



BASIC DECENCY

**Protecting the human rights
of children**

An examination of natural life sentences
for Michigan's children

Acknowledgements

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For those who are 18 or younger at the time they commit a crime, who, like in this case, did not mean for death to occur, or frankly, for even serious injury to occur...

We need some kind of review mechanism after a long term of years. I'm saying that, in decency, we ought have a mechanism for looking at things, because frankly, it's simply impossible to predict here in the year 2006 what you're going to be like in a whole other generation in the year 2021 or 31 or 40.

HONORABLE DENNIS C. KOLENDA

Kent County Circuit Court, 2006.

Sentencing 17-year-old Leeclifton Jerome Moore to mandatory life without possibility of parole after a felony murder conviction

Introduction

Six years ago, through polling and focus groups, citizens of Michigan were asked this question: “How should we treat Michigan youth involved in homicide crimes?”

People weighed the importance of just punishment, the need for public safety, and also considered their social responsibility to the troubled youth involved in the crime. Results revealed that these Michigan residents were deeply concerned that the most severe sentence our state laws can impose on an adult who commits murder is likewise imposed on a child who did not.

They were also uncomfortable to learn that Michigan’s current laws do not allow a jury or a judge to consider a juvenile’s age, abusive upbringing, troubled environment, lack of maturity, or their potential for rehabilitation before imposing adult punishment. Most of those polled were unaware that hundreds of adolescents in our state, some as young as 14, have been sentenced to die in prison without an opportunity to demonstrate their remorse, show their potential for rehabilitation, or prove that they pose no risk to society.

The 2006 polling revealed strong public opposition to our current laws, which require sentencing all young people between the ages of 14 and 17, who are convicted of an offense involving a first-degree homicide, to spend the rest of their lives in adult prison without any opportunity for parole.

When faced with the issue, people in Michigan strongly supported eliminating the life without parole sentence for juveniles.¹ They recognized the distinct differences between adults and developing adolescents, and supported sentencing practices that would protect youthful offenders from the adult consequences of their decisions.²

In 2008 a bipartisan majority of the Michigan House of Representatives passed legislation that would end Michigan’s practice of sentencing young people under the age of 18 to life without parole. The Michigan Senate Judiciary Committee refused to release these bills for a vote and the laws mandating this punishment remain in place.

To date, 376 young people have been sentenced to life without the possibility of parole in Michigan. Only one other state has more.

In recent years, editorials in major media outlets have called for, at minimum, judicial discretion in sentencing. Some legislators who initially favored this punishment for youth have since called for reform. Former Representative Burton Leland, a Democrat from Detroit, repudiating his initial support of the 1995 Juvenile Justice Reform Act explained, “We wanted to let thugs know that they can’t hide behind their mother’s apron. Now, 25 years later, I think locking youthful offenders up for life is ridiculous.”³

Prosecutors, who are central opponents of juvenile life without parole reform, often make the argument of “adult time for adult crime.” However, most adults do not spend the rest of their lives in prison for comparable homicide crimes because prosecutors have full discretion to offer plea bargains of a lesser sentence to those adults charged with homicide crimes. Even where children are offered plea bargains, they are at a significant disadvantage in negotiating these same pleas. In fact, young people in Michigan are more likely to receive longer sentences than adults for comparable offenses.

This report examines the arguments for and against reforming Michigan’s laws that mandate a life without parole sentence for youth involved in certain homicide crimes. It addresses the disadvantages children face in the adult criminal justice system and analyzes the data resulting from the implementation of this sentence. This report also explores the fiscal and human costs of sentencing a young person to life without parole (LWOP) in Michigan.

Protection and punishment of Michigan's children

All of us were once children and most of us have known, nurtured or loved a child. With that experience comes an inherent understanding that adolescents are distinctly different than adults. They are impulsive, inexperienced, vulnerable to mistreatment, and uniquely dependent on adult and societal guidance and protection.

The civil laws in Michigan provide that children under the age of 18 are not responsible enough to vote, to sit on a jury or to enlist in the armed services. They cannot enter into a contract or quit school. Children may not leave home, get married without parental consent, or obtain a driver's license until the age of 16.

Michigan also has laws that protect youth against sexual violence, parental neglect and exploitation. Labor laws, contract laws, and human services statutes work to ensure the well-being of children by recognizing their inability to adequately care for themselves. These considerations are a formal acknowledgement that children lack the experience, judgment, and responsibility of an adult, and need protection. But in Michigan, such recognition and protections do not extend to children in our criminal justice system, despite the social, political, and scientific acknowledgement that children are less culpable and responsible than adults for their actions.

Contemporary neurological science confirms the cognitive differences between a child and an adult. An examination of the human brain demonstrates the undeveloped frontal lobe in adolescence compared to adults.⁴ This is the area of the brain that is associated with impulse control, planning, risk evaluation, and comprehending consequences. Scientific research confirms that the part of the brain which allows for mature decision making is not yet fully developed in teenagers.

It is not that children fail to recognize right from wrong. Instead, it is this cognitive underdevelopment of the brain, coupled with an inability to appropriately respond to peer pressure, adult persuasion, and lack of control over their environment, that increases the risk of impulsive and dangerous activity among youth.⁵

While there is no denying that youth must be held fully accountable for their poor choices and violent acts, the U.S. Supreme Court has ruled that punishment must be proportional, recognizing a young person's lesser responsibility and culpability. Even when adolescents commit the most serious of crimes, a series of decisions from the U.S. Supreme Court recognize that children cannot be viewed and punished the same as an adult.

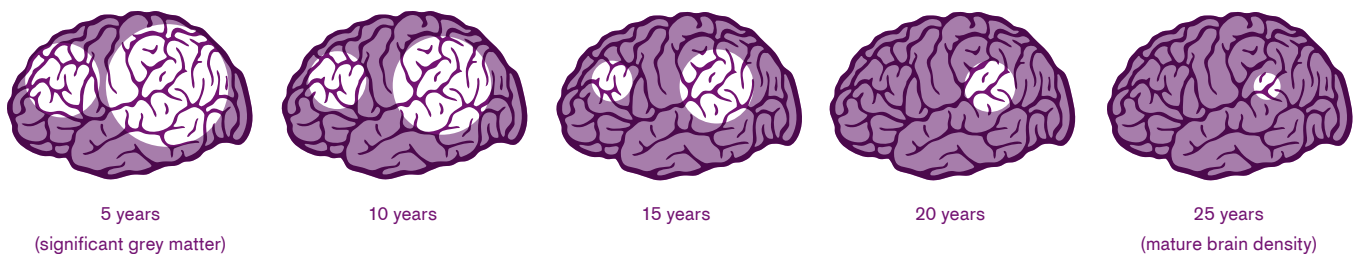


FIGURE 1
EARLY BRAIN DEVELOPMENT

Neurological research shows that a child's brain continues to mature even into his or her mid-twenties. This graphical representation shows how grey matter volume in the brain decreases as a child ages. To watch a video of this process, see www.bit.ly/braindevelopment

In 2005 the U.S. Supreme Court abolished the death penalty for children who committed their crime before the age of 18, reasoning that: “Whether viewed as an attempt to express the community’s moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult. 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.” (Justice Kennedy, *Roper v. Simmons*) In 2010, the Supreme Court extended recognition of the need for lesser punishment for youth in *Graham v. Florida*.

GRAHAM V. FLORIDA

In *Graham v. Florida*, a watershed case with respect to the sentencing of children, Terrence Graham, a 17-year-old, was sentenced to life without parole for his involvement in an armed robbery. The Court reasoned that children are different than adults and thus entitled to distinct treatment that accounts for their particular vulnerabilities.

Children lack the same maturity and responsibility level of adults, they are more vulnerable and susceptible to peer pressure, and their character is still forming.⁶ In comparison to adults, children are both less culpable and more capable of reform.⁷

“By denying the defendant the right to reenter the community, the state makes an irrevocable judgment about that person’s value

and place in society. This judgment is not appropriate in light of a juvenile nonhomicide offender’s capacity for change and limited moral culpability... For juvenile offenders, who are most in need of and receptive to rehabilitation, the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence all the more relevant.” (Justice Kennedy, *Graham v. Florida*)

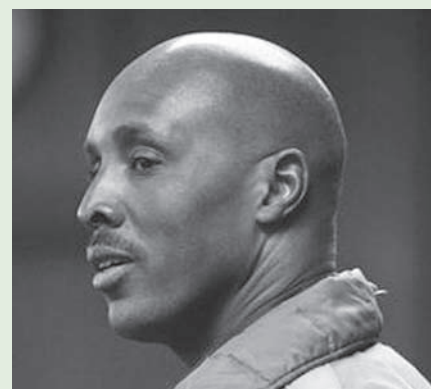
The same rationales cited by the Court in *Graham v. Florida* for treating young people as less culpable than adults can be equally persuasive when considering the appropriate punishment for youth convicted of homicide crimes in our state. Case in point is one Michigan judge who converted a youth’s life without parole sentence into a life with parole sentence: “**Thus, the differences that exist between juveniles and adults neither change nor become less persuasive**

whether the underlying conviction is for a homicide or otherwise... If the U.S. Supreme Court considers the defendant in *Graham* as capable of one day demonstrating growth and maturity, its reasoning and analysis in making such a determination should surely apply to the Defendant here.” (Judge Gary C. Giguere, *People v. Jones*, vacating Anthony Jones’ life without parole sentence, Dec. 21, 2011, 9th Circuit, Michigan)

ANTHONY JONES

Anthony Jones was 17 when he and two other teens planned to rob the owner of a local store. The owner resisted and one of Anthony’s co-defendants, who had a handgun, grabbed the owner and a struggle ensued. While running away, Anthony heard the shot that killed the owner. He was charged as an adult and convicted of first-

degree felony murder on the theory that he aided and abetted. Anthony received a life without parole sentence in 1979. His co-defendant, who shot and killed the owner was charged with second-degree murder and upon conviction received a life sentence with parole, making him eligible for release after 10 years. Anthony, who has served 33 years for his actions, is now awaiting parole review.



Criminal laws treating children as adults

Currently, Michigan is one of only seven states that mandates that a child as young as 14 be charged, tried, and sentenced as an adult for a homicide offense and, if convicted, be sentenced to life without any possibility for parole.⁸ Under the current system, there is no opportunity for a judge or jury to ever consider the youth's lesser culpability, rehabilitative capacity or diminished risk to public safety.

But Michigan's criminal justice system has not always worked this way. Before 1988, charges against children under the age of 17 could only be filed in juvenile court. Prosecutors could ask a judge to waive 15- and 16-year-olds to adult court. In making the waiver decision, the judge was required to consider the seriousness of the offense, the youth's maturity and life experiences, prior juvenile record, amenability to treatment in a youth facility, as well as public safety and welfare.⁹ And yet, once waived to adult court, a judge had no discretion but to sentence the youth to the adult punishment of life without the possibility of parole.

