

# The United States of America: Juvenile Life without Parole



Respectfully submitted to the United Nations Human Rights Council  
on the occasion of its 9th Universal Periodic Review Session,  
UPR Review of the United States of America,  
Pursuant to General Assembly Resolution A/RES/60/251  
Hearings of the Human Rights Council Working Group

Geneva, Switzerland  
November-December of 2010

(Submitted to the Human Rights Council on 19 April 2010)

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*Prepared and submitted by the International Human Rights Law Society with the endorsement of the Program in International Human Rights Law of Indiana University School of Law—Indianapolis, Indiana U.S.A.*

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The International Human Rights Law Society, Program in International Human Rights Law and this  
“Shadow Report” to the United Nations Human Rights Council

*The International Human Rights Law Society (IHRLS) is a student organization at Indiana University School of Law at Indianapolis that promotes global justice and basic fundamental freedoms. Each year the IHRLS sponsors speakers, events and, through its cooperation with the Program in International Human Rights Law, presents shadow reports to the United Nations.*

*The Program in International Human Rights Law of Indiana University School of Law—Indianapolis (PIHRL), was established in 1997 to further the teaching and study of international human rights law, promote human rights scholarship, assist human rights governmental, inter-governmental & non-governmental organizations, and facilitate student law intern global placements.*

*IHRLS and PIHRL welcome the United States’ first Universal Periodic Review to the United Nations Human Rights Council. This Report reveals that the United States is not in compliance with international law regarding juvenile imprisonment.*

## Methodology

*This report is based on original research of the statutory laws of the 50 U.S. states. The law is current as of April 2010. Where applicable, we consider the judicial treatment of the statutes where it conflicts with the statutory text. We summarize relevant cases pending before the U.S. Supreme Court, which may substantially affect juveniles sentenced to life without parole. This report also includes statistics gathered by other NGOs about juveniles serving life without parole.*

## Endorsement & Acknowledgments

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## Executive Summary

The United States continues to sentence juveniles to life without the possibility of parole (JWLOP) despite recommendations from the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination, and obligations under the Convention on the Rights of the Child. Though the U.S. Supreme Court has cases pending on the constitutionality of JWLOP, and may rule before the United States' Periodic Review, we hope that the Council addresses current JWLOP violations.

## Proposed Recommendations

We respectfully request the Council to recommend that the United States enact legislation or take other measures as may be necessary to:

- (1) eliminate life sentences without the possibility of parole for juveniles convicted of crimes committed before the age of eighteen years old;
- (2) base the sentencing of juveniles on modern scientific understanding of juvenile psychological development;
- (3) emphasize rehabilitation and education in judicial treatment of juveniles; and
- (4) retroactively apply these recommendations to juveniles currently serving life without parole.

## United States Juvenile Sentencing Practices Do Not Comply With International Law

### A. United States Juvenile Sentencing Obligations under International Law.

The United States' continued practice of JWLOP violates its obligations under the International Covenant on Civil and Political Rights (ICCPR-party), Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT-party), Convention on the Elimination of All Forms of Racial Discrimination (CERD-party), and Convention on the Rights of the Child (CRC-signatory).

#### 1. Obligations under the ICCPR.

The Human Rights Committee concluded that sentencing of children to life without parole (LWOP) violates Article 24(1)'s guarantee to protect children based on their status as a minor.<sup>1</sup> The Committee noted that the U.S. ICCPR reservation regarding treating juveniles as adults in "exceptional circumstances" does not keep the U.S. from a violation, and the Committee remained concerned by information that "treatment of children as adults is not only applied in exceptional circumstances".<sup>2</sup> The U.S. imposing LWOP on over 2,500 children, many of whom were not even convicted for the worst crimes, is clearly beyond<sup>3</sup> "exceptional circumstances."

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<sup>1</sup> See U.N. Human Rights Committee, Concluding Observations of the Human Rights Committee: United State of America, ¶ 34, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (15 September 2006).

<sup>2</sup> *Id.*

<sup>3</sup> Brief for Amnesty International, et al. as Amici Curiae Supporting Petitioners, *Graham v. Florida*, 2009 WL 2219304, at 26-27 (No. 08-7412, 08-7621), (U.S. Jul. 22, 2009) [hereinafter Amnesty Brief].

