

# INHUMAN SENTENCING OF CHILDREN IN THE UNITED STATES OF AMERICA

## Summary

Capital punishment is unconstitutional for offences committed by persons under the age of 18 and sentences of corporal punishment are unavailable for all offences. However, life imprisonment is lawful across the country and life imprisonment without the possibility of release remains lawful for homicide offences in the majority of states and under the federal criminal justice system.

This report was originally prepared for the Child Rights International Network in May 2011, but updated in February 2016. For more information about CRIN's inhuman sentencing campaign, visit [www.crin.org/home/campaigns/inhuman-sentencing](http://www.crin.org/home/campaigns/inhuman-sentencing) or contact us at [info@crin.org](mailto:info@crin.org).



## Introduction

Within the United States, each state operates its own separate juvenile justice system and sets a maximum age for juvenile court jurisdiction, a minimum age of criminal responsibility and provisions for transfer to adult court. The federal government also prosecutes a limited number of juveniles. While there is no separate federal juvenile court, juveniles are generally accorded a special status within the federal system.<sup>1</sup>

The minimum age of criminal responsibility is set at the federal and state level. At the state level, 33 states set no minimum age of criminal responsibility, theoretically allowing a child to be sentenced to criminal penalties at any age,<sup>2</sup> though in most of these states a capacity related test is applied. Of the states that do set a minimum age of criminal responsibility, North Carolina has the lowest at seven years, while Wisconsin has the highest at 10 years.<sup>3</sup>

The age of criminal majority also varies across jurisdictions within the United States. Eight states place 17 year-olds under the jurisdiction of adult courts while two place 16-year-olds and 17 year-olds under adult jurisdiction.<sup>4</sup> However, all states retain mechanisms that permit children who would by default be tried under the juvenile justice system to be transferred to adult courts.<sup>5</sup> The mechanisms whereby the decision to refer a child offender to the adult criminal justice system vary across the states, but in 25 states jurisdiction is transferred for specific offences, in 15 states juvenile courts have the power to waive jurisdiction on a case-by-case basis while 15 states give

1 For more information, see U.S. Dept. of Justice, Bureau of Justice Statistics, Juvenile Delinquents in the Federal Criminal Justice System (1997). Available at: <http://www.bjs.gov/content/pub/pdf/Jdfcjs.pdf/>

2 Cipriani, D. Children's Rights and the Minimum Age of Criminal Responsibility: A global perspective, Ashgate, 2009, p. 221 and 222.

3 Ibid.

4 See Office of Justice Programs, Statistical Briefing Book: Juvenile Justice system Structure and Process (Jurisdictional Boundaries), 2014. Available at: [http://www.ojjdp.gov/ojstatbb/structure\\_process/qa04101.asp?qaDate=2014&text=-](http://www.ojjdp.gov/ojstatbb/structure_process/qa04101.asp?qaDate=2014&text=-).

5 U.S. Department of Justice, Trying Juveniles as Adults: An analysis of state transfer laws and reporting, September 2011, p. 2. Available at: <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf>.

prosecutors the discretion to determine whether a case is filed in juvenile or adult jurisdiction.<sup>6</sup>

## Legality of inhuman sentencing

### Life imprisonment

Life imprisonment remains lawful as a sentence for offences committed while under the age of 18 in all 50 states and the District of Columbia. Life imprisonment without the possibility of parole is lawful for child offenders in 36 states.<sup>7</sup>

Through a series of cases, the United States Supreme Court has set limits on when states can impose imprisonment without the possibility of release. In 2010, the Court ruled that such sentences could not be imposed for non-homicide offences committed as a child<sup>8</sup> and in 2012, that mandatory life imprisonment without parole sentences cannot be imposed for an offence committed while under the age of 18.<sup>9</sup>

In January 2016, the Supreme Court ruled that the prohibition on mandatory life imprisonment without the possibility of parole sentences for child offenders was retroactive - i.e. that it applied to those children whose sentences were finalised prior to the court's decision in 2012.<sup>10</sup> Previously, States had been divided on whether they were willing to consider the prohibition retroactive.

