, says Sgt. Eren Stephens, a department spokeswoman.

Ron Scott, spokesman for the local activist group Coalition Against Police Brutality, says he's been in contact with about 12 panhandlers who claim to have been assaulted by members of the security crew. Some of the panhandlers are afraid to come forward, Scott says, because of outstanding warrants against them for such misdemeanors as urinating in public.

Debra Hart tells *Metro Times* she was panhandling near Greektown Casino on Jan. 20, when two of the men in black walked up to her.

"They came and told me to get out of Greektown," she alleges. "Then one said, 'I hate to do this,' and sprayed me with Mace."

Roosevelt Dean, a homeless man who also stays in Hart Plaza, says he had an encounter with two of the men in black when he stopped in front of a store on Monroe Street the evening of March 3.

"One of them grabbed me," he says. "The other one punched me in my face several times," he says. "Told me I wasn't allowed to walk the streets of Greektown anymore, anywhere in Greektown. So I took off."

Both Dean and Hart filed formal complaints at the Police Department's 1st Precinct on Beaubien Street, adjacent to the Greektown area.

A third complaint was filed by Otis Jones, a homeless man who claims he saw two of the men in black roughing up a panhandler in front of the Bouzouki Club, a strip club on Lafayette Street. Jones claims the two men identified themselves as police officers and ordered him to move along when he tried to intervene.

"They're saying they're police," Jones says. "So I told them, 'If you're the police, arrest me.'"

Instead, alleges Jones, one of them punched him in the face several times.

Jones also says he was given the run-around when he tried to file a report, having to wait two hours before officers from the 1st Precinct would accompany him as he pointed out his alleged assailants. When they did find the men, Jones says, the officers asked him how he could be so sure it was them.

Police Department spokesman Sgt. Omar Feliciano says the department is investigating the complaints filed by Dean, Hart and Jones, but that he's prohibited from providing information about ongoing investigations.

No arrests have been made. Police say their investigation has gone slowly because of difficulties in reaching the panhandlers for information.

Scott says most of the people making complaints can be found by visiting the local homeless shelters. Even if they're not there, he adds, other people who know their whereabouts will be.

"I may not always find them every time I want to see them," he says, "but I do find them."

Joyce Wiswell, spokeswoman for the merchant's association, says the complaints are just mischief-making on the part of the panhandlers. After the Detroit Police Department cut the number of officers patrolling the area, she says, Greektown merchants felt it necessary to hire the security team. The cost is \$4,000 a week. She says that most, if not all, of the eight men are laid-off Detroit police officers.

"The panhandlers were getting extremely aggressive with visitors to Greektown, so [the merchants] hired their own private security guards," she says. "They felt it was important."

In her opinion, the panhandlers' reports of physical abuse are untrue. After Jones called her office to voice his complaints in late February, Wiswell attended a security team meeting to get their side of the story.

"The security officers swear nothing has happened," she says. "If something was happening, they'd be fired fast."

Wiswell says she wasn't aware that Dean and Hart had also formally filed complaints alleging assault.

Safety is an important image to project for Greektown. Steve Georgiou, owner of Olympia Restaurant and president of the merchant's association, says the area is "instrumental" for any Detroit revival, and its reputation as a trouble-free zone for tourists is crucial for the businesses there. He doesn't put much stock in the reports by panhandlers.

"I can't believe that this is happening," he says. The security officers "aren't just people we give a suit and tell to walk the streets. They're police officers. They're trained to talk to people. They're told not to touch anyone, just to encourage people to leave the area if they're causing problems. Their purpose is to challenge the panhandlers who are harassing people in Greektown."

Begging for food or money on the street was prohibited by Detroit city ordinance until 1998, when the ban was ruled unconstitutional, says police spokeswoman Stephens.

Michael Steinberg, legal director of the Michigan ACLU, says that begging is generally viewed as constitutionally protected free speech, and that any ordinance barring it must be very narrowly crafted to survive a court challenge.

"The Detroit Police Department has an obligation to protect the free speech rights of these panhandlers," Steinberg says.

The Coalition Against Police Brutality's Scott says the group is considering filing a class action lawsuit against the merchants association on behalf of the beggars.

"These people are being treated in a manner that is inhumane and brutal," he says of the homeless people who have come to him. "Some of these [security guards] are violating their basic civil and human rights. We're not going to tolerate it. If it happens to them, it can happen to anybody."

Ben Lefebvre is a *Metro Times* staff writer. Send comments to blefebvre@metrotimes.com or call 313-202-8015.