17-YEAR-OLDS

Michigan has long been in the minority of states who treat 17-year-olds as adults for purposes of criminal punishment. The majority of states (38) treat 17-year-olds as minors for both civil and criminal purposes.¹⁰ 55% of youth serving LWOP in Michigan were 17 years old at the time of their offense and automatically treated as adults for purposes of charging, conviction and sentencing.

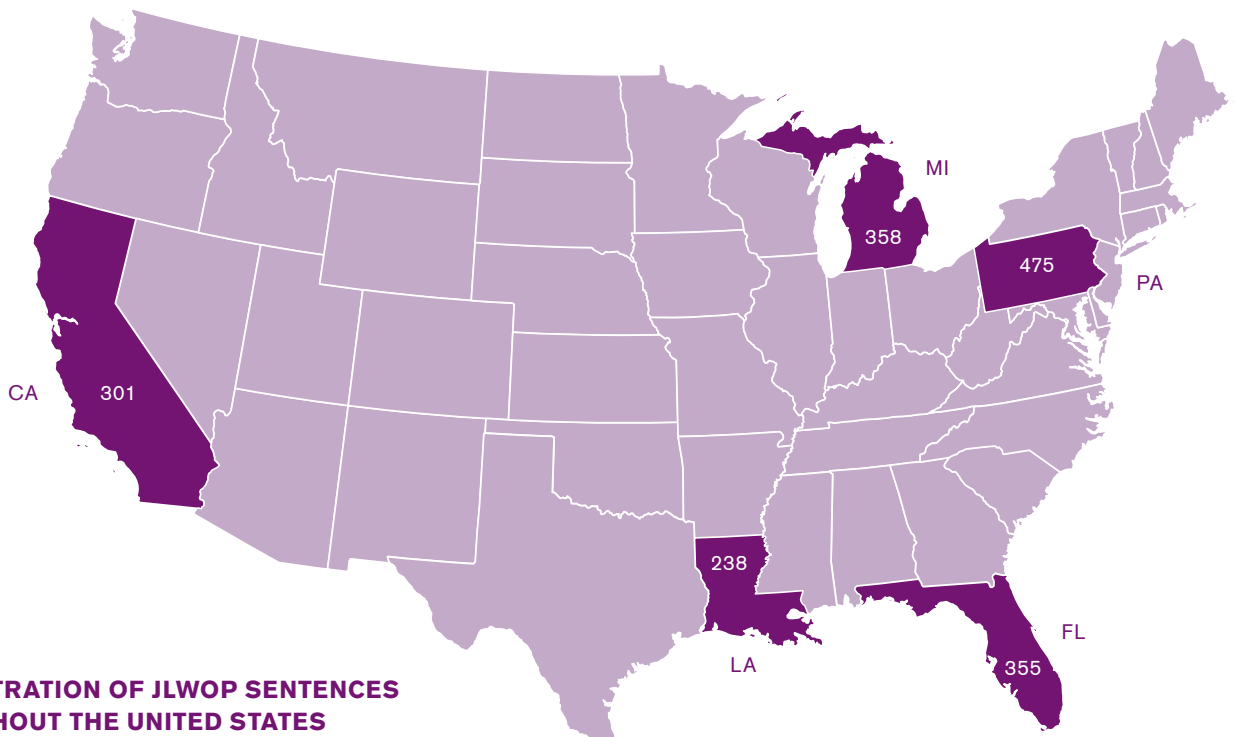


FIGURE 2
CONCENTRATION OF JLWOP SENTENCES
THROUGHOUT THE UNITED STATES

Michigan and four other states account for two-thirds of all children imprisoned for life in the United States.

In 1988 the legislature eliminated the requirement of judicial waiver hearings in favor of automatic waiver. This allowed a prosecutor to file charges against 15- and 16-year-olds directly in adult court without any judicial review or consideration of their youthful status or circumstances. The direct file provision eliminated all opportunity for individual assessment before transfer to adult court. If convicted in adult court, the judge had limited discretion in sentencing. The judge could send the youth to a juvenile facility until release at age 19, or impose the sentence of life without the possibility of parole.

In 1996 the automatic waiver provision was expanded to include 14-year-olds charged with one of 12 crimes, including homicide. Any judicial discretion on whether a child, 14 and older, could be charged and tried as an adult was eliminated.¹¹ Once in adult court, the law now requires the judge to sentence the child as an adult, which means life without parole for first-degree homicide offenses.¹²

Michigan is among a minority of states that make life without parole mandatory for a juvenile accomplice who did not commit an intended homicide.¹⁴ Under current Michigan law: **“The most sympathetic 15-year-old accomplice to a felony-murder and the most sociopathic adult serial killer will receive the same sentence, without any judicial ability to take stock of the difference between the two for sentencing purposes.”** (Kimberly Thomas, University of Michigan Law School Professor)

One-third of youth currently serving life without parole sentences in Michigan did not themselves commit a homicide but instead were convicted for their lesser involvement as tag-alongs, lookouts, or for following the orders of adult co-defendants. These current sentencing laws are the kind that the U.S. Supreme Court has criticized: **“An offender’s age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.”**¹⁵

“DESIGNATION”

In 1996 the legislature created a little-used process called *designation*, which allows a prosecutor to decide to try youth under 17 in juvenile court with adult-like proceedings.¹³

If the child, designated as an adult, is found guilty of a first-degree homicide crime, the judge may:

1. commit the child to a juvenile facility until age 21;
2. sentence the child as an adult, which means a mandatory life without parole sentence; or
3. give the child a “blended sentence,” where the child is sent to a juvenile facility and then re-evaluated to determine whether adult sentencing is appropriate at a later date.

The only adult sentence available is still life without possibility of parole. The blended sentence allows the court to evaluate the youth’s progress in juvenile programming at regular intervals before determining whether an additional adult sentence is appropriate. There is only one documented case of a child, between the ages of 14 and 17, being designated.



Children make up only 25 percent of Michigan's population, but they represent 100 percent of our future. We must work and act together to make that future better, safer, and healthier for all our families.

GOVERNOR JOHN ENGLER

Address to the Citizens of Michigan
"Juvenile Justice Reform" July 27, 1996

Adult time for adult crime: less than life

“Adult time for adult crime”¹⁶ is the repeated public argument for punishing young people the same as mature adults. To understand the limitations of the argument, it is important to look at what prison time an adult in Michigan actually serves as a result of homicide conviction, in particular.

Each year hundreds of adults are charged with homicide crimes that mandate a life without parole sentence upon conviction. In Michigan, prosecutors offered the majority of those adults charged with a first-degree homicide a plea bargain for a lesser sentence in exchange

for admitting their guilt. 62% of those adults charged with committing first-degree murder were plea bargained by the prosecutor to a lesser term of years or a parolable sentence.

The average prison time served by those adults who took a plea offer for their first-degree homicide charge was 12.2 years.¹⁷ 12.2 years and then they were released. This is the actual “adult time for adult crime” in Michigan.

Plea agreements are a recognized, constitutional method of resolving criminal cases. A prosecutor may elect to offer a plea bargain in which the defendant admits his guilt in exchange

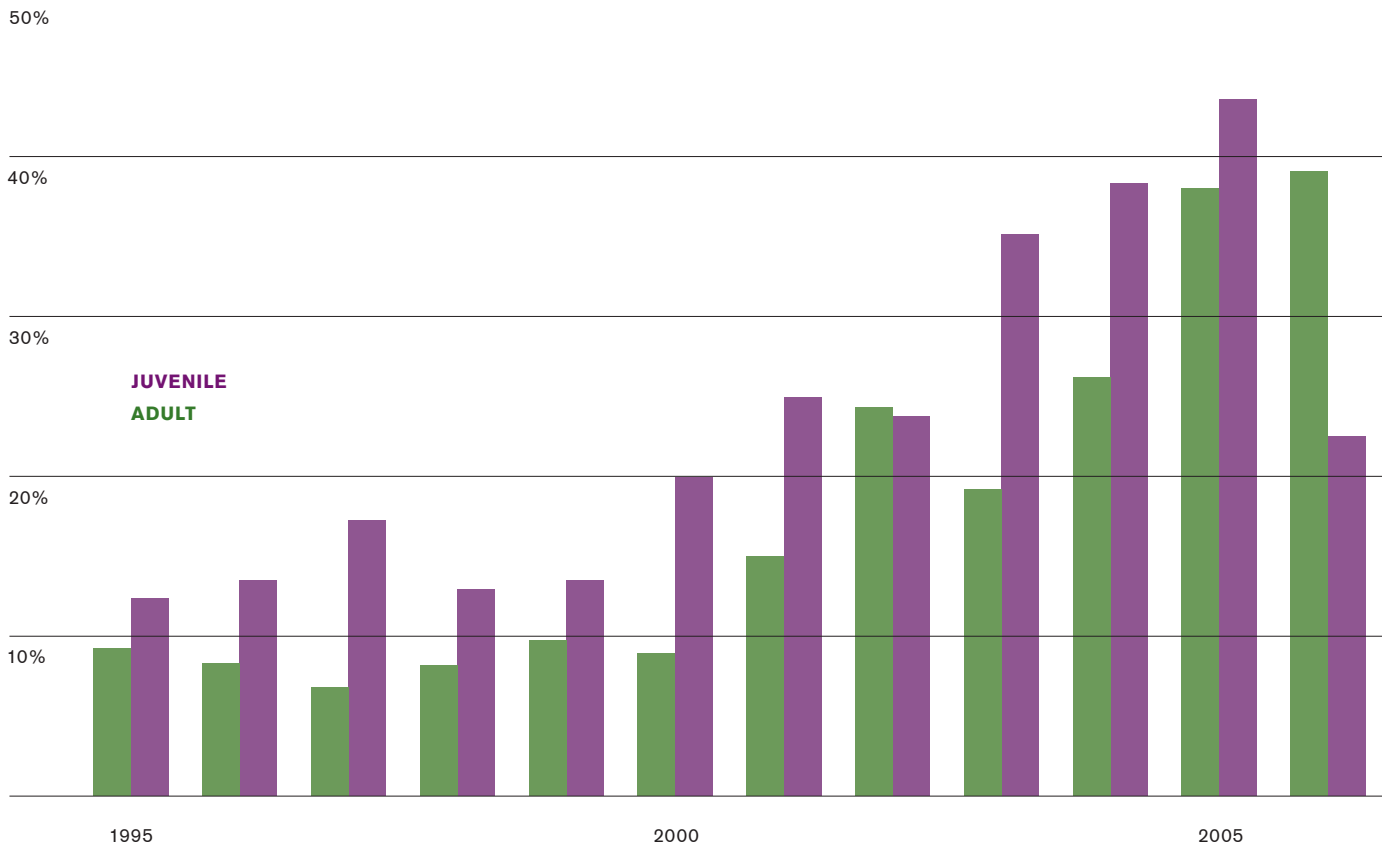


FIGURE 3
LWOP SENTENCING RATES OF ADULTS & JUVENILES
FOR CRIMES OCCURRING IN MICHIGAN, 1995–2010

The LWOP sentencing rate for juveniles has outpaced that of adults during 12 of the past 16 years.

for a lesser sentence. Although statistics vary, guilty pleas account for roughly 75–90% of all criminal convictions.¹⁸

Unlike judicial decisions, there are no written rules or established guidelines on who is or is not offered a plea bargain. There are no legislatively defined parameters for prosecutors' decisions in the charging and very little oversight of the plea process. A prosecutor virtually has unlimited discretion over the plea bargains, making the decision on what crime to charge an individual with, what lesser sentence to offer, and to whom.