Courts have also considered corollary issues related to life sentences in the United States, including in Michigan, where the state appeal court ruled in August 2015 that the decision whether to impose a life without parole sentence on a child offender must be made by a jury rather than a judge.<sup>11</sup>

### Death penalty

The death penalty is unlawful for persons under the age of 18 at the time of committing an offence. Twenty states

permitted the imposition of capital punishment on juvenile offenders until 2005, when the United States Supreme Court ruled that the practice violated the constitutional prohibition on cruel and unusual punishment.<sup>12</sup> The judgment had the effect of outlawing the death penalty for child offenders in all jurisdictions within the United States.

### Corporal punishment

Corporal punishment is not a lawful sentence for any offence throughout the United States. While there is some suggestion that the practice is unconstitutional,<sup>13</sup> the Supreme Court has yet to explicitly rule on the matter.

Notwithstanding the lack of a formal national prohibition, corporal punishment remains unavailable as a sentence for all offenders in the United States as the federal government and all 50 states have abolished the practice.<sup>14</sup>

## Inhuman sentencing in practice

Prior to the Supreme Court's decision in *Miller v. Alabama* in 2012, an estimated 7,626 people were serving life sentences for offences committed while they were under the age of 18, 2445 of whom were sentenced to life imprisonment without the possibility of parole.<sup>15</sup> Since the reforms introduced following the ruling, it is not clear how many of these sentences have been reviewed and reduced.

<sup>12</sup> *Roper v. Simmons* [2005] 543 U.S. 551. A summary and link to the full judgment is available at [www.crin.org/node/6983](http://www.crin.org/node/6983).

<sup>13</sup> See *Ingraham v. Wright*, 430 U.S. 651 (1977); United States Constitution, Amendment VIII.

<sup>14</sup> See JRank, American Law and Legal Information, Crime and Criminal Law, Corporal Punishment – Prevalence, available at <http://law.jrank.org/pages/737/Corporal-Punishment-Prevalence.html>: "The last two states to use corporal punishment as a judicial penalty were Maryland, where it was seldom inflicted before being abolished in 1952, and Delaware, where the last flogging took place in 1952 although formal abolition did not occur until 1972. Corporal punishment remains available, however, as a penalty for serious breaches of prison discipline in a number of states. Milder forms of corporal punishment for students remain a possible penalty in many states."

<sup>15</sup> This figure was determined using a combination of the data provided in The Sentencing Project's report No Exit: The Expanding Use of Life Sentences in America (available at [http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=280&id=106](http://www.sentencingproject.org/detail/publication.cfm?publication_id=280&id=106)) and State Distribution of Estimated 2,574 Juvenile Offenders Serving Juvenile Life Without Parole, an update to Human Rights Watch and Amnesty International's joint report The Rest of Their Lives: Life without Parole for Child Offenders in the United States, first published in 2005 (Updated table available at <http://www.hrw.org/en/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole>; original report available at <http://www.hrw.org/en/reports/2005/10/11/rest-their-lives>). No Exit lists 6,807 juvenile offenders serving sentences of life imprisonment, including 1,755 without the possibility of parole. Because No Exit uses figures that track states' definitions of juvenile offender and hence exclude some persons under 18 serving sentences of life imprisonment where they were ineligible for juvenile court jurisdiction, the figure provided for juveniles serving life sentences without the possibility of parole has been replaced with the comparable and more robust figure of 2,574 provided in State Distribution. Even with this substitution, this figure still likely underestimates the total number of persons serving sentences of life imprisonment for offences committed when they were under the age of 18 given the varying definition of juvenile offender in No Exit.

<sup>16</sup> *Graham v. Florida*, 560 U.S. \_\_\_ at 13 (2010) (slip opinion). This figure is based on the United States Supreme Court's own independent research and the data provided in the Public Interest Law Center at Florida State University's study Juvenile Life without Parole for Non-Homicide Offenses: Florida Compared to Nation (Sept. 2009), available at [http://www.law.fsu.edu/faculty/profiles/annino/Report\\_juvenile\\_lwop\\_092009.pdf](http://www.law.fsu.edu/faculty/profiles/annino/Report_juvenile_lwop_092009.pdf).

<sup>6</sup> For more information and analysis, see U.S. Department of Justice, Trying Juveniles as Adults: An analysis of state transfer laws and reporting, September 2011.