Detroit Free Press

April 25, 2006

Editorial

Smart Sentences: Give Juvenile Offenders a Chance for Parole

A bill to reform Michigan's notorious juvenile lifer law has been locked up for nearly four months in the Senate Judiciary Committee, where it could quietly die. That would be a shame, because the proposal, sponsored by Sen. Liz Brater, D-Ann Arbor, is in line not only with science, common sense and legal tradition, but also with public opinion in Michigan.

A recently released survey by the Wayne State University School of Social Work and Center for Urban Studies found that, when given alternatives, only 5% of state residents support current practices of forcing judges to give some kids as young as 14 life without possibility of parole -- the maximum adult penalty for convictions in first-degree murder cases.

Teenagers, as parents know and brain-imaging research shows, are more impulsive and unstable than adults, even without the abuse and neglect that many young offenders have faced growing up. Juveniles don't have the same legal rights and responsibilities as adults because they lack the maturity and judgment to handle them. Nor should they generally pay the same consequences for crimes. That's partly why a conservative U.S. Supreme Court threw out the death penalty for juveniles.

In Michigan, more than 300 juveniles have been sentenced to life without parole -- one of the highest numbers in the nation. Brater's bill, supported by Amnesty International and Human Rights Watch, would give them a chance at parole after they serve at least 15 years.

The WSU survey showed that, without question, Michigan residents believe young offenders should be held accountable for violent crimes. But they also believe sentences must consider the emotional and psychological maturity of teenagers. That view is consistent with science and evolving court decisions, and it ought to be consistent with Michigan law.

Brater's bill deserves a hearing.

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November 1, 2005

By Christina Hildreth

Critics: Juveniles serving life without parole need second looks

Michigan jails house the third-highest number of inmates serving life sentences without parole who were sentenced as minors, according to a report released last month. The only states with more lifers sentenced as juveniles are Pennsylvania and Louisiana.

State Sen. Liz Brater (D-Ann Arbor) announced last week that she is crafting legislation in an attempt to lower this number.

“We’re not saying that people shouldn’t be held accountable for these terrible deeds, but sometime in their life, they should have a second look,” she said.

The report, issued by Amnesty International and Human Rights Watch, said more than 2,000 inmates are in U.S. jails for life because of crimes they committed as juveniles. Michigan prisons hold more than 300 of these inmates, some sentenced at ages as young as 15. A separate report released by the American Civil Liberties Union last year noted that under current state law, life without parole is a mandatory sentence for a juvenile convicted of first degree murder in an adult court.

Brater’s bill would nullify a 1997 law that allows juveniles of any age to be tried as adults for heinous crimes. If passed, the bill would rescind a judge’s ability to sentence youths to life without parole, as well as permit the re-examination of certain prisoners to determine if they still pose a threat to public safety.

But don’t expect the bill to be introduced soon. Brater said she knows she is tackling a controversial issue and will have to work with “all the stakeholders” to come up with a bill that could garner bipartisan support.

But supporters of juvenile justice reform say now is the time for change. Nationally, juvenile justice law is undergoing massive changes, with many states overturning tough legislation passed in the 1990s that stiffened sentences for juvenile offenders and lowered the age at which the accused could be tried as adults.

“It can be a very big political hot potato; no one wants to be soft on crime,” said Shelli Weisburg, legislative director of the Michigan chapter of the ACLU. “But this is really a juvenile justice issue that is long overdue.”

While Brater’s proposal has not yet encountered loud resistance, some state legislators are hesitant to rush into reform.

Sen. Alan Cropsey (R-DeWitt) said despite the recent studies, the state Senate needs to see much more information before it can entertain Brater’s proposed bill.

“To redo a judicial sentence is really, really tricky,” he said. “It’s not that we don’t need to relook at this, we just have to be really careful.”

Cropsey pointed to the case of John Rodney McRea of St. Claire Shores. Rodney was convicted in 1950 of killing an 8-year-old boy, slashing his throat and genitals and hiding his body under a concrete slab in a drain field. Although McRea was only 15 at the time, state law allowed him to be tried as an adult.

McRea was sentenced to life without parole, but in 1972, then-Gov. William Milliken commuted his sentence because of his good behavior. After being released, he completed his parole and moved to Florida

with his wife and son. Since his move, Florida police have investigated him in connection with the disappearances of two young boys.

“(This) would never have happened if he had not been let out of prison,” Cropsey said. “That’s why we need to say, ‘OK, who are we talking about here to be letting out?’”

But reform supporters say many youths who commit violent crimes can change with proper rehabilitation.

“What we know in terms of moral development — and we’re learning more all the time — is that it comes on in some people much later than we normally think,” said Tom Croxton, a psychology professor emeritus who studied juvenile justice and ethics at the University.