Plea bargaining has also been identified as one area where defendants facing criminal charges encounter racial bias. Nationally, it is

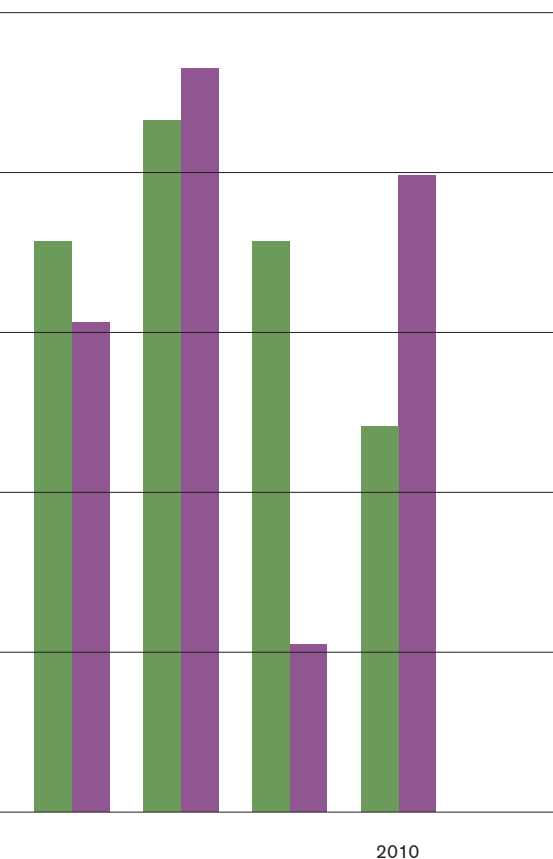
reported that African-Americans, for example, have been forced to accept guilty pleas to more serious offenses than whites. Studies further show that African-Americans are offered fewer reductions in plea bargains than other defendants.¹⁹

Additionally, the U.S. General Accounting Office reports that in states studied, African-American children charged with violent offenses are 1.8–3.0 times more likely than white children to be tried in adult courts and, therefore, subject to the plea bargaining process.²⁰ (Michigan did not participate in this study and has not publicly reported on which juveniles prosecutors decide to treat as adults and which as children.)

No public record exists to demonstrate why prosecutors decide to treat some youth involved in homicide crimes as juveniles and others as adults. Because there is no appellate review of the decision making process, prosecutors are the only participants in the criminal justice system who decide whether a young person under the age of 17 will be sent to adult courts or will be protected and given the opportunity to receive counseling, treatment, education and rehabilitative programming in a juvenile detention setting until the age of 21.

The U.S. Department of Juvenile Justice and Delinquency Prevention has announced a plan requiring data collection on youth adjudicated as adults versus those treated as children, starting in 2012. The announcement stated that, "at this time, the only apparent reality is that prosecutors are increasingly treating young people as if they were adults."

The decision to charge a child as an adult, results in that child being processed through the complex adult criminal justice system. As the U.S. Supreme Court recognized, juveniles are less able to understand the criminal justice proceedings, causing them to work less effectively with their lawyers.²¹ This lack of understanding has particular significance in the plea bargaining process, for which there is little judicial oversight.



“Juveniles have less ability to perceive and to evaluate risk than they will have at full maturity... similarly many youth make decisions based mostly on short-term outcomes rather than considering the longer consequences, more so than when they become adults. Not surprisingly, this immaturity may have a significant—and perilous—influence on youths’... decisions about pleas and plea agreements.”²²

Adequate and skilled counsel is essential if a child is to understand the significance of a plea offer. Counsel must fully explain the relevant aspect of law so the youth completely understands the possible scenarios under which he or she can be convicted and the consequences of a conviction. For example, one Michigan court found that the defense counsel’s actions were objectively unreasonable when counsel did not explain to the defendant that he could be convicted of first-degree murder through an aiding and abetting theory, despite knowing his client’s hesitancy to plead guilty because he did not kill anyone.²³ The defendant stated that he would not have “gambled” his life standing trial if he had known he faced life in prison without parole.²⁴

As the U.S. Supreme Court recognized recently in *J.D.B. v. North Carolina*, “a child’s age is far more than a chronological fact. It is a fact that generates common sense conclusions about behavior and perception.”²⁵ Children are less mature than adults and they lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them, and are more vulnerable to outside pressures than adults.²⁶

There is no place where the disparity and inequity of being a child in an adult system is more in evidence than in the area of plea bargaining. Countless examples exist of young people who rejected prosecutors’ offers of lesser sentences—sentences that, if accepted, would have meant most of them would now be free. Time and time again, these adolescents said they simply could not comprehend the offer or the likely alternative and did not understand the consequences of their not taking the plea that was offered.

The very same reasons that young people are deemed too immature to enter into a civil or business contract should also apply when the contract involves their life.

I want my “life to be full of human dignity and commitment to others.”

ANTONIO ESPREE

JAMAR JOHNSON

When Jamar Johnson had just turned 16, he and his older brother were arrested for the murder of their little brother. Jamar’s older brother informed the police that Jamar was not the shooter and admitted his own guilt. During Jamar’s trial the prosecuting attorney offered him a plea deal of 15 years. When Jamar asked for advice, he recalls his



lawyer explaining that he thought they could successfully fight the charges and Jamar would go free. Jamar remembers believing that if convicted he would receive a “life sentence” which he understood meant 20 years. No one explained that, if convicted, he would be sentenced as an adult to a natural life sentence and would die in prison. Jamar turned down the plea and was sentenced to life without possibility of parole. Jamar has now served 21 years.

ANTONIO ESPREE

As a child, Antonio had no choice or ability to leave his environment, which was characterized by drug abuse and domestic violence. When he was 13 years old, Antonio began to hang out with his older brother and cousins who were involved in the drug trade. During the holiday break in 1997 Antonio went with two of his older friends to Ypsilanti for a drug deal, which ended in a shoot-out between the rival groups. Antonio was shot, but one of his friends and another young man were shot and killed.

Antonio was 16 years old and his only prior involvement with the justice system was for truancy and for running away from home. He and one of his older co-defendants were charged with first-degree murder. A third adult co-defendant was convicted of second-degree murder

and became eligible for parole in 2010. Antonio was offered a plea. In exchange for pleading guilty to second-degree murder, he would receive a sentence of 25 to 40 years in prison. Antonio asked the older inmates he was housed with for advice. All of the inmates told him not to accept the plea because it was a scam that would later be used against him. Antonio, just 16 at the time, could not conceive of spending 25 years in prison and did not understand that the only sentence he could receive, if convicted, was life without parole. He rejected the offer.

Antonio has now served 24 years of his life without any hope of release. He expects to complete his Associate Degree in Domestic Violence Counseling and maintains a 3.85 GPA. Antonio also serves as Chairman of the Warden's Forum, a collaborative organization



comprised of inmates and prison administration. Despite his maturation, Antonio will never have the opportunity to demonstrate his rehabilitation, transformation and lack of threat to public safety.

BOBBY HINES

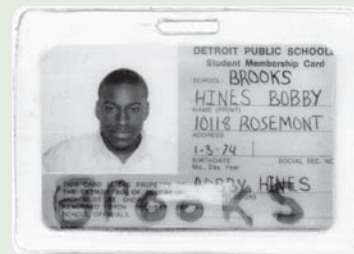
When Bobby had just completed the eighth grade, he went with two older youth to confront a man who was an alleged drug dealer and who had stolen a friend's coat. The argument escalated and one of the older youth pulled a gun and shot the man, who died from his wound. Both the shooter and 19-year-old co-defendant received second-degree parolable life sentences and will soon be eligible for release.

Bobby was charged as an adult even though he was the youngest; he did not have a gun and did not assault anyone. Ironically, because Bobby didn't shoot anyone, he was not charged with second-degree murder. Instead, he was charged with participating in a

felony robbery and assault in which a homicide occurred. Felony murder in Michigan causes the same sentence as first-degree premeditated murder—life without parole. Bobby just finished middle school when he was charged and offered a plea bargain of 20 to 40 years in exchange for pleading guilty to a lesser charge of second-degree murder.

Bobby could not understand why he was being charged with first-degree homicide when the adult person with a gun—who shot someone—was charged with a lesser crime. He did not understand how he could admit guilt to second-degree murder when he did not shoot anyone. Bobby could not believe he would go to adult prison and did not understand the mandatory life without parole sentence.

He also could not contemplate 20 years in prison. Not understanding the law or the consequences, he rejected the plea offer. Bobby was convicted of felony murder for his involvement and received the mandatory adult punishment for this crime: life without possibility of parole. Bobby has already served 22 years for his decision to go along that day, two more years than the prosecutor agreed would have been sufficient.



Plea bargaining: disparate impact on children

A prosecutor's decision to offer a plea requires a belief that a sentence less severe than life without parole is both appropriate and consistent with protecting public safety. While some prosecutors publicly assert that a life without parole sentence should be imposed on all juveniles convicted of first-degree murder, 74% of juveniles who committed homicide offenses were initially given the opportunity to plead guilty to a lesser charge. The number of years offered in exchange for guilty pleas ranged from two years to parolable life (with parole eligibility beginning after 10 or 15 years).

Some prosecutors do understand that the state's treatment of young defendants is in desperate need of reform. Instead of the harsh, mandatory structure that exists under current law, they argue that the system should provide greater discretion and consideration for review when a child's life is at stake.

"The uniquely harsh punishment of juveniles in Michigan is inconsistent with the principles I have seen in residents of this state." (Mark Osler, former Federal Prosecutor in Michigan, now serving as a Law Professor at the University of St. Thomas Law School in Minneapolis, Minnesota)

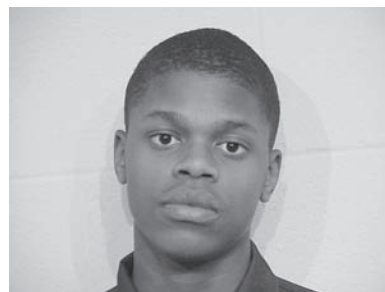
They also fully comprehend the gravity of the juvenile life without parole sentence, acknowledging that it is not the proper punishment for all youth accused of serious homicide offenses.