<sup>7</sup> See Campaign for the Fair Sentencing of Youth, "States that have eliminated JLWOP" for an up to date list of states that have eliminated the sentence. Available at: <http://fairsentencingofyouth.org/reports-and-research/sentenceeliminated/>.

<sup>8</sup> *Graham v. Florida* [2010] 560 U.S. \_\_\_. For a summary of the case and a link to the full judgment, see [www.crin.org/node/7008](http://www.crin.org/node/7008). To review the documents related to the case, visit <http://www.scotusblog.com/case-files/cases/graham-v-florida/> and for more information on what the case means for children's rights, see Child Rights International Network, Supreme Court limits use of life without parole sentences for children in conflict with the law, available at: [www.crin.org/node/12802](http://www.crin.org/node/12802).

<sup>9</sup> *Miller v. Alabama* [2012] 567 U.S. ---; 132 S. Ct. 2455. For a summary and a link to the full judgment, see [www.crin.org/node/40845](http://www.crin.org/node/40845).

<sup>10</sup> *Montgomery v. Louisiana* [2016] WL 280758. Summary and link to full judgment available at: [www.crin.org/node/42348](http://www.crin.org/node/42348).

<sup>11</sup> *Michigan v. Skinner* [2015] Michigan Court of Appeals, No. 317892. Available at: [http://publicdocs.courts.mi.gov:81/OPINIONS/FINAL/COA/20150820\\_C317892\\_122\\_317892.OPN.PDF](http://publicdocs.courts.mi.gov:81/OPINIONS/FINAL/COA/20150820_C317892_122_317892.OPN.PDF).

## Progress towards prohibition and elimination

### Law reform needed

All legal provisions authorising life imprisonment for offences committed while under the age of 18 should be repealed and explicit prohibitions of life imprisonment should be enacted.

### Law reforms under way

Law reforms fall far short of abolishing life imprisonment in all its forms in any jurisdiction in the United States, but progress is being made to limit life without the possibility of parole. The Supreme Court of the United States is due to give judgment in the case of *Montgomery v. Louisiana* in 2016, which will determine whether the prohibition on mandatory sentences of LWOP for child offenders should be applied retroactively.

The decision of the Supreme Court in *Miller v. Alabama* in 2012 struck down legislation in 28 states and triggered widespread reform of criminal sentencing across the United States. As of November 2015, 14 States had eliminated life imprisonment without the possibility of parole for offences committed while under the age of 18: Alaska, Colorado, Connecticut, Delaware, Hawaii, Kansas, Kentucky, Massachusetts, Montana, Nevada, Texas, Vermont, West Virginia, Wyoming.<sup>16</sup>

Recent and ongoing law reforms include:

**Federal.** In October 2015, the Senate Judiciary Committee passed the Sentencing Reform and Corrections Act. The current draft of the Bill would create a system whereby juveniles sentenced to life imprisonment without the possibility of parole under federal criminal law would be able to seek parole after serving 20 years of their sentence.<sup>17</sup>

The Senate is now able to vote on the bill and the House of Representatives would also have to pass the bill before it could become law.

**Arkansas.** Act 1490 of 2013 permits sentences of life without the possibility of parole for child offenders (JLWOP) but allows the alternative of life imprisonment with eligibility for parole after 28 years.<sup>18</sup>

<sup>16</sup> Campaign for the Fair Sentencing of Youth, States that have eliminated JLWOP. Available at: <http://fairsentencingforyouth.org/reports-and-research/sentenceeliminated/>.

<sup>17</sup> The Sentencing Reform and Corrections Act of 2015 (Senate Judiciary Committee version), Section 209. Available at: <http://www.judiciary.senate.gov/imo/media/doc/10-01-15%20Sentencing%20Reform%20and%20Corrections%20Act%20Section%20by%20Section.pdf>.

<sup>18</sup> Act No.1490. Available at: <ftp://www.arkleg.state.ar.us/acts/2013/Public/ACT1490.pdf>.

**California.** Senate Bill 9 passed on 30 September 2012 allowed people who had been sentenced to JLWOP to submit a request for a new sentencing hearing. A person who has been so sentenced can apply for resentencing after serving 15 years in detention the sentence could then be reduced to a life sentence with the possibility of parole after 25 years had been served.<sup>19</sup> The legislation applies retroactively.