To hold juveniles morally responsible for crimes they committed when “they were not morally developed makes no sense,” he added.

The United States stands out internationally for its tough juvenile justice system. According to the Amnesty International report, all countries except the United States and Somalia have ratified international treaties condemning “life imprisonment without possibility of release” for “offenses committed by persons below eighteen years of age.”

The U.S. Supreme Court boosted juvenile justice reform last year when it ruled that juvenile executions violated the Eighth Amendment in the land mark case *Roper v. Simmons*. Writing for the majority, Justice Anthony Kennedy cited arguments similar to Croxton’s, writing, “Retribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.”

According to a report by the A-C-L-U of Michigan, 306 prisoners in the state are serving life sentences without a chance for parole for crimes committed before age 18.

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Detroit Free Press

October 29, 2005

By David Eggert

Critics: Juveniles serving life without parole need second looks

LANSING, Mich. (AP) -- Efren Paredes hit a bleak turning point this year that he may never be able to reverse.

The 32-year-old, who was accused of murder at age 15 in St. Joseph, has now spent more of his life behind bars than as a free man.

Paredes has tried to make the best of his imprisonment by earning a GED, becoming a teacher's aide and transcribing textbooks into Braille. He wants to work with the blind if he's let out.

But that release is highly improbable because Paredes, along with 308 other Michigan inmates convicted of crimes committed before age 18, is serving a life sentence without the possibility of parole.

"He has shown positive growth and maturity in all his years of incarceration," said Paredes' mother, Velia Koppenhoefer. "Efren poses no risk or danger to society whatsoever."

Paredes' case and others have led to calls for reforming the justice system in Michigan, which has the second-highest rate of life-without-parole sentences for juveniles, according to a recent report. Critics say minors unfairly receive the same punishment as adults for crimes committed before they're old enough to vote, serve on juries or make legal contracts.

"We're not trying to excuse the actions of people who receive these sentences," said state Sen. Liz Brater, an Ann Arbor Democrat who wants to prohibit juveniles from being sentenced to life without parole and give those already in prison a chance for parole. "What we're saying is they deserve second looks."

In the late 1980s and mid-1990s, the Legislature made it easier to charge and punish children as adults. The changes allowed prosecutors to bypass the juvenile courts and charge minors aged 14-16 as adults in cases involving murder and certain other crimes.

Juvenile judges have lost some discretion to decide if people under 17 should be tried as adults. For some crimes, circuit judges have to sentence juveniles the same as adults. A first-degree murder conviction is punishable by life without parole, regardless of age. Michigan is one of 11 states to automatically consider 17-year-olds as adults for criminal purposes.

Critics say the policy changes coincided with a rise in the rate of life-without-parole sentences for youth offenders. According to research conducted by the American Civil Liberties Union of Michigan, about 7 percent of people under 17 who were convicted of homicide received sentences of life without parole between 1975 and 1987. That number increased to 23 percent between 1997 and 2001.

Deborah LaBelle, an Ann Arbor lawyer who led the ACLU project, notes that prosecutors don't have to try children as adults.

They can choose what's known as designation and give juvenile judges a choice: sentencing offenders to a juvenile facility until age 21; imprisoning them for life without parole; or imposing a blended sentence, which keeps them incarcerated until 21, followed by a decision on possible adult imprisonment.

But LaBelle says prosecutors aren't immune to public and political pressures that accompany murder trials.

"It's really hard for prosecutors to have a tool in their belts and not use it," she said. "But some people in prison right now have been there many years and they are not the same people who were sentenced 30 years ago."

Prosecutors disagree, and Republicans in the GOP-controlled Legislature aren't convinced changes are needed.

Saginaw County Prosecutor Michael Thomas says a sentence of life without parole fits the crime of first-degree murder. He cites a 1990 case in which two boys, ages 16 and 13, made fire bombs and tossed them inside a Saginaw County house occupied by a family of six. Three children were killed.

"He's going to be in prison the rest of his life," Thomas said of the 16-year-old, who was charged as an adult. "Every day he wakes, takes nourishment. He paints. It's a minimum-security facility. Those three kids are dead. They had the most precious thing removed from them: the right to be alive."

Thomas questions the ACLU and others who distinguish between an 18-year-old and someone a few years younger. The difference is arbitrary because some younger children are more mature than their older peers, he says.

Before 1988, few Michigan juveniles were tried as adults because prosecutors needed a waiver from juvenile court jurisdiction. Children locked up as juveniles, including murderers, were eligible for release at age 21 or before.