## 2. Obligations under CAT.

The Committee Against Torture noted that JLWOP “could constitute cruel, inhuman, or degrading treatment or punishment” as prohibited in Article 16 of CAT.<sup>4</sup>

## 3. Obligations under CERD.

The Committee on the Elimination of Racial Discrimination found that JLWOP is incompatible with Article 5(a) of CERD,<sup>5</sup> which guarantees the right to equal treatment before all justice systems. The Committee relied on the disproportionate imposition of this sentence to children belonging to racial, ethnic, and national minorities.<sup>6</sup>

## 4. Obligations under CRC.

The U.S. has signed but not ratified the CRC. As such the U.S. must “refrain from acts which would defeat the object and purpose” of the treaty.<sup>7</sup> The purposes found in the CRC’s preamble, referencing multiple international human rights law instruments, include the need for “special care and assistance” to children, “the full and harmonious development” of a child’s personality, the extension of “particular care to the child,” and “special safeguards” for children. These purposes are exemplified in multiple treaty provisions including CRC Article 37(a), which explicitly prohibits JLWOP. The U.S. imposing JLWOP defeats the CRC’s object and purpose.

## B. Current Status of United State’s Sentencing Laws for Juvenile Offenders.

The U.S. is a federated system with each state maintaining its own criminal code. In addition, federal criminal law is applicable in all the states. In state criminal codes there is no uniform minimum age for criminal prosecution and the sentence is set by each states’ own laws. Now, 2 states prohibit JLWOP and 5 states permit such sentences but make offenders eligible for parole after a fixed number of years.<sup>8</sup> The remaining 43 states have some form of mandatory or discretionary JLWOP. Human Rights Watch (HRW) estimates that over 2,500 individuals are serving LWOP for crimes committed while under the age of 18.<sup>9</sup>

### 1. States with Mandatory Sentencing of Juveniles to Life without Parole.

27 states in the U.S. statutorily require sentences of LWOP for criminal offenses committed by juveniles, and about 2,312 individuals in these states are serving LWOP for crimes committed under the age of 18.<sup>10</sup> The majority of these mandatory sentences are related to the crime of murder.

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<sup>4</sup> U.N. Committee Against Torture, Conclusions and Recommendations of the Committee Against Torture: United State of America, ¶ 34, U.N. Doc. CAT/C/USA/CO/2 (25 July 2006).

<sup>5</sup> U.N. Committee on The Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United State of America, ¶ 21, U.N. Doc. CERD/C/USA/CO/6 (8 May 2008).

<sup>6</sup> *Id.*

<sup>7</sup> Vienna Convention on the Law of Treaties, art. 18, 1155 U.N.T.S. 331.

<sup>8</sup> Oregon and Kansas have statutes that expressly prohibit JLWOP. Colorado, Idaho, Kentucky, New Mexico, and Texas have statutes that render those sentenced to JLWOP eligible for parole after a fixed number of years. The status of JLWOP for all U.S. states is listed in Annex 1.

<sup>9</sup> HUMAN RIGHTS WATCH, STATE DISTRIBUTION OF YOUTH OFFENDERS SERVING JUVENILE LIFE WITHOUT PAROLE (2009), <http://www.hrw.org/en/news/2009/10/02/state-distribution-juvenile-offenders-serving-juvenile-life-without-parole/> [hereinafter HUMAN RIGHTS WATCH JLWOP REPORT (2009)] (based on data between mid-2004 through 2009).

<sup>10</sup> See ANNEX 1 for the chart based on HUMAN RIGHTS WATCH JLWOP REPORT (2009), *supra*, note 9.

## 2. States with Permissive Sentencing of Juveniles to Life without Parole.

15 U.S. states permit discretionary sentences of LWOP for criminal offenses committed by juveniles, and in these states about 171 individuals are serving LWOP for crimes committed under the age of 18.<sup>11</sup>

## 3. Current Estimates on the Number of Juveniles Serving Life without Parole.

HRW and Amnesty International (AI) released two studies discussing the numbers of juveniles sentenced to life without parole. In their 2005 report, they stated that there were 2,225 juveniles serving life without parole.<sup>12</sup> This number had risen to 2,574 by 2009.<sup>13</sup>

## 4. Current Development in the U.S. Supreme Court.

On Nov. 9, 2009, the U.S. Supreme Court heard arguments for two cases regarding the constitutionality of JLWOP for non-homicide offenses.<sup>14</sup> The first case, *Sullivan v. Florida*,<sup>15</sup> concerns a 13-year-old boy sentenced to JLWOP after being convicted for sexual assault.<sup>16</sup> The second, *Graham v. Florida*,<sup>17</sup> involves a 16-year-old boy sentenced to JLWOP after being convicted of armed burglary and attempted armed robbery.<sup>18</sup>

Both cases analyze whether JLWOP sentencing violates the Eight Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment.<sup>19</sup> In Addition, both petitioners argue that the Supreme Court's decision in *Roper v. Simmons*, 543 U.S. 551 (2005), should be extended to the sentence of JLWOP.<sup>20</sup> *Roper* prohibited the imposition of the death penalty on individuals below the age of 18.<sup>21</sup> *Roper* relied on international law that prohibited the imposition of the death penalty for juvenile offenders as well as the “national consensus” about the constitutionality of the death penalty for juveniles.<sup>22</sup>

The outcome of these cases will have an impact on JLWOP in the United States. It is uncertain how the Supreme Court will decide, and how broad the ruling will be. Even if the Court strikes down JLWOP, it may be limited to non-homicide offenses, and would still leave a gap between what is constitutional in the U.S. and what is obligated under international law.