**Delaware.** Senate Bill 9 of 2013 prohibited JLWOP but requires a minimum sentence of 25 years' imprisonment to be served in its place.<sup>20</sup> The legislation has retroactive effect.

**Florida.** House Bill 7035 passed in 2014 retains JLWOP, but permits the alternative sentence of not less than 30 years imprisonment.<sup>21</sup>

**Hawaii.** House Bill 2116 of 2014 abolished JLWOP, but requires a life sentence with the possibility of parole in its place.<sup>22</sup>

**Iowa.** The governor of Iowa responded to the court's ruling in *Miller v. Alabama* by commuting the sentence of every person serving a sentence of life imprisonment without the possibility of parole for an offence committed while under the age of 18 to 60 years' imprisonment.<sup>23</sup> The action of the governor forced cases into the courts, where the individuals subject to the commutations have sought the "individualised sentencing" which was a requirement of the Miller decision.<sup>24</sup> Iowa enacted a law in April 2015 instituting sentencing options where JLWOP was previously mandatory, requiring life imprisonment with the possibility of parole.<sup>25</sup>

**Kansas.** The Supreme Court of Kansas ruled in 2015 that mandatory post-release supervision for child offenders convicted of sex offences was unconstitutional under the state constitution.<sup>26</sup>

**Louisiana.** House Bill 152 of 2013 retains JLWOP but allows the alternative of not less than 35 years'

<sup>19</sup> See Senate Bill 9 of 2012. Available at: <http://www.fairsentencingforyouth.org/wp/wp-content/uploads/2011/02/SB-9-Chaptered.pdf>.

<sup>20</sup> Senate Bill 9 of 2013. Available at: <http://www.legis.delaware.gov/LIS/LIS147.nsf/vwLegislation/1EA0FC1FD4DF714485257AFC0052953C?open>.

<sup>21</sup> House Bill 7035. Available at: <http://www.flsenate.gov/Session/Bill/2014/7035>.

<sup>22</sup> House Bill 2116. Available at: [http://www.capitol.hawaii.gov/Archives/measure\\_in-div\\_Archives.aspx?billtype=HB&billnumber=2116&year=2014](http://www.capitol.hawaii.gov/Archives/measure_in-div_Archives.aspx?billtype=HB&billnumber=2116&year=2014).

<sup>23</sup> The Guardian, "Iowa governor Terry Branstad defies US supreme court on juvenile sentencing", 22 July 2012. Available at: <http://www.theguardian.com/law/2012/jul/22/iowa-governor-defies-juvenile-sentencing>.

<sup>24</sup> See, for example, *Iowa v. Ragland* p[2013] No. 12-1758. Available at: <http://caselaw.findlaw.com/ia-supreme-court/1642127.html>.

<sup>25</sup> See SF 448. Available at: <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=billbook&GA=86&hbill=SF448>.

<sup>26</sup> *Kansas v. Dull* [2015] Opinion No. 106,437. Summary and link to the full judgment available at: [www.crin.org/node/41548](http://www.crin.org/node/41548).

imprisonment.<sup>27</sup> The legislation does not address the issue of retroactivity.

**Michigan.** Act 22 of 2014 retains JLWOP, but allows for the alternative of not less than 25 years' imprisonment.<sup>28</sup> The legislation does not apply retroactively.

**Nebraska.** Act LB 44 of 2013 retains JLWOP but allows the alternative sentence of not less than 40 years' imprisonment.<sup>29</sup> The Act does not address the issue of retroactivity.

**North Carolina.** Session Law 2012-148 of 2012 retains JLWOP but permits the alternative of not less than 25 years' imprisonment.<sup>30</sup> The Law applies retroactively.

**Pennsylvania.** Act 204 of 2012 retains JLWOP but permits the alternative of not less than 25 years' imprisonment where the offence was committed while under the age of 15 and not less than 35 years' imprisonment where the child was aged 15 to 17.<sup>31</sup> The Act does not apply retroactively.

**South Dakota.** Senate Bill 39 of 2013 retains JLWOP but permits judicial discretion to reduce the sentence to a shorter term.