"The bottom line was these juveniles getting out at age 19 were committing more crimes and more murders," Thomas said.

He adds that prisoners serving life can petition the governor to commute, or reduce, their sentences. But Gov. Jennifer Granholm has been reluctant to use that power, unless for medical reasons.

Critics argue there isn't enough case-by-case flexibility for children tried as adults. Some are serving life without parole for felony murder, regardless of whether they pulled the trigger.

Patrick McLemore, now 23, was convicted of felony murder in the 1999 death of an elderly man in Burton. When a 19-year-old friend asked him to come to the man's house, McLemore says he found his co-defendant had beaten the homeowner to death. McLemore's father says his son helped hide the man's car because he was scared and his friend threatened him.

"The only thing my son was guilty of was as an accessory after the fact," said Jim McLemore, a retired supervisor from General Motors Corp. and Delphi Corp. "The law is really unfair. I don't think anybody below age 18 should ever be sentenced as an adult. They're 16, 17 years old. They're not old enough to vote, drink, buy cigarettes or anything like that."

Patrick McLemore turned down a plea deal, was convicted at trial and sentenced to life without parole. His co-defendant pleaded guilty to second-degree murder and is eligible for release in 2032.

Sen. Alan Cropsy, a DeWitt Republican who heads the Senate Judiciary Committee, says he's unsure whether the law should be changed. But he stresses that victims can't be forgotten when considering sentencing changes.

"Public safety has to trump everything," he said.

_____ On the Net: Sen. Liz Brater: <http://www.senate.mi.gov/brater>

ACLU of Michigan: <http://www.aclumich.org>

Department of Corrections: <http://www.michigan.gov/corrections>

A copy of the nationwide report can be found at the following sites:

<http://hrw.org/reports/2005/us1005/>

<http://www.amnestyusa.org/countries/usa/clwop>

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Criminal Justice

Detroit Free Press

October 20, 2005

Editorial

Juvenile Lifers

Make parole possible for some young offenders

Young Michiganders can receive mandatory life sentences before they're old enough to buy cigarettes, vote or drive. State legislators ought to change this unjust and unforgiving system, which ignores the longstanding role of maturity and competence in assessing legal culpability.

More than 300 people in Michigan serving mandatory life sentences, without possibility of parole, were convicted of crimes they committed when they were 14 to 17 -- the nation's third highest number of juvenile cases. Nearly two-thirds of them are African American.

Human Rights Watch, Amnesty International and the American Civil Liberties Union of Michigan joined together in Detroit last week to spotlight Michigan's role in this nationwide problem and start pushing for legal and legislative changes.

Because of their immaturity, juveniles do not have the same rights as adults. Logically, neither should they generally suffer the same consequences.

As a first step, the Legislature ought to abolish life without parole for any offense committed by anyone 17 or younger, as well as permit parole for offenders convicted as juveniles and now serving life-without-parole sentences. That change, in itself, would not release anyone from prison. It would simply allow the Parole Board to look at a case and decide whether the offender is a good candidate for parole.

In many cases, the juveniles were not directly involved with the murder they were convicted of. Nor did most have adequate legal representation.

To be sure, punishment is appropriate for young people who commit crimes. But the maximum adult penalty of life without parole, which forever locks out a second chance, is unreasonable and unwarranted for anyone too young to exercise adult rights and responsibilities.

The New York Times

September 15, 2004

Editorial

Imprisoning youths for life unjustly ignores their age

Michigan's criminal justice system has senselessly given up on and discarded people who committed crimes when they were juveniles -- sometimes not even old enough to drive.

More than 300 people serving sentences of life without the possibility of parole were convicted of crimes they committed when they were 14 to 17, reports the Michigan branch of the American Civil Liberties Union. Two-thirds of them were African American, though blacks make up only 12 percent of the state's population. More than 100 of the teens sentenced to life were 16 when involved in a homicide, said the "Second Chances: Juveniles Serving Life Without Parole in Michigan Prisons" study. Many juvenile offenders were only peripherally involved in their crimes.

"The law deprives me of doing justice," Saginaw County Circuit Court Judge Leopold Borrellow said in 1991 when sentencing a 16-year-old to life without parole for murder.

Because of their immaturity, juveniles do not have the same rights as adults; nor should they generally bear the same consequences for their actions. But the laws of Michigan, and of other states, have increasingly ignored the relationship between immaturity and responsibility, and even legal competency. In 1996, Michigan lowered the age that juveniles could be automatically charged as adults, from 15 to 14.

Considering Michigan's costly and crowded prison system, legislators ought to do two things: Give judge's discretion in the sentencing of juveniles, and restore parole eligibility to those who already have served lengthy sentences.