"A juvenile's level of participation in a crime should be considered. Cases where a juvenile was a major participant in a violent crime but not the person who pulled the trigger. That's where I think it lies with the prosecutor and the judge to say, even though [the juvenile] is guilty of that offense, I'm going to take away the possibility of life without parole by charging the juvenile with an offense such as second-degree murder, which is punishable by up to life in prison but with the possibility of parole."

(Jeff Fink, Kalamazoo County Prosecutor, "No one here gets out alive," *Kalamazoo Gazette*, Nov. 6, 2011)

When a prosecutor decides to issue the complaint and warrant, a child is automatically tried in adult criminal court. This means there is no judicial hearing in which evidence is presented on the record and no appealable written opinion is issued showing the reasons for adult court filing. There are no standards or evidence-based practices for charging and the prosecutor is not obligated to consider the child's family history, mental capacity, school records, or youthful status. This system causes inequity in both sentencing and plea offers.

Judge Mark Janer contends that, **"when you realize the number [of lifers] who didn't do the killing, you realize it's too harsh a penalty. It would be best to individualize the cases and allow judges to determine if they get a shot at parole."** Abolishing the life without parole sentence does not mean nor does it guarantee that all imprisoned juveniles will earn parole or be released. Providing a meaningful opportunity for release based on an individual's demonstrated maturity and rehabilitation is just that: an opportunity. Judges in Michigan retain veto power for those who have parolable life sentences and the parole board must still decide whether an individual should be paroled under established guidelines.²⁷



"My attorney told me I was offered a plea, but my mother told me don't take it because I didn't do it." (Dontez Tillman, the youngest juvenile ever sentenced to life without parole in Michigan. Dontez was 14 years and 87 days old when he was charged as an adult with felony murder. Dontez was convicted and sentenced to spend the rest of his life behind bars.)

Juveniles are at a serious disadvantage in negotiating and understanding plea offers because of their very youthfulness, immaturity, inexperience, and failure to realize the consequences. Many have reported that they did not fully understand the nature of the charges they were facing, the crime they were on trial for, or the meaning of parole. As such, they do not comprehend the value of the pleas offered and rejected them at a much higher rate than adults.

A prosecutor's decision to plea bargain does not appear to be linked to a level of the defendant's involvement in the crime, their age, prior juvenile record, the existence of an adult co-defendant, or troubled family history. Only a minority of counties appear to offer pleas based on participation in the offense. The young people who were the primary participants and those who did not actually commit a homicide were offered pleas at roughly the same rate. However, the young people who did not actually commit the homicide were less likely to accept a plea than those who did the killing. Many asserting their belief that they would not be punished with a life sentence because they did not kill anyone.²⁸

"I practically begged [my client] to take [the plea agreement to a lesser charge] but [he] turned it down... and now this young man who is 15 years old is going to spend the rest of his life in prison and it's a tragedy." (Larry Phelan, defense counsel for Cedric King, Kent County)

Some juveniles reject a plea offer based on the well-meaning but untrained advice of a loved one. Some received ineffective assistance of counsel. For many, the limitations of their young mind impaired their ability to fully understand the consequences of rejecting a plea offer. Most children cannot imagine a life beyond age 20 and, to an adolescent, the thought of spending a term of 15 years behind bars is literally unimaginable. They simply cannot fully understand or comprehend the real possibility of lifelong incarceration.

DEON HAYNES

Deon Haynes had never been in trouble with the law. He was 16 and had just finished the tenth grade at Saginaw High School, when he and two friends went out to eat. Two of the boys concocted a plan to break into the house of an acquaintance and steal money they saw there a day earlier. Deon states he was present for the plan but stayed in the car when the other two boys broke into the house and shot one of the residents.

The teen that shot the homeowner pled guilty to assault with intent to commit murder and was sentenced to a term of 23 to 50 years. He will likely be released in 2014. Deon, who insists he never entered the home, was charged as an adult with first-degree homicide. On the advice of his attorney,



he rejected a plea offer of 15 to 30 years because he was innocent of the homicide and did not understand he could receive a life without parole sentence for felony murder. His case was tried twice and two separate juries could not agree on his guilt, resulting in mistrials. Deon was tried a third time and, after only three days of testimony, was convicted of felony murder and sentenced to mandatory life without parole. He has now spent nineteen years in prison, five years more than the prosecutor thought appropriate. Absent any reform of the laws, Deon will spend the remainder of his life behind bars.

Nearly 100 children in Michigan who were offered plea deals for early release and turned them down now have no meaningful opportunity for release. Unless there is reform, these young offenders will die in prison despite the fact that there is little difference between the crimes they committed and those committed by other adolescents and adults, who today are free after serving fewer than 15 years in prison for their crime.

“Our challenge as we redesign the juvenile system is to create a bridge with the adult system that prevents dangerous youthful offenders from slipping through the crack. We must also effectively balance deterrence and public safety concerns with a young offender’s potential for rehabilitation.” (Former Governor John Engler, addressing the purpose of his 1996 Juvenile Justice Reform Action Plan for Michigan)

38% of all young people serving life without parole in Michigan had no prior criminal record in juvenile or adult court. This supports the assumption that which defendants are offered a plea appears to be based largely on circumstances unconnected to their perceived dangerousness. Rather, the geographies of where the crime was committed had a significant impact on whether a plea was offered, with Calhoun, Oakland, and Saginaw counties offering pleas at a rate far below the state average.

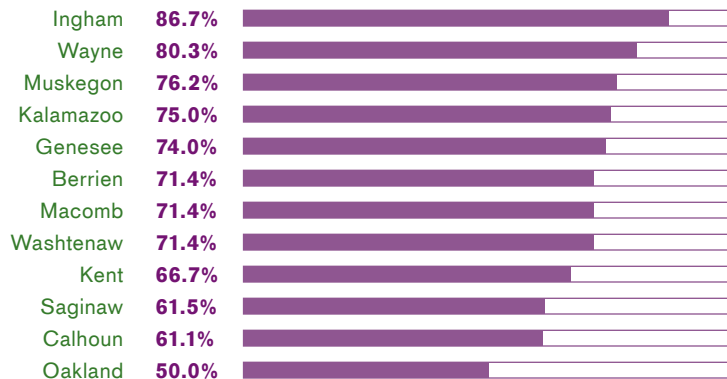


FIGURE 4
GEOGRAPHIC DISPARITIES IN PLEA OFFER RATES FOR YOUTH CHARGED WITH FIRST-DEGREE HOMICIDES

Where the offense is committed dramatically impacts the length of time a youth will serve in prison.

JEROME WALKER

Despite the turmoil and instability in his home life, Jerome managed to finish the ninth grade before dropping out of a Detroit public school. Without school or any parental guidance Jerome became involved in a youth gang. In 1998 he went to rob a house, believing it to be unoccupied. When confronted by the homeowner, Jerome shot and killed him. Charged as an adult with first-degree murder, the prosecution offered Jerome a plea deal on two separate occasions that would have had him serve 15 to 30 years



in prison. He rejected the offers. Jerome says that he did not understand the offers and did not realize that by continuing to fight his case, he was facing a possible lifetime behind bars. Jerome was convicted and sentenced to life without parole.

Self-improvement became very important to Jerome. Since his incarceration, he has completed his GED and has now exhausted all institutional certification programs. Jerome also loves to write and is currently working on a series of novels for at-risk youth that he hopes will be published one day. Although he has not been in contact with his victim’s family, Jerome has tattooed the man’s name on his chest as an expression of his remorse. He says it also serves as a constant reminder of both the life he took and his obligation to change and give back.

Racial disparities in pleas and sentencing

Nationwide, racial disparities appear at each juncture of the criminal justice system. In Michigan, 73% of those youth serving life without parole are children of color, despite their only representing 29% of youth in Michigan. Nationwide, black youth represent just 28% of juvenile arrests,²⁹ yet they account for 35% of juvenile defendants waived to adult court.³⁰

Since there is no reported public data in Michigan on which youth offenders' prosecutors choose to divert to the juvenile courts, compared to those sentenced in adult court, the complete data on racial disparities is unknown. With no established criteria or judicial oversight, this lack of transparency raises a number of concerns.

In the area of plea bargaining and youth charged with homicide crimes in Michigan, the data that is available shows some racial disparities for those youth sentenced to and serving life without parole as adults. Across the state, there is a significant difference in the rate of pleas offered to adolescents based on the race of the victim. Youth accused of a homicide offense where the

victim was white were 22% less likely to receive a plea offer than in cases where the victim was a person of color.

In the context of the death penalty, studies consistently show that the decision to offer a lesser punishment is influenced when the race of the victim mirrors the race of the decision maker, but the circumstances of the homicide and the criminal history of the defendant are otherwise similar.³¹ 96% of the publicly elected prosecutors in Michigan are white. Prior to 2004, only one of the 83 prosecutors in Michigan was a person of color and all but three were male. Currently there are two prosecutors of color and 13 who are women.

Historical narratives on race relations suggest that prosecutors perceive violent crimes against whites as more serious and threatening than those committed against blacks, resulting in harsher punishments.³² In some counties across the state, the racial disparity in plea offers by prosecutors is more pronounced.

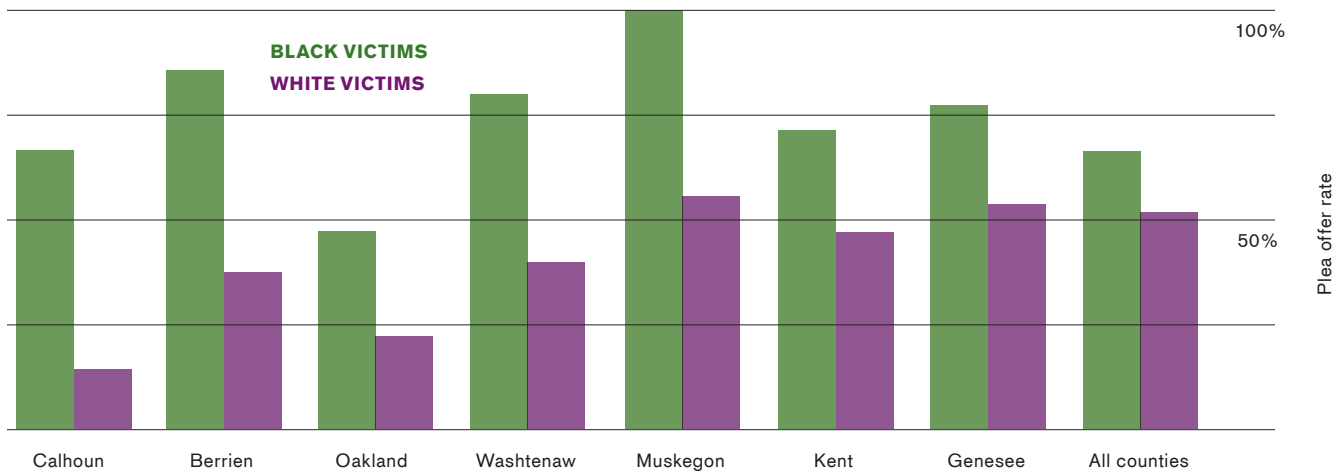


FIGURE 5
RACIAL DISCREPANCY IN PLEA OFFER RATES

Counties in Michigan with the widest discrepancy in plea offer rates based on the race of the victim. Throughout the state youth with white victims were 21.8% less likely to be offered a reduced sentence than youth whose victims were black.