## C. The United States Juvenile Sentencing Practice is in Violation of International Law.

The U.S. is in breach of international law for its continued practice of JLWOP. The U.S. is bound by the ICCPR, CAT, CERD, and CRC. The Human Rights Committee has recognized JLWOP as a violation of Article 24.<sup>23</sup> The U.S. is obligated “to adopt such laws

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<sup>11</sup> See ANNEX 1 for the chart based on HUMAN RIGHTS WATCH JLWOP REPORT (2009), *supra*, note 9.

<sup>12</sup> AMNESTY INTERNATIONAL & HUMAN RIGHTS WATCH, *The Rest of Their Lives: Life without Parole for Child Offenders in the United States* 52 (2005), available at <http://www.hrw.org/sites/default/files/reports/TheRestofTheirLives.pdf>.

<sup>13</sup> HUMAN RIGHTS WATCH JLWOP REPORT (2009), *supra* note 9.

<sup>14</sup> Transcript of Oral Argument, *Sullivan v. Florida*, 78 U.S.L.W. 3015 (U.S. May 4, 2009) (No. 08-7621), available at [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/08-7621.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/08-7621.pdf) [hereinafter *Sullivan* Transcript]; Transcript of Oral Argument, *Graham v. Florida* 78 U.S.L.W. 3170 (U.S. Oct. 5, 2009) (No. 08-7412), available at [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/08-7412.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/08-7412.pdf) [hereinafter *Graham* Transcript].

<sup>15</sup> *Sullivan v. Florida*, 78 U.S.L.W. 3015 (U.S. May 4, 2009) (No. 08-7621).

<sup>16</sup> *Sullivan* Transcript at 3, *supra* note 14.

<sup>17</sup> *Graham v. Florida*, 78 U.S.L.W. 3170 (U.S. Oct. 5, 2009) (No. 08-7412).

<sup>18</sup> *Graham* Transcript at 41, *supra* note 14.

<sup>19</sup> *Sullivan* Transcript at 9, *supra* note 14; *Graham* Transcript at 3, *supra* note 14.

<sup>20</sup> Petition for Writ of Certiorari at 4, *Graham v. Florida*, 78 U.S.L.W. 3170 (U.S. Oct. 5, 2009) (No. 08-7412); Petition for Writ of Certiorari at 9, *Sullivan v. Florida*, 78 U.S.L.W. 3015 (U.S. May 4, 2009) (No. 08-7621).

<sup>21</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>22</sup> *Roper*, 543 U.S. 551, at 24, *supra* note 21; see Petition for Writ of Certiorari at 5-6, *Graham*, (No. 08-7412), *supra* note 20.

<sup>23</sup> U.N. Human Rights Committee, Concluding Observations of the Human Rights Committee: United State of America, ¶ 34, U.N. Doc. CCPR/C/USA/CO/3 (15 September 2006).

or other measures as may be necessary to give effect to the rights recognized” in the ICCPR.<sup>24</sup> The ICCPR demands, “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”.<sup>25</sup> The Human Rights Committee has found the numerous incidences of juveniles sentenced to LWOP exceed the U.S.’ “exceptional circumstances” reservation for treating juveniles as adults.<sup>26</sup> In addition, JWLOP is contrary to the object and purpose of human rights treaties to which the U.S. is either a party or signatory.

**D. Recommendations for the Human Rights Council Regarding U.S.A. Violations of International Human Rights Law.**

We respectfully request the Council to recommend that the United States of America enact legislation or take other measures as may be necessary to:

- (1) eliminate life sentences without the possibility of parole for juveniles convicted of crimes committed before the age of eighteen years old;
- (2) base the sentencing of juveniles on modern scientific understanding of juvenile psychological development;
- (3) emphasize rehabilitation and education in judicial treatment of juveniles; and
- (4) retroactively apply these recommendations to juveniles currently serving life without parole.

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<sup>24</sup> ICCPR art. 2(2), Oct. 5, 1977, 999 U.N.T.S 171.

<sup>25</sup> *Id.* at art. 2(3)(a).

<sup>26</sup> U.N. Human Rights Committee, Concluding Observations of the Human Rights Committee: United State of America, ¶ 34, U.N. Doc. CCPR/C/USA/CO/3 (15 September 2006).