**Texas.** Senate Bill 39 of 2013 abolished JLWOP but permits a 40 year minimum sentence of imprisonment in its place.<sup>32</sup>

**Washington.** Senate Bill 5064 of 2014 retains JLWOP, but permits an alternative minimum sentence of 25 years' imprisonment.<sup>33</sup>

**Wyoming.** House Bill 23 of 2013 abolished JLWOP, but permits a minimum sentence of 25 years' imprisonment in its place.<sup>34</sup>

Of the 28 states that had legislation in place providing for mandatory JLWOP in 2012, 11 have yet to enact legislation

to bring their law into conformity with the *Miller v. Alabama* decision: Alabama, Arizona, Idaho, Illinois, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, Ohio and Virginia.

### National campaigns

There are a number of well-established national campaigns seeking to end the practice of sentencing child offenders to life imprisonment, particularly life imprisonment without the possibility of parole. These campaigns include:

**The American Civil Liberties Union (ACLU) section on juvenile justice.** As part of its ongoing juvenile justice project, the ACLU has heavily lobbied state and federal legislatures for sentencing reform and mounted individual challenges to juvenile life sentences without the possibility of parole imposed in state courts.

**The Campaign for the Fair Sentencing of Youth.**<sup>35</sup> The Campaign is committed to ending the practice of sentencing children to life imprisonment without parole and works to assist state and federal activists across the country seeking juvenile justice reform.

**The Equal Justice Initiative's Campaign on Death in Prison sentences.**<sup>36</sup> The Initiative runs a litigation campaign that challenges sentences of life imprisonment without parole imposed on young children, and is also working to build public support for legislative reform on the issue.

**The Juvenile Law Center.**<sup>37</sup> The Center has argued that sentences of life imprisonment without parole imposed on juvenile offenders are unconstitutional in a number of cases and has also supported state-level legislation to abolish these sentences.

**The Sentencing Project.**<sup>38</sup> As part of its advocacy campaign for sentencing law and practice reform, the Sentencing Project published a report on the rising use of life sentences in the United States in general and as imposed on juveniles.

27 House Bill 152 of 2013. Available at: <https://www.legis.la.gov/legis/ViewDocument.aspx?d=857374>.

28 Public Act No. 22 of 2014 (Senate Bill 0319 of 2013). Available at: [http://www.legislature.mi.gov/\(S\(p3os4av5hirrdxja1ibxhayp\)\)/milleg.aspx?page=GetObject&objectname=2013-sb-0319](http://www.legislature.mi.gov/(S(p3os4av5hirrdxja1ibxhayp))/milleg.aspx?page=GetObject&objectname=2013-sb-0319).

29 Act LB 44. Available at: <http://nebraskalegislature.gov/FloorDocs/103/PDF/Slip/LB44.pdf>.

30 Session Law 2012-148. Available at: <http://www.ncleg.net/Sessions/2011/Bills/Senate/PDF/S635v5.pdf>.

31 Act 204 of 2012. Available at: <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2012&sessInd=0&act=204>.

32 Senate Bill 39 of 2013. Available at: <https://legiscan.com/SD/text/SB39/2013>.

33 Senate Bill 5064 of 2013. Available at: <http://apps.leg.wa.gov/billinfo/summary.aspx?year=2013&bill=5064>.

34 House Bill 23 of 2013. Available at: <http://legisweb.state.wy.us/2013/Bills/HB0023.pdf>.

35 For more information, visit the organisation's website at <http://fairsentencingofyouth.org/>.

36 For more information, visit: <http://www.eji.org/childrenprison/deathinprison>.

37 For more information, visit: <http://www.jlc.org/current-initiatives/youth-criminal-justice-system/challenging-juvenile-life-without-parole-jlwop-and>

38 For more information, visit the organisation's website at: <http://www.sentencingproject.org/template/index.cfm>.

## National and international law conflicting with inhuman sentencing

### The Constitution

A number of provisions of the Constitution guarantee protections in the criminal justice system, including the right to a speedy, public trial and due process of law. Of particular interest is the prohibition on cruel and unusual punishment contained in the Eighth Amendment:

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Notably, the Eighth Amendment has been the basis for successful judicial challenges to the imposition of the death penalty<sup>39</sup> and limitation on the sentencing of child offenders to life imprisonment without the possibility of parole.