Sometimes who is offered a plea and who is not depends more on who is better equipped to negotiate a deal.

ERNEST DAVIS

Ernest Davis was 17 in 1984 when he went with his uncle—who, at 34, was twice his age—and two other co-defendants to rob a man of



drugs and money. His uncle, Larry Davis, was the planner of the crime and the one who shot and killed the home-owner. Mr. Davis, who had served two prior prison sentences as an adult, knew the system and negotiated a plea offer for parole life, making him eligible for release after 10 years. Ernest Davis, a youth with no prior juvenile or adult records, was in the eleventh grade and was never offered a plea for a lesser sentence. He was tried and convicted as an adult for first degree murder under the aiding and abetting theory and received the mandatory life without possibility of parole sentence.

NICOLE DUPURE

At 17, Nicole Dupure left home to live with her 19-year-old boyfriend Tommy, who was kicked out of his house. Tommy worked on a plan to get money to pay for a place for them to stay. The couple stopped at a Big Boy restaurant next to an apartment complex, where an elderly woman lived that Nicole frequently looked after. Tommy excused himself, saying he had to use the restroom, but instead left the restaurant and went next door to rob the woman. Nicole remained in the restaurant. Tommy later admitted to stabbing and killing the elderly lady during the robbery. Two years later, after an evaluation

deeming him competent to stand trial and an unsuccessful motion to suppress his confession, Tommy implicated Nicole in the offense, hoping to get a good plea bargain. Police did not consider Nicole a suspect in the crime until Tommy accused her of being involved. At her trial, Tommy admitted, “I never had the intentions to pin it on her until I ran out of options.” Tommy was offered a plea to second-degree murder in exchange for his testimony against Nicole and will likely be eligible for release before his 40th birthday. Nicole was convicted of felony murder in Macomb County and sentenced to life without possibility of parole. Nicole maintains that she had no

involvement in the crime and unlike Tommy, who admittedly committed the homicide, Nicole was never offered a plea bargain.



It is rarely the juvenile and almost always an older co-defendant who is able to negotiate their way through the system and make a good plea bargain.

KEVIN BOYD

Kevin Boyd was 16 when his mother, who admitted to killing his father, initially implicated Kevin instead of her lover as her partner in the crime. After five hours of intense interrogation alone, and having been told that his mother had accused him, Kevin confessed. Kevin was charged as an adult with the murder of his father, a white male, and was never offered a plea. Kevin asserts the confession was false and believed the police would surely discover he had stayed at a friend's house all night,³³ but during the rigorous interrogation he confessed only after the police told him that everything would go smoothly and that he could go home if he just said he did it.

Kevin was charged as an adult with first-degree premeditated murder. Kevin could not believe what was happening and while held in a juvenile facility, he was diagnosed



with severe depression and put on 24-hour observation after trying to hang himself. Kevin was convicted and given the adult sentence of life without parole.

On appeal, the court initially reversed his sentence stating, "Although defendant committed a very serious offense, experts testified at the sentencing hearing that defendant was a model prisoner, an excellent student, amenable to treatment, unlikely to disrupt the rehabilitation of other juveniles, not a danger to the public and

remorseful for his actions." (Per Curiam Opinion, Oakland County Circuit Court, *State of Michigan v. Kevin Boyd*, 1998 WL 1991584, at *2 [Mich. Ct. App. June 5, 1998]). Without explanation, the court reversed itself three months later and reinstated Kevin's life without parole sentence. Kevin's mother is serving a life without parole sentence and admits she lied about Kevin's involvement to protect her lover.

Kevin has now served 26 years of his life sentence. He is currently a school porter but is no longer eligible for any other vocational programs due to life sentence. He spends his free time in prison writing music. One of the most rewarding experiences for Kevin is the work he does with younger inmates as part of a mentorship program within the prison. He provides guidance and tutors the younger inmates to help them get their GED and stay on track while in prison.

MICHIGAN CITIZENS CALL FOR REFORM

"I don't want somebody young and immature to be put away and also costing us more and more dollars to support them in prison when maybe if given a second chance could be a productive person and be functional in society." (Michigan citizen participating in a 2005 independent focus group on youth sentences)

"The 'mandatory' does not let the people there take into consideration the background of a particular case. I have a major problem with the mandatory part... I think it should be the possibility of parole in every case. That doesn't mean it will happen. The possibility should be there." (Michigan citizen participating in a 2005 independent focus group on youth sentences)

Michigan's inadequate indigent defense impact on youth in the adult system

Among youth charged with homicide:

75%

were represented by court-appointed counsel because their family could not afford to hire an attorney

CASES REPRESENTED BY DISCIPLINED ATTORNEYS

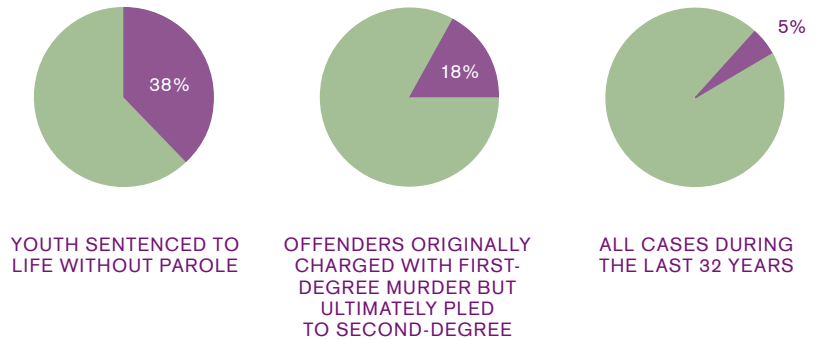


FIGURE 6

“The features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings. Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it. They are less likely than adults to work effectively with their lawyers to aid in their defense. Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by one charged with a juvenile offense. These factors are likely to impair the quality of a juvenile defendant’s representation.” (Justice Kennedy, *Graham v. Florida*)

In the juvenile justice system, a guardian is appointed to act in the best interests of the child and assist in negotiating all aspects of the system. But in adult court, a child with no resources

of their own relies heavily on court appointed counsel. Yet court appointed counsel in criminal proceedings receive no training in issues specific to juveniles. Attorneys receive no assistance to deal with the youth’s immaturity, inexperience, and low level of competence, which renders child defendants less capable of meaningful participation in the adult legal process. Michigan’s acknowledged troubled and ineffective public defense system especially disadvantages these young people.

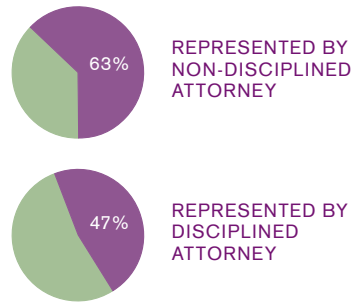
Additionally, many youth are negatively impacted by the conditions under which they are held pre-trial. A child held in a county jail facility is required to be separated from adults by sight and sound to protect them from predatory behavior of adults.³⁴ However, this federal regulation usually results in the child being held in isolation for months and in some instances, over a year. As a result of the severe psychological

Youth represented by a non-disciplined attorney were:

43 %

more likely to accept a plea offer than youth represented by a disciplined attorney

PLEA OFFER RATES FOR YOUTH



Black defendants receiving a life without parole sentence were:

421 %

more likely than white defendants, who negotiated a lesser sentence, to have been represented by a disciplined attorney

impact of solitary confinement, child defendants have a decreased ability to participate in their own defense.³⁵

An attorney representing youth should be skilled in both juvenile justice and adult criminal proceedings, and knowledgeable of the interaction of the two systems and laws. But unlike many other states Michigan requires no specific training for representing an individual facing a murder charge and any person who has passed the bar, irrespective of a lack of experience or training, may represent a child charged with murder and facing life without parole.

Attorneys who have represented youth convicted and sentenced to life without parole in Michigan have an abnormally high rate of attorney discipline from the State Bar of Michigan, which polices attorneys.³⁶ In any given year, 0.3% of all attorneys are reprimanded, but 38% of counsel representing youth sentenced to life

without parole have been publicly sanctioned or disciplined by the Michigan Bar Association for egregious violations of ethical conduct.

One proponent of correcting the state's public defense system is Michigan Governor Rick Snyder. On October 13, 2011, he issued an executive order creating a commission focused on improving legal services provided to Michigan's poorest communities. Appointed to the committee are members of the judiciary, attorneys, local governments, and the general public.

“A core principle of our criminal justice system is the guarantee that an individual charged with a crime be entitled to legal representation, even if they are unable to hire private counsel. The Commission will work to ensure that all criminal defendants receive effective assistance of counsel.” (Governor Rick Snyder³⁷)

JAMIL ALLEN

Jamil was raised by relatives in Detroit. As a teen, he spent most of his time with a cousin. A youth gang in the neighborhood routinely bullied both boys and Jamil was beaten and robbed on multiple occasions. Finally, heeding the advice of his uncle, Jamil and his cousin decided to stand up to their tormentors. Jamil and his cousin took a gun for protection and during a fight Jamil shot and killed one of the boys.

In adult court Jamil had two trials—the first ending in a mistrial. Neither of Jamil’s attorneys met

with him until the day of trial and they did not call any witnesses on his behalf. Jamil did not understand that he was supposed to participate in his own defense. Jamil does not believe he was offered a plea, but is not sure. When Jamil was convicted of first-degree murder, he did not understand that he would spend the rest of his life behind bars. Instead, he believed a “life sentence” meant he would be released in 10 years.

Upon his placement in an adult prison, older prisoners repeatedly victimized the 16-year-old Jamil. Since entering prison Jamil has earned his GED and taken classes in legal writing and journalism.



Jamil is now 41 years old, and has been incarcerated for more than half of his life.

GREGORY WINES

Gregory had a dysfunctional family environment with a drug-addicted mother and a father intermittently hospitalized for mental illness. His grandmother obtained legal custody when he was five. As a child he was diagnosed with various emotional and behavioral challenges, and was enrolled in long-term counseling from an early age. When he was 16, Gregory learned that his girlfriend was pregnant. The teens decided to run away together and devised a plan, with an acquaintance named Stephen, to steal a car and drive out of state. The planned robbery

escalated when Stephen brandished a gun and shot the owner of the vehicle. Gregory and his girlfriend escaped from Stephen’s company and called the police to report the killing. They cooperated fully with the investigation, even locating the shell casings from the shooting.