Without those changes, Michigan's juvenile justice system will continue to be unjust and unforgiving.



Associated Press



October 26, 2005

By David Eggert

Senator's bill would ban sentencing youths to life with no chance of parole

Lawmaker calls the prison term double standard

A state lawmaker wants to prohibit Michigan juveniles from being sentenced to life in prison without the possibility of parole.

Sen. Liz Brater, D-Ann Arbor, announced a four-bill package Tuesday she said would give children convicted of violent crimes a second chance by giving them a chance for parole.

Brater said keeping people under age 18 from voting or serving on a jury while saying they're old enough to serve life in prison sets a dangerous double standard.

"These children have committed horrible crimes, and must be held accountable for their actions," she said. "No one is saying these individuals should get off with just a slap on the wrist, but locking them away forever ignores the fact that there is a chance they could eventually become productive members of society."

Brater and the American Civil Liberties Union of Michigan cited a study by Human Rights Watch and Amnesty International showing Michigan has the second-highest rate of imposing life sentences without parole on juveniles.

The ACLU says 306 prisoners in the state are serving life sentences without a chance of parole for crimes committed before the age of 18. Almost half of them committed their crimes while 16 or younger.

It is unclear, though, whether Republicans in the GOP-controlled Legislature are open to changing the law.

DeWitt Republican Alan Cropsey, who heads the Senate Judiciary Committee, said victims should not be forgotten when considering sentencing changes. "Public safety has to trump everything."



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The Detroit News

September 21, 2004

Editorial

Give Juvenile Offenders a Chance for Parole

Michigan has high number of inmates serving life sentences without parole for crimes committed as minors

There are more than 300 people in Michigan prisons serving sentences of life without parole for offenses they committed as juveniles. Michigan law should be revised to allow the possibility of parole for some of these offenders.

The Michigan Chapter of the American Civil Liberties Union has just produced an important study on such offenders. Michigan has a relatively high number of these inmates who were sent to prison with no hope of parole.

According to the ACLU study, this is not because the state has no death penalty or because of its homicide rate. Rather, it is because of policy changes made in the law during the last two decades.

Those policies need to be revisited. Almost half, 146, of the 307 persons serving life sentences with no hope of parole for juvenile offenses were sentenced for crimes committed when they were 16 years old or younger.

The ACLU recommends a number of changes to make it harder to try juveniles as adults or to impose sentences of life without parole. The best reform would be to grant parole boards more discretion to release offenders who were given sentences of life without parole for crimes committed when they were juveniles.

It must be remembered that the sentence of life without parole is imposed for premeditated murder. It should draw a very serious sentence. And prosecutors and judges should have the leeway to impose a life sentence when they believe circumstances warrant it.

Nevertheless, the ACLU raises the valid point that juveniles may not have the ability to fully comprehend the enormity of murder. They should be eligible for parole at some point in their lives.

After all, as the study says, society withholds the ability to vote or to drink alcoholic beverages from those under the age of 18 because they are not deemed to have the necessary judgment.

The ACLU study, "Second Chances," notes a number of instances in which juvenile offenders who received life without parole were accomplices or in some other way indirectly involved with the murder that led to their imprisonment.

We have argued in the past for the release of very old prisoners and more discretion by the state's Parole Board for other offenders. The ACLU study notes that, statistically, offenders are less likely to engage in violent crimes as they age.

But during the last few years, the percentage of paroles granted to all violent offenders — excluding sex offenders, who have much lower parole rates — has trended down to 34.4 percent in 2003 from 44 percent in 1996. Of course, as Parole Board Chairman John Rubitschun says, "we want to be careful with assaultive offenders."

Life prison sentences

Life without parole sentences and homicide statistics for those younger than 18, 1990-2001.

State	Life without parole sentences	Homicide rate (per 100,000 youth)	Life without parole as percent of homicides
Michigan	182	3.0	22%
Florida*	155	2.3	17
California	166	3.7	4
Illinois	69	4.5	4
Missouri	54	0.9	12
South Carolina	21	6.8	4
Georgia	13	2.7	3

*Florida homicides are for 1992-2001

Source: American Civil Liberties Union

The Detroit News

And the possibility of parole for persons convicted of murder as juveniles will not have a major effect on the prison population, which is now in the vicinity of 49,000.

But having a relatively large number of persons in prison with no hope of parole for crimes they committed as juveniles is not a distinction of which Michigan should be proud. This is an issue for the Legislature.

State law should recognize at least the possibility of change by those who committed a crime as teen-agers and give them some chance of release from prison.