### International human rights treaties

The United States has ratified or acceded to the following international treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 1994)
 

*Reservations:* “the United States considers itself bound by the obligation under article 16 to prevent ‘cruel, inhuman or degrading treatment or punishment’ only insofar as the term ‘cruel, inhuman or degrading treatment or punishment’ means cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”
- International Covenant on Civil and Political Rights (in 1992)
 

*Reservations:* upon ratification, the United States made a number of reservations to the Covenant, including “That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.” “That the United States considers itself bound by article 7 to the extent that ‘cruel, inhuman or degrading treatment or punishment’ means the cruel unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.” “That the policy and practice of the United States are generally in compliance

with and supportive of the Covenant’s provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2(b) and 3 of article 10 and paragraph 4 of article 14. The United States further reserves to these provisions with respect to States with respect to individuals who volunteer for military service prior to age 18.”

- International Convention on the Elimination of All Forms of Racial Discrimination (in 1994)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (in 2002)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (in 2002)

The United States has signed but not ratified the following international treaties:

- Convention on the Rights of the Child (in 1995)
- International Covenant on Economic, Social and Cultural Rights (in 1977)
- Convention on the Rights of Persons with Disabilities (in 2009)
- Convention on the Elimination of All Forms of Discrimination against Women (in 1980)

### International complaints mechanisms

The United States has accepted the inter-State complaints mechanism under the Convention against Torture.

### Status of treaties

Treaties have the same force as federal law under the legal system of the United States.<sup>40</sup> Under the Supremacy Clause of the United States Constitution, treaties entered into by the United States and all federal laws are considered the “supreme law of the land.”<sup>41</sup> When a treaty and federal law cover the same subject, courts endeavour to construe them so as to give meaning to both. If the court cannot reconcile the federal law and the treaty, the one enacted more recently will have force, assuming the treaty is self-executing. A self-executing treaty is one that becomes judicially enforceable automatically upon ratification.<sup>42</sup> Alternatively, a non-self-executing treaty requires legislation to be judicially enforceable.<sup>43</sup>

<sup>40</sup> 74 Am. Jur. 2d Treaties § 13.

<sup>41</sup> U.S. Constitution, Article IV § 2.

<sup>42</sup> Cornell University Law School, Self-executing treaty. Available at: [https://www.law.cornell.edu/wex/self\\_executing\\_treaty](https://www.law.cornell.edu/wex/self_executing_treaty)

<sup>43</sup> Ibid.

<sup>39</sup> *Roper v. Simmons* [2005] 543 U.S. 551. A summary and link to the full judgment is available at [www.crin.org/node/6983](http://www.crin.org/node/6983).

For more information, see CRIN's report on access to justice for children in the United States.<sup>44</sup>

## Recommendations from human rights treaty monitoring bodies

### Human Rights Committee

(23 April 2014, CCPR/C/USA/CO/4, *Concluding Observations on the fourth periodic report, para. 23*)

"While noting with satisfaction the Supreme Court decisions prohibiting sentences of life imprisonment without parole for children convicted of non-homicide offences (*Graham v. Florida*), and barring sentences of mandatory life imprisonment without parole for children convicted of homicide offences (*Miller v. Alabama*) and the State party's commitment to their retroactive application, the Committee is concerned that a court may still, at its discretion, sentence a defendant to life imprisonment without parole for a homicide committed as a juvenile, and that a mandatory or non-homicide-related sentence of life imprisonment without parole may still be applied to adults. The Committee is also concerned that many states exclude 16 and 17 year olds from juvenile court jurisdictions so that juveniles continue to be tried in adult courts and incarcerated in adult institutions (arts. 7, 9, 10, 14, 15 and 24)."

"The State party should prohibit and abolish the sentence of life imprisonment without parole for juveniles, irrespective of the crime committed, as well as the mandatory and non-homicide-related sentence of life imprisonment without parole. It should also ensure that juveniles are separated from adults during pretrial detention and after sentencing, and that juveniles are not transferred to adult courts. It should encourage states that automatically exclude 16 and 17 year olds from juvenile court jurisdictions to change their laws."