Gregory was offered a plea to second-degree murder in exchange for his admission of guilt but rejected the offer, explaining that he could not confess to a shooting he did not commit. Gregory did not understand that, under the law in Michigan, his participation as a child in the planned robbery subjected him to the same punishment

as an adult shooter—life in prison. He simply did not grasp that the justice system would sentence him to die in prison. Both Gregory and Stephen received the same sentence: life in prison without any possibility of parole.



An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed.

SUPREME COURT JUSTICE ANTHONY KENNEDY

Graham v. Florida

CEDRIC KING

Cedric's mother raised him as a single parent until she died when he was six years old, and he was sent to live with his father. At age 11, after his father became incapable of caring for him, Cedric became a ward of the state where he was passed around to a series of group homes. At age 14, Cedric ran away at the urging of his 28-year-old brother Marc, who resided in Michigan.

When Cedric arrived in Michigan, Marc took him to the apartment of a man who had stolen some clothes from them. Cedric was joking around with another man at the apartment when an argument ensued and his brother shot the man in the thigh. Cedric did not have a gun nor did he shoot anyone. The man his brother shot did not die or sustain any life threatening injury. However, at age 14, Cedric was charged in Kent County with conspiracy to commit

first-degree murder, which carries a life sentence. Cedric had no funds and was assigned a lawyer who told Cedric he could get a plea bargain of seven to ten years, but he would have to testify against his brother. Cedric would not testify against his brother. At the time of his trial, Cedric could not read or write and did not understand most of what happened during his trial. Nor did Cedric realize he was being tried as an adult and faced a sentence of life in prison for his actions that day.

Cedric was continually misidentified as being 15 years old. The trial lasted ten hours, no witnesses were



called on his behalf, and Cedric was convicted of conspiracy to commit first-degree murder, sentenced to what the judge described as a natural life, and placed in an adult prison. Because his brother Marc was twice Cedric's age, and was designated as a habitual offender, he was convicted of assault with intent to commit murder and received a parolable life sentence.

Cedric is now 28 years old. He has spent more than half of his life behind bars for a crime in which he was just a 14-year-old tagalong, was not the shooter, and where no one died. The prosecutor was willing to have Cedric released after seven years, at the age of 21. Had he been tried as a juvenile, Cedric would have been sent to a youth facility, received an education, gotten counseling, and released at 21 years old. But because he was tried as an adult, the court had no choice but to sentence him to life in an adult prison. Cedric has no date of release.

The State of Michigan provides no funding, oversight, standards, or written guidelines to ensure that all criminal defendants receive adequate assistance of counsel.³⁸ Michigan is one of just seven states in the nation where funding for trial-level indigent defense is the sole responsibility of each county. While some counties choose to compensate public defenders at a flat rate, others elect to contract services out to private firms. Hourly compensation is \$50 and flat-rates fall between \$300 and \$400 per trial, regardless of whether the defendant is accused of petty theft or murder.³⁹

Already disadvantaged by an inability to meaningfully participate in their own defense and hampered by inadequate representation from counsel with insufficient resources to mount

a proper defense, juveniles are left trying to navigate an adult system where the only hope of escaping a life without parole sentence lies with the unfettered discretion of a prosecutor. For at least two counties in Michigan, the prosecuting attorney's budget is nearly double the county's indigent defense budget.⁴⁰

Who a juvenile defendant has as a defense counsel (and other factors unrelated to a youth's actions) can have a severe impact on both the conviction rate and length of sentence for juvenile defendants accused of homicide. It comes as no surprise, then, that a recent study conducted by the RAND Corporation confirmed that the skill of counsel directly affects both conviction and sentence rate.⁴¹

GIOVANNI CASPER

In 2006 Giovanni Casper was in the tenth grade when he attended an event at a local roller rink with his friends. A fight broke out early that night between Giovanni, his friends, and another group of teenagers, but was broken up by employees. Another fight began when Kenneth Dear approached Giovanni and began throwing punches.

Upon arrest, police interrogated Giovanni for hours without a parent present. The officers wrote out a statement and told Giovanni that if he signed it, he could go home. At the time of his arrest Giovanni was functionally illiterate. At trial, testimony was given stating that Giovanni was standing in front of Kenneth Dear at the roller rink

when Dear suffered a single, fatal gunshot wound to the chest. The prosecution argued that although no one saw a gun in Giovanni's hand, his proximity to the victim and the testimony of prior bad blood between the two teens was sufficient to sustain a conviction. Giovanni was automatically charged and tried as an adult and subsequently convicted of first-degree premeditated homicide. Giovanni was sentenced as an adult to mandatory life without parole.



Giovanni did not meet with his court appointed attorney until the first day of trial. His attorney did not call any witnesses on his behalf and, against his wishes, would not allow Giovanni to testify. Giovanni's attorney never informed him that a plea was offered. When Giovanni received his paperwork after sentencing, he learned that the prosecutor had proposed a term of 13–22 years in exchange for a guilty plea. Giovanni remembers that his attorney asked him to sign a number of papers during trial but, because he could not read, he did not realize he was rejecting a plea offer.

Since his incarceration Giovanni has learned to read and write, and has also obtained his GED. He is in the fourth year of his sentence and will spend the rest of his life in prison.

The features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings. Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it. They are less likely than adults to work effectively with their lawyers to aid in their defense. Difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions by one charged with a juvenile offense. These factors are likely to impair the quality of a juvenile defendant's representation.

SUPREME COURT JUSTICE ANTHONY KENNEDY

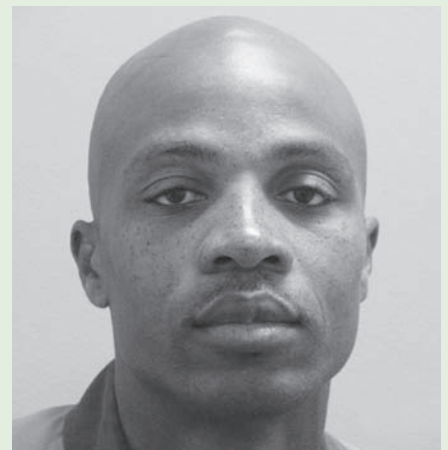
Graham v. Florida

BEKEIBA HOLLAND

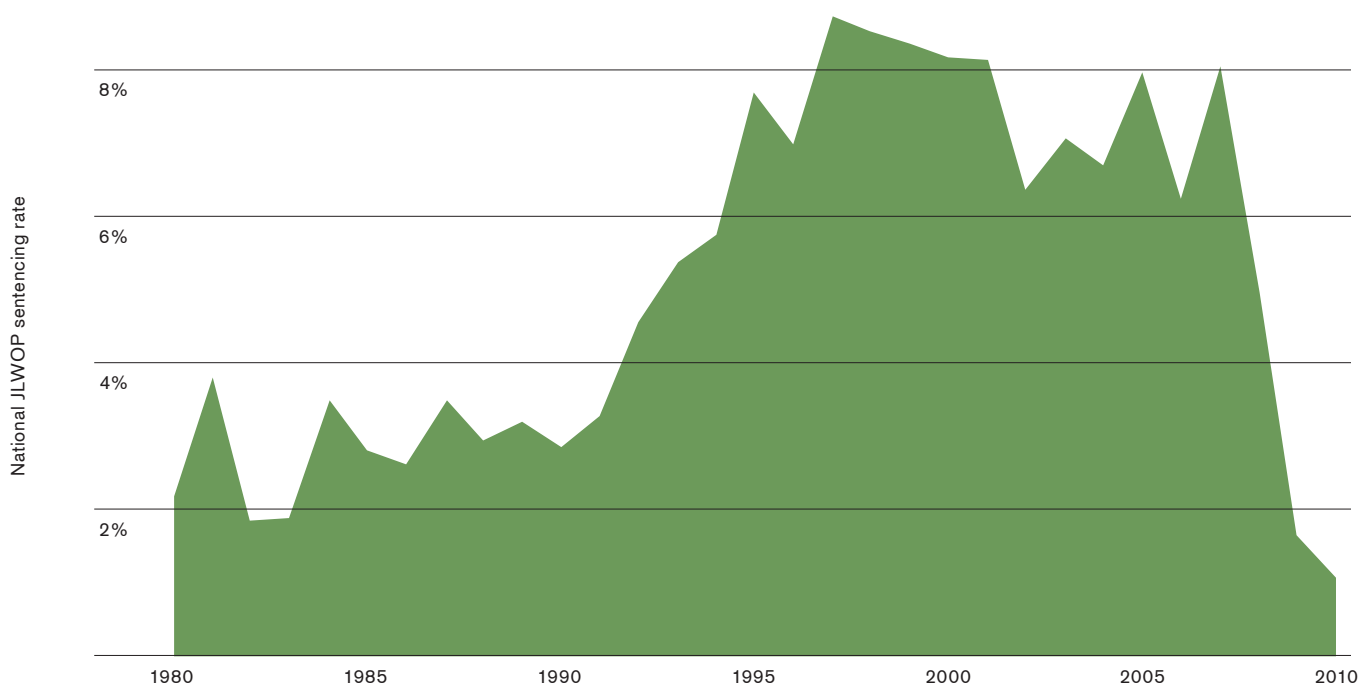
Bekeiba Holland was 17 years old when he was accused of accompanying his older brother and his brother's 19-year-old friend to commit a break-in at a known drug house, during which two people were killed. Although Bekeiba declared his innocence, the prosecutor produced a witness who claimed to have seen Bekeiba with the other two defendants. The two adult co-defendants were convicted of first-

degree homicide and Bekeiba was convicted of aiding and abetting. All, including Bekeiba, received life without parole sentences. Bekeiba has claimed that he was never at the scene, did not know the victims, and is completely innocent.

Bekeiba's family hired an attorney who did not present testimony of witnesses who would have provided Bekeiba with an alibi. This attorney, who had several previous disciplines, was finally disbarred a few years after Bekeiba's trial.



Evolving standards of decency & Michigan's exceptionalism



In the late 1990s the laws that governed youth punishment became increasingly harsh, as states like Michigan began to treat children as adults. The most severe sentence available for any adult in Michigan—life without parole—was increasingly imposed on young people and peaked in 1998.

FIGURE 7 (ABOVE) THIRTY YEARS OF NATIONAL JLWOP SENTENCING

JLWOP sentencing rates in the United States (1980–2010) according to year of offense and adjusted for reported homicides.