## ANNEX 1: Chart of U.S.A. Juvenile Life without Parole<sup>1</sup>

	States	Adult Criminal Prosecution of kids under 18 <sup>2</sup>	Adult Criminal Prosecution of kids under 18	Mandatory LWOP <sup>3</sup>	Prohibited, Discretionary, or Fixed Term LWOP	Number of Juveniles serving LWOP <sup>4</sup>
1	Alabama		Discretionary	Mandatory	————	62
2	Alaska	Mandatory	————	————	Mandatory (99 years without parole) <sup>5</sup>	0 <sup>6</sup>
3	Arizona	Mandatory	————	————	Discretionary	32
4	Arkansas		Discretionary	Mandatory	————	73
5	California	Mandatory	————	Mandatory	————	250
6	Colorado	Mandatory	————	————	Eligible for parole after 40 years.	48
7	Connecticut	Mandatory	————	Mandatory	————	9
8	Delaware	Mandatory	————	Mandatory	————	7
9	Florida	Mandatory	————	Mandatory	————	266
10	Georgia	Mandatory	————	Mandatory	————	8
11	Hawaii	————	Discretionary	Mandatory	————	4
12	Idaho	————	Discretionary	————	Eligible for parole after 10 years.	4
13	Illinois	Mandatory	————	Mandatory	————	103
14	Indiana	Mandatory	————	————	Discretionary	2
15	Iowa	————	Discretionary	Mandatory	————	44
16	Kansas	————	Discretionary	————	Prohibited	0
17	Kentucky	Mandatory	————	————	Eligible for parole after 25 years.	5
18	Louisiana	Mandatory	————	Mandatory	————	335
19	Maine	————	Discretionary	————	Discretionary	0
20	Maryland	————	Discretionary	————	Discretionary	13
21	Massachusetts	Mandatory	————	Mandatory	————	57
22	Michigan	————	Discretionary	Mandatory	————	346
23	Minnesota	————	Discretionary	Mandatory	————	2
24	Mississippi	Mandatory	————	————	Discretionary	24
25	Missouri	————	Discretionary	Mandatory	————	116
26	Montana	————	Discretionary	————	Discretionary	1
27	Nebraska	————	Discretionary	Mandatory	————	24
28	Nevada	Mandatory	————	————	Discretionary	16
29	New Hampshire	————	Discretionary	Mandatory	————	3
30	New Jersey	————	Discretionary	Mandatory	————	0
31	New Mexico	————	Discretionary	————	Eligible for parole after 30 years.	0
32	New York	Mandatory <sup>7</sup>	————	Mandatory for Terrorism.	————	0
33	North Carolina	Mandatory	————	Mandatory	————	44
34	North Dakota	————	Discretionary	————	Discretionary	1
35	Ohio	Mandatory	————	Mandatory	————	2
36	Oklahoma	Mandatory	————	————	Discretionary	48
37	Oregon	————	Discretionary	————	Prohibited	0
38	Pennsylvania	Mandatory	————	Mandatory	————	444
39	Rhode Island	————	Discretionary	Mandatory	————	2
40	South Carolina	————	Discretionary	Mandatory	————	26
41	South Dakota	Mandatory	————	Mandatory	————	9
42	Tennessee	————	Discretionary	————	Discretionary	4
43	Texas	Mandatory	————	————	Eligible for parole after 40 years.	5
44	Utah	Mandatory	————	————	Discretionary	1
45	Vermont	————	Discretionary	————	Discretionary	0
46	Virginia	Mandatory	————	Mandatory	————	48
47	Washington	————	Discretionary	Mandatory	————	28
48	West Virginia	Mandatory	————	————	Discretionary	0
49	Wisconsin	Mandatory	————	————	Discretionary	16
50	Wyoming	————	Discretionary	————	Discretionary	6

<sup>1</sup> All U.S. states with JLWOP have statutes that legalize this practice, which violates the ICCPR. See ANNEX 2 for statutory provisions.

<sup>2</sup> Considered mandatory for an offense where a juvenile is required or automatically waived into adult criminal proceedings.

<sup>3</sup> Considered mandatory if a statute requires the imposition of a sentence of LWOP for an offense or offense plus prior history of offense.

<sup>4</sup> HUMAN RIGHTS WATCH, STATE DISTRIBUTION OF YOUTH OFFENDERS SERVING JUVENILE LIFE WITHOUT PAROLE (2009), <http://www.hrw.org/en/news/2009/10/02/state-distribution-jvenile-offenders-serving-jvenile-life-without-parole/> (based on data between mid-2004 through 2009).

<sup>5</sup> Defendant may file one request, regardless of granting or denial, for modification or reduction after serving half the term.

<sup>6</sup> Source does not consider 99-year sentence without parole as LWOP. It is unclear if any juveniles are serving such a sentence.

<sup>7</sup> Juveniles 13 or older are criminally liable for murder. No age limit for terrorism acts.