(18 December 2006, CCPR/C/USA/CO/3/Rev.1, *Concluding Observations on the second and third periodic reports, paras. 6, 29, 34*)

"The Committee welcomes the Supreme Court's decision in *Roper v. Simmons* (2005), which held that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. In this regard, the Committee reiterates the recommendation made in its previous concluding observations, encouraging the State party to

withdraw its reservation to article 6 (5) of the Covenant.<sup>45</sup>"

"The Committee regrets that the State party does not indicate that it has taken any steps to review federal and state legislation with a view to assessing whether offences carrying the death penalty are restricted to the most serious crimes, and that, despite the Committee's previous concluding observations, the State party has extended the number of offences for which the death penalty is applicable. While taking note of some efforts towards the improvement of the quality of legal representation provided to indigent defendants facing capital punishment, the Committee remains concerned by studies according to which the death penalty may be imposed disproportionately on ethnic minorities as well as on low-income groups, a problem which does not seem to be fully acknowledged by the State party."

"The State party should review federal and state legislation with a view to restricting the number of offences carrying the death penalty. The State party should also assess the extent to which death penalty is disproportionately imposed on ethnic minorities and on low-income population groups, as well as the reasons for this, and adopt all appropriate measures to address the problem. In the meantime, the State party should place a moratorium on capital sentences, bearing in mind the desirability of abolishing death penalty."

"The Committee notes with concern reports that forty-two states and the Federal government have laws allowing persons under the age of eighteen at the time the offence was committed, to receive life sentences, without parole, and that about 2,225 youth offenders are currently serving life sentences in United States prisons. The Committee, while noting the State party's reservation to treat juveniles as adults in exceptional circumstances notwithstanding articles 10 (2) (b) and (3) and 14 (4) of the Covenant, remains concerned by information that treatment of children as adults is not only applied in exceptional circumstances. The Committee is of the view that sentencing children to life sentence without parole is of itself not in compliance with article 24 (1) of the Covenant.

"The State party should ensure that no such child offender is sentenced to life imprisonment without parole, and should adopt all appropriate measures to review the situation of persons already serving such sentences."

<sup>44</sup> CRIN, Access to justice for children: United States, December 2013. Available at: <https://www.crin.org/en/library/publications/united-states-access-justice-children>.

<sup>45</sup> Article 6(5) requires that the "[s]entence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."

### **Committee Against Torture**

(19 December 2014, CAT/C/USA/CO/3-5, *Concluding Observations on the combined third to fifth periodic reports, para. 24*)

“While welcoming the Supreme Court rulings in *Graham v. Florida* (2010) and *Miller v. Alabama* (2012), in which the court imposed limitations on juvenile life-without-parole sentences, the Committee remains concerned that some courts have ruled that the *Miller v. Alabama* ruling does not apply retroactively and that the majority of the 28 states that allow mandatory life sentences without the possibility of parole for children have not passed legislation to comply with the ruling. Moreover, the rulings leave open the possibility for judges to impose life-without-parole sentences in homicide cases, even where the child played a minimal role in the crime, and courts continue to impose the sentence (arts. 11 and 16).”

“The State party should abolish the sentence of life imprisonment without parole for offences committed by children under 18 years of age, irrespective of the crime committed, and enable child offenders currently serving life without parole to have their cases reviewed by a court for reassessment and resentencing, to restore parole eligibility and for a possible reduction of the sentence.”

(25 July 2006, CAT/C/USA/CO/2, *Conclusions and Recommendations on the second periodic report, para. 34*)

“The Committee reiterates the concern expressed in its previous recommendations about the conditions of the detention of children, in particular the fact that they may not be completely segregated from adults during pretrial detention and after sentencing. The Committee is also concerned at the large number of children sentenced to life imprisonment in the State party (art. 16).”

“The State party should ensure that detained children are kept in facilities separate from those for adults in conformity with international standards. The State party should address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman or degrading treatment or punishment.”