Oklahoma	39
Washington	30
Maryland	21
Tennessee	12
Delaware	10
Connecticut	5
Oregon	5
S. Dakota	5
Idaho	4
New Hampshire	2
Ohio	2
N. Dakota	1
Utah	1
Wyoming	1
Alaska	0
Hawaii	0
Kansas	0
Kentucky	0
Maine	0
Montana	0
New Jersey	0
New Mexico	0
New York	0
Rhode Island	0
Vermont	0
W. Virginia	0

Since then, our nation's understanding of adolescent development, theories of punishment, and judicial rulings have resulted in more children being treated as juveniles. Fewer states are now willing to impose the life without parole sentence on its youth.

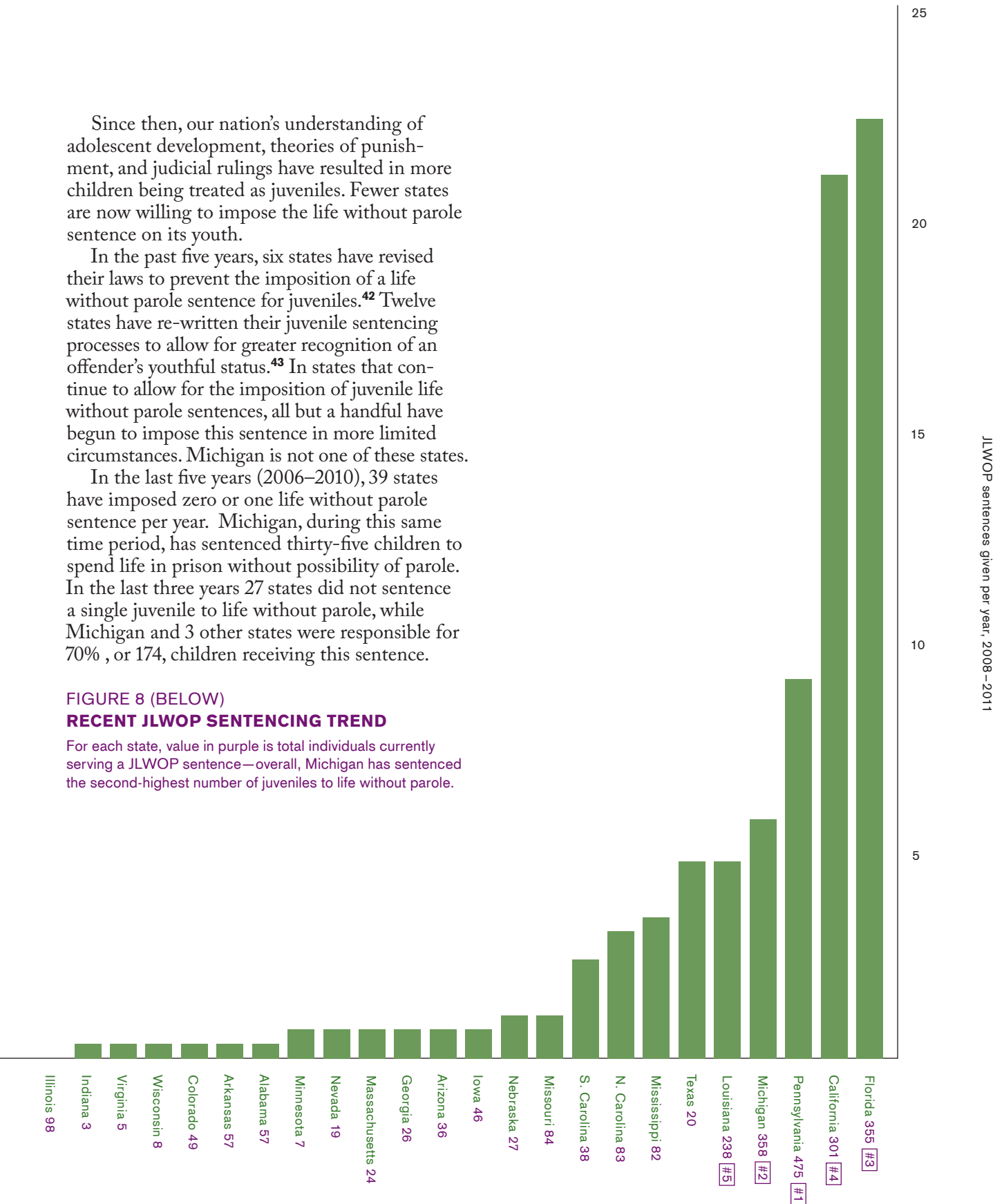
In the past five years, six states have revised their laws to prevent the imposition of a life without parole sentence for juveniles.⁴² Twelve states have re-written their juvenile sentencing processes to allow for greater recognition of an offender's youthful status.⁴³ In states that continue to allow for the imposition of juvenile life without parole sentences, all but a handful have begun to impose this sentence in more limited circumstances. Michigan is not one of these states.

In the last five years (2006–2010), 39 states have imposed zero or one life without parole sentence per year. Michigan, during this same time period, has sentenced thirty-five children to spend life in prison without possibility of parole. In the last three years 27 states did not sentence a single juvenile to life without parole, while Michigan and 3 other states were responsible for 70% , or 174, children receiving this sentence.

FIGURE 8 (BELOW)

RECENT JLWOP SENTENCING TREND

For each state, value in purple is total individuals currently serving a JLWOP sentence—overall, Michigan has sentenced the second-highest number of juveniles to life without parole.



Michigan has the second highest number of children in the world sentenced to spend their life in an adult prison without possibility of parole.

KARY MOSS

Director, ACLU of Michigan

Michigan continues to have the second-highest number of juveniles serving life without parole in the country. This is not because the state has a higher youth population, or because Michigan young people commit more crime. To the contrary, juvenile arrest rates in Michigan are actually lower than national averages.⁴⁴ Despite the fact that children in Michigan account for merely 3% of the nation's youthful population,⁴⁵ our state accounts for nearly 14% of all children sentenced to life without the possibility of parole. Even Texas, despite its notorious reputation for harsh punishment, recognized the indecency of designating any child irredeemable and abolished its life without parole sentence for youth in 2009.⁴⁶

What is different in Michigan is the automatic treatment of 14- to 17-year-olds as adults for a wide range of homicide related offenses, the requirement that 17-year-olds be treated as adults for all criminal charges, and the mandatory sentence of life without possibility of parole for all youth convicted of 1st degree homicide related offenses.

Absent a change in Michigan allowing adolescents to be viewed individually and constituent with their child status, the state's harsh, mandatory laws will continue to push Michigan to lead the nation in these sentences.

“Well, the first thing the Court is going to say, I don't know what good it will do, I find the limitations of this statute to be totally unfair to everyone concerned. However, I have to live with them and deal with them... So looking at all of it, I don't think I have a choice. I think I must sentence him as an adult, and I am going to impose a life sentence on the first count of first-degree felony murder... I have no choice.” (Hon. Clarice Jobes, sentencing 16-year-old Jose Miguel Burgos to life without possibility of parole for his involvement in a shooting that occurred during an intended drug transaction)

“There are two sides to the argument [of youth sentencing]. On one hand, the people who would participate in that conduct are extremely dangerous. On the other, you're basically throwing the kid away... I have no problem keeping someone in prison who ought to be there... But, ten years later, someone ought to be able to look at it and see if [imprisonment] still makes sense.” (Bay County Circuit Judge Harry P. Gill, “Locked up for life,” *The Bay City Times*, Nov. 6, 2011)

1999

2010

40%

30%

20%

10%

JLWOP sentencing rate

Michigan

United States

FIGURE 9

COMPARING MICHIGAN & NATIONAL TRENDS

Best-fit lines for Michigan and the rest of the nation (excluding Michigan) according to the year of offense. Both data sets adjusted for homicide arrests.



State parties shall ensure that:

- A. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by a person below eighteen years of age;**
- B. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;**
- C. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.**

The cost of Michigan's laws and practice: human rights and fiscal responsibility

Michigan sentences 30% of its youth arrested for 1st degree homicide crimes to live the rest of their lives behind bars. This despite the fact that one-third of these young people did not themselves commit a homicide. Michigan inflicts this punishment on its youth at a rate four times greater than the rest of the nation, which imposes life without parole in just 7% of cases.

In Michigan there is no review mechanism to evaluate youth to determine if, upon maturity, they can safely return to the community. As a result, Michigan spends over \$10 million a year incarcerating individuals for crimes they committed as adolescents. A life without parole sentence for each adolescent, taking custody and health care costs into account, will exceed

\$2 million. To date, there are 376 children who have received this sentence in Michigan. Faced with an aging prison population, increased health care costs, and longer sentences, these costs are expected to grow.

“Life in prison without the possibility of parole gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, no hope. Maturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation... The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential.”
(Justice Kennedy, *Graham v. Florida*)

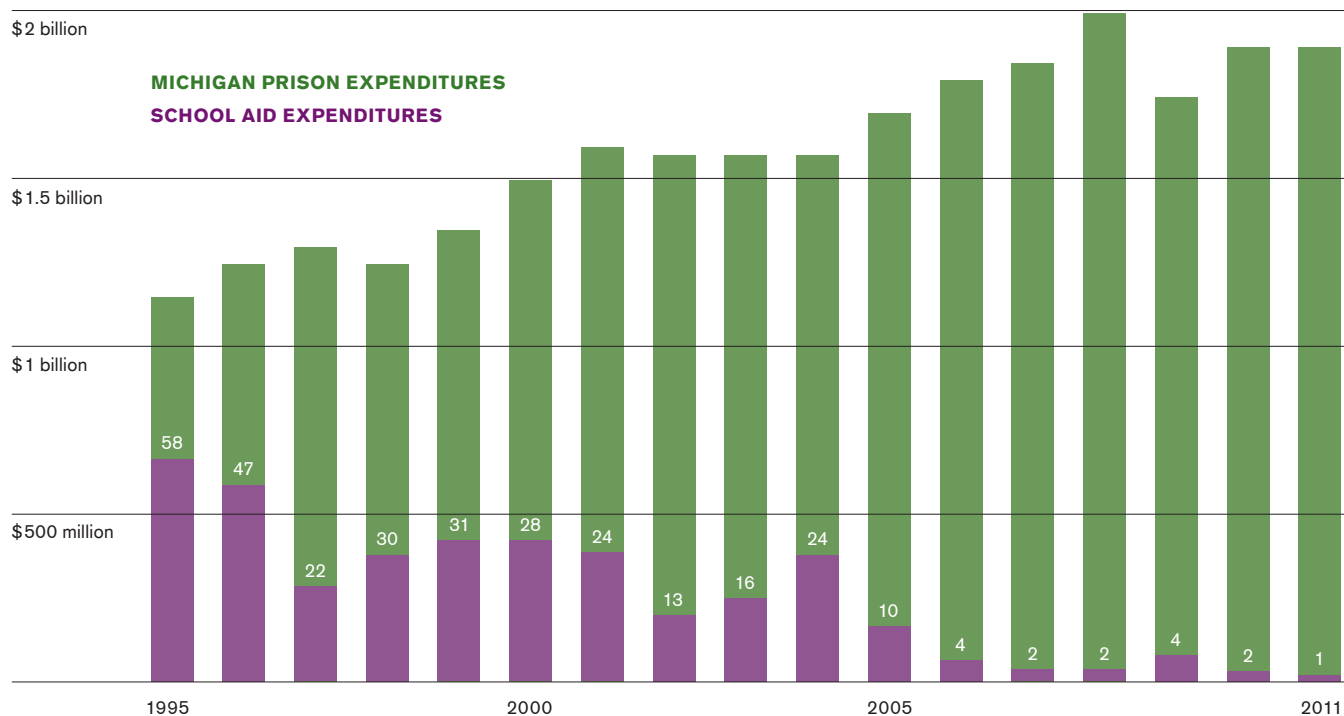


FIGURE 10
MICHIGAN EXPENDITURES: EDUCATION & INCARCERATION

Value shown above is School Aid spending as a percentage of spending by the Michigan Department of Corrections.

