

## *Adult Time for Adult Crimes*

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**Editor's Note:** NDAA filed an amicus brief in the recent GRAHAM-SULLIVAN v. FLORIDA Supreme Court case, supporting the State of Florida as respondent. NDAA asserted:

*Its members are state and local prosecutors who, in the exercise of their prosecutorial discretion, bear the heavy burden of deciding whether to seek the most severe possible sanctions against juvenile offenders—including life imprisonment without parole—when the circumstances so warrant. The relative rarity of juvenile life-without-parole sentences is a testament that this responsibility is not discharged lightly. Prosecutors (and courts) recognize that life without parole is a severe sanction that should be imposed on a youthful offender only in extreme circumstances, and as a consequence, the penalty is rarely imposed. But that does not mean that the Constitution bars such punishment on those rare occasions when it is necessary to protect society.*

*The following article is the Executive Summary to the book, "ADULT TIME FOR ADULT CRIMES: LIFE WITHOUT PAROLE FOR JUVENILE KILLERS AND VIOLENT TEENS," written by Charles D. Stimson and Andrew M. Grossman. The book, published by The Heritage Foundation, was published in August 2009, and one copy was mailed to every prosecutor's office in the country. Additional copies can be downloaded by using the following link: <http://www.heritage.org/Research/Crime/sr0065.cfm>. Free hardcopies of the book can be obtained by sending a message to the following e-mail address: [LWOP@heritage.org](mailto:LWOP@heritage.org)"*

**LIFE WITHOUT PAROLE** for the very worst juvenile offenders is reasonable, constitutional, and (appropriately) rare. In response to the Western world's worst juvenile crime problem, U.S. legislators have enacted common-sense measures to protect their citizens and hold these dangerous criminals accountable. Forty-three states, the District of Columbia, and the federal government have set the maximum punishment for juvenile offenders at life without the possibility of parole. By the numbers, support for its use is overwhelming.

Nonetheless, its continued viability is at risk from misleading lobbying efforts in many states and court cases that seek to substitute international law for legislative judgments and constitutional text.

Emboldened by the Supreme Court's *Roper v. Simmons* decision, which relied on the Eighth Amendment's "cruel and unusual punishments" language to prohibit capital sentences for juveniles, anti-incarceration activists have set about extending the result of *Roper* to life without parole. If they succeed, an important tool of criminal punishment will be eliminated, and all criminal sentences could be subjected to second-guessing by judges, just as they are in capital punishment cases today.

The most visible aspects of this campaign are a number of self-published reports and "studies" featuring photographs of young children and litigation attacking the constitutionality of life without parole for juvenile offenders—including two cases that the U.S. Supreme Court has agreed to hear in its 2009 term.

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Because the activists have monopolized the debate over life without parole, legislatures, courts, the media, and the public have been misled on crucial points. For example, dozens of newspaper articles, television reports, and court briefs have echoed the activists' assertion that 2,225 juvenile offenders are serving LWOP sentences in the United States, despite the fact that this figure is nothing more than a manufactured statistic. This report is an effort to set the record straight. It provides reliable facts and analysis, as well as detailed case studies, with full citations to primary sources.

Activists argue that the United States does not need life-without-parole sentences for juvenile offenders because other Western nations, particularly in Europe, do not use it. In fact, the need is real. In one recent year, juveniles committed as many violent crimes in the United States as in the next seven highest countries combined. The U.S. ranks third in murders committed by youths and 14th in murders per capita committed by youths, putting it in the same league as Panama, the Philippines, Kazakhstan, Paraguay, Cuba, and Belarus.

Also contrary to activists' arguments, the Constitution does not forbid use of the sentence. The Eighth Amendment's prohibition on "cruel and unusual punishments" was intended to bar only the most "inhuman and barbarous" punishments, like torture. Though the Supreme Court has departed from this original meaning, it has honored the principle that courts should defer to lawmakers in setting sentences in almost every instance.

One exception applies to punishments that are "grossly disproportionate to the crime," something that the Court has found only in a handful of cases. Otherwise, the Court has approved harsh punishments for a variety of offenses so long as legislatures have a "reasonable basis" for believing that the punishment advances the criminal justice system's goals. Because no state imposes life without parole for minor crimes, the punishment will never be constitutionally disproportionate. The other exception applies only in death penalty cases like *Roper*, and the Court has long refused to subject non-death punishments to the deep scrutiny that it uses in capital cases.

Even ignoring that distinction, the argument that *Roper* could be extended to life-without-parole sentences comes up short. Indeed, the *Roper* Court actually relied on the availability of the sentence to justify prohibiting the juvenile death penalty.

Finally, the activists turn to international law to challenge life-without-parole sentences for juvenile offend-

ers, relying on the aspirational language that is often present in treaties to advance their domestic political agendas. They assert that international law prohibits the use of the sentence and is directly applicable in U.S. court cases.

In this, they ignore almost every rule about the relationship between international agreements and U.S. law. Most treaties are not "self-executing," which means that they can be enforced in domestic courts only to the extent that they have been implemented by statutes. This variety of treaty, which includes almost every human rights agreement, simply cannot preempt federal or state law acting on its own.

Treaties do not reach even that point until they have been ratified, as required by the Constitution. Yet activists cite the Convention on the Rights of the Child, which the United States has not ratified. To get around this, they claim that the CRC has become customary international law. But, like treaties, customary law cannot be enforced in domestic courts until it has been implemented by legislation.

They also give short shrift to reservations that the United States entered when it ratified two other treaties, the International Covenant on Civil and Political Rights and the Convention Against Torture. In both cases, the United States acted to preserve its sovereignty with respect to criminal punishment, limiting the treaties' reach to punishments already forbidden by the Eighth Amendment.

Most juvenile offenders should not and do not have their cases adjudicated in the adult criminal justice system. Every state has a juvenile justice system, and those courts handle the majority of crimes committed by juveniles. But some crimes evince characteristics that push them beyond the leniency otherwise afforded to juveniles: cruelty, wantonness, a complete disregard for the lives of others. Some of these offenders are tried as adults, and a small proportion of them are sentenced to life without parole—the strongest sentence available to express society's disapproval, incapacitate the criminal, and deter the most serious offenses.

A fair look at the Constitution provides no basis for overruling the democratic processes of 43 states, the District of Columbia, and the U.S. Congress. Neither do international law or the misleading and sometimes just wrong statistics and stories marshaled in activists' studies. Used sparingly, as it is, life without parole is an effective and lawful sentence for the worst juvenile offenders. On the merits, it has a place in our laws.