### **Committee on the Elimination of Racial Discrimination**

(25 September 2014, CERD/C/USA/CO/7-9, *Concluding Observations on the combined seventh to ninth periodic reports, paras. 20 and 21*)

“While welcoming the measures taken by the State party to address racial disparities in the criminal justice system, such as the launch of the “Smart on Crime” initiative in August

2013, the Committee remains concerned that members of racial and ethnic minorities, particularly African Americans, continue to be disproportionately arrested, incarcerated and subjected to harsher sentences, including life imprisonment without parole and the death penalty. It expresses concern that the overrepresentation of racial and ethnic minorities in the criminal justice system is exacerbated by the use of prosecutorial discretion, the application of mandatory minimum drug-offence sentencing policies, and the implementation of repeat offender laws. The Committee is also concerned at the negative impact of parental incarceration on children from racial and ethnic minorities (arts. 2, 5 and 6).”

“The Committee calls upon the State party to take concrete and effective steps to eliminate racial disparities at all stages of the criminal justice system, taking into account the Committee’s general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, by, inter alia: (a) Amending laws and policies leading to racially disparate impacts in the criminal justice system at the federal, state and local levels and implementing effective national strategies or plans of action aimed at eliminating structural discrimination; (b) Imposing a moratorium on the death penalty, at the federal level, with a view to abolishing the death penalty; (c) Ensuring that the impact of incarceration on children and/or other dependents is taken into account when sentencing an individual convict”

“The Committee is concerned at racial disparities at all levels of the juvenile justice system, including the disproportionate rate at which youth from racial and ethnic minorities are arrested in schools and referred to the criminal justice system, prosecuted as adults, incarcerated in adult prisons and sentenced to life imprisonment without parole. It also remains concerned that, despite the recent Supreme Court decisions which held that mandatory sentencing of juvenile offenders to life imprisonment without parole is unconstitutional, 15 states have yet to change their laws, and that discretionary sentences of life imprisonment without parole are still permitted for juveniles convicted of homicide (arts. 2, 5 and 6).”

“The Committee calls upon the State party to intensify its efforts to address racial disparities in the application of disciplinary measures, as well as the resulting “school-to-prison pipeline”, throughout the State party and ensure that juveniles are not transferred to adult courts and are separated from adults during pretrial detention and after sentencing. It also reiterates its previous recommendation to prohibit and abolish life imprisonment without parole for persons who were under 18 years at the time of the crime, irrespective of the nature and circumstances of the crime committed, and

to commute the sentences for those currently serving such sentences.”

*(8 May 2008, CERD/C/USA/CO/6, Concluding Observations on the fourth, fifth and sixth periodic reports, para. 21)*

“The Committee notes with concern that according to information received, young offenders belonging to racial, ethnic and national minorities, including children, constitute a disproportionate number of those sentenced to life imprisonment without parole (art. 5 (a)).

The Committee recalls the concerns expressed by the Human Rights Committee (CCPR/C/USA/CO/3/Rev.1, para. 34) and the Committee against Torture (CAT/C/USA/CO/2, para. 34) with regard to federal and state legislation allowing the use of life imprisonment without parole against young offenders, including children. In light of the disproportionate imposition of life imprisonment without parole on young offenders, including children, belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.”

## Universal Periodic Review

### ***Second cycle***

During the second cycle of the Universal Periodic Review, Fiji, Austria and Benin made recommendations about the abolition or restriction of life imprisonment without parole sentences for offences committed while under the age of 18. The United States expressed its partial support for these recommendations, responding that “[t]he Administration supports federal legislation to eliminate life-without-parole sentences for juveniles in the federal criminal justice system.” Such legislation would not affect the state criminal law, which has jurisdiction over the majority of offences for which life imprisonment without the possibility of parole is imposed.

### ***First cycle***

During the first cycle of the Universal Periodic Review in 2010, Switzerland, Belgium, Austria and Slovakia recommended that the United States abolish life imprisonment without the possibility of parole for child offenders.<sup>46</sup> The United States did not accept any of these

recommendations.<sup>47</sup>

<sup>46</sup> Report of the Working Group on the Universal Periodic Review: United States of America, A/HRC/16/11, 4 January 2011, para. 92.180.

<sup>47</sup> Report of the Working Group on the Universal Periodic Review: United States of America (Addendum), A/HRC/16/11/Add.1, 4 January 2011, para. 9.



### About CRIN ([www.crin.org](http://www.crin.org))

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

Our work is based on five core values:

- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

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