When a child is sentenced to spend the rest of his or her life in prison without a mechanism for re-evaluation or release, we all bear the fiscal, moral, and humanitarian costs. When it comes to the treatment of its youth, Michigan laws and practices are not only out of step with the rest of the United States, but are contrary to the basic human rights standards adopted by the rest of the world.

The Convention on the Rights of the Child (CRC) and the International Covenant on Civil and Political Rights (ICCPR) provide international recognition that youth need special protections that adults do not and that any juvenile charged with a criminal offense must

be treated consistent with their child status.⁴⁷ These documents, signed by every nation, recognize that children, even those who commit crimes, cannot be viewed as miniature adults. They require that children who commit criminal offenses be incarcerated for the shortest possible duration necessary⁴⁸ and punishing youth with life imprisonment sentences is expressly prohibited.⁴⁹ The United States has refused to ratify the CRC and, while ratifying the ICCPR, reserved the right in exceptional circumstances to treat juveniles as adults. Michigan's routine treatment of children as adults and mandatory sentencing scheme are contrary to the express limited reservations of the United States; to take such action only in exceptional cases.

The CRC affirms that the rights of every child—including those youth alleged, accused, or determined guilty under penal law—are to be treated in a manner consistent with promoting the child's innate dignity and worth. This means that state laws applied to youthful offenders must be constructed in a manner that accounts for the child's age, the fact that they lack control over their environment, and have less experience than adults.

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” (Convention on the Rights of the Child, Article 3)

Michigan's failure to protect the basic human rights of its children has raised the concern of the U.N. Human Rights Committee, the U.N. Committee Against Torture, the U.N. General Assembly, and the Committee on the Convention for the Elimination of All Forms of Racial Discrimination.

Cost of K-12 education
for one pupil, 1998–2010:

\$101,361

Cost of incarceration for
one youth prisoner, 1998–2010:

\$323,995

Conclusion: a call for basic decency

Calls for reforming Michigan's laws sentencing youth to life without parole have come from all quarters—the judiciary, law enforcement, faith communities, human rights advocates, and families of both victims and youth.

Many judges oppose the law because it prohibits any individualized consideration of the child defendant. Judges are not only barred from evaluating mitigating factors such as the defendant's age, maturity level, family history, and capability for rehabilitation, but are also prohibited from considering their level of involvement in the crime.

Many in the law enforcement community also recognize a need for different treatment of youth.

“While I found rare a youth who seemed quite malignant in his orientation, most I dealt with were typical adolescents. The young offender’s need for approval and belonging were the motivations for being part of a criminal enterprise and the crime of homicide, while predictable to any adult observer, was not anticipated by the youth. Anyone who has raised a child or worked with them professionally knows that adolescence is hormone driven and that peer esteem and belonging are often the most important parts of any decision a youth person makes.” (Pamela K. Withrow, retired warden at Michigan Reformatory)

Former directors of the Michigan Department of Corrections have acknowledged a greater need for an individualized approach in sentencing practices and support abolishing life without parole sentences for youth.

“When you put a 14-year-old in an adult system, you’ve given up. Adult prisons are not designed for juveniles.” (Patricia Caruso, former director of the Michigan Department of Corrections)

Groups as diverse as Right on Crime, The National PTA, The Boy Scouts, Mothers Against Murders, National Black Police Association, National Alliance of Faith and Justice, former family court judges, The American Medical Association, American Psychological Association, and United Methodist Church General Board of Church and Society have supported abolishing this sentence in favor of giving youth a chance for release upon maturity and rehabilitation.

This approach also makes sense fiscally. The cost of housing youthful defendants for the remainder of their lives is expensive, both morally and fiscally. Michigan is one of only four states that spend more on corrections than it does on higher education.⁵¹ Consider, for instance, that the Michigan Department of Corrections prison population has tripled in the last 20 years. Even more alarming, the Michigan Department of Corrections budget has grown from \$193 million in 1980 to \$1.94 billion in 2011.⁵² Michigan taxpayers could spend up to \$2 million to house a single juvenile offender for the duration of his or her natural life.⁵³

A financially responsible solution to these growing corrections costs would be to allow for a review of the youth offender; to determine years later whether that individual continues to pose a threat to public safety or whether that individual has demonstrated maturation and rehabilitation.

Faith-based supporters from across the state have also rallied to support the abolishment of the juvenile life without parole sentence as a moral imperative because it is fundamentally at odds with the principles of restorative justice embraced by interfaith traditions. As a society, the foundation for the protection of our children is contrary to a system of punishment that denies forgiveness and redemption to youth.

“[We] cannot support policies that treat young offenders as though they are adults. The actions of the most violent youth leave us shocked and frightened and therefore they should be removed from society until they are no longer dangerous. But society must never respond to children who have committed crimes as though they are somehow equal to adults, fully formed and conscious and fully aware of their actions.” (Catholic Bishops of the South, 2000 USCCB Statement, “Responsibility, rehabilitation, and restoration: a Catholic perspective on crime and criminal justice”)

BOSIE SMITH

In 1992 Bosie Smith was involved in the stabbing death of an adult male during a fight. Despite the fact that the adult male who initiated the fight was eight years older and twice the size of 103-pound Bosie, the jury rejected Bosie's claim of self-defense and convicted him on the charge brought by prosecutors: first-degree murder. At the time of his conviction, Bosie had completed schooling through the



eighth grade. He was charged and tried as an adult without a judicial waiver hearing or any consideration of his juvenile status, mental age, or maturity.

“I wish I had some type of options because of the sentence that’s mandatory... I truly wish that it was a sentence of, for instance... any number of years up to life. But I don’t have that option... there’s no option with the Court.” (Trial Judge Hon. William F. Ager, Bosie Smith sentencing hearing, 1992)

AMY BLACK

Amy Black was 16 years old when, in 1990, her 19-year-old boyfriend stabbed a man to death. Amy participated in the robbery and she helped cover up the murder. She was convicted of aiding and abetting first-degree murder.

“I am sure that you have a lot of good points. I am sure, based on the testimony of several people who

came in here to testify about your change in the last six months... you have the potential of making the best of what the rest of your life has to offer... The legislature has chosen to take away the judge’s discretion in your case, and I have no choice in the sentence on the first-degree murder charge.” (Hon. Ronald H. Pannucci, Muskegon County Circuit Court, Amy Black sentencing hearing, 1991)



“[T]he sentence is mandatory and there is nothing that I can do about it, and if there were, I would give some consideration in this case, but there is nothing that I can do about it, because the sentence is already set by law and there is nothing I can do about that.” (Hon. Henry Heading, sentencing 15-year-old Robert Morton to life without possibility of parole)

RIGHT ON CRIME

Described as a “conservative solution” to the cost and public safety concerns of incarceration, Right on Crime advocates for policy reform to provide review for those convicted of crimes committed under the age of 18 and evaluate their ability to safely return to society. Right on Crime states that, “Victims should be notified about sentencing reviews, which will not guarantee release, but will ensure tax dollars are not wasted on people who have served time in prison for crimes committed as juveniles and no longer pose a threat to society. This is a fair, cost-effective, age-appropriate way to ensure that juveniles are held accountable for harm they have caused, which offers them an opportunity to redeem themselves.”⁵⁰

Recommendations

The U.S. Supreme Court recently ruled that youth, convicted of non-homicide crimes before their eighteenth birthday and sentenced to life in prison, must be given a meaningful and realistic opportunity for release to rejoin society. Ruling that a life without parole sentence is cruel and unusual punishment for these children, the Court recognized that adolescents are simply different than adults and these differences mean they are not as culpable for their actions and cannot be punished the same as adults. While recognizing that youth must be punished for their unlawful acts, the court held that their child

status and unique capacity for growth must be taken into account when formulating an appropriate and proportional punishment for acts committed when still a child.

We recommend the following reforms to Michigan's mandatory punishment system, which fails to recognize the different culpability and rehabilitation potential of a child as compared to an adult, and to restore proportional and fair sentences for children who break the law but are deserving of a second chance upon maturation and rehabilitation:

1. Abolish Michigan's sentence of life without the possibility of parole for children who commit homicide offenses prior to the age of 18;
2. Require that a child's status, lack of control of their environment, susceptibility to peer pressure, lack of experience, immaturity, lesser culpability, underdeveloped sense of consequences, and unique capacity for growth be taken into consideration in imposing an appropriate proportional sentence of children convicted of homicide offenses occurring before their 18th birthday;
3. Provide for judicial resentencing for all individuals currently serving a life without parole sentence for an offense committed prior to their 18th birthday;
4. Provide an opportunity for parole for any youth having served ten years of a life sentence with annual reviews thereafter and mandatory public hearing every five years;
5. Amend Michigan's parole statute (MCL 791.235) to require:
 - *presumptive parole of any child sentenced to a life offense for acts committed prior to the age of 18;*
 - *the Parole Board to give greater weight to a youth's institutional record after maturation;*
 - *the Parole Board to take into consideration an individual's youthful status at the time of the offense, as a mitigating factor;*
 - *the Parole Board to waive an individual's lack of programming, education or work as a negative factor where lack of programming, work or education was due to a life without parole sentence and/or the individual's youthful status;*
6. Amend MCL 712A.2a and 712A.4 to eliminate automatic waivers of youth to circuit court and require a judicial waiver of any youth under the age of 18 prior to being tried and sentenced as if they were adults;
7. Prohibit the incarceration of any minor child under the age of 18, in an adult facility;
8. Require each county to maintain public data on the processing of youth under the age of 18 for criminal acts, including the age, date, race, gender and outcomes of, 1.) youth processed through the juvenile court system, 2.) youth designated for a blended or delayed sentence, and 3.) youth prosecuted in adult court;
9. Require CLE training as a prerequisite for any counsel appointed to represent a youth under the age of 18 charged with a homicide crime.

Methodology

This report is based on publicly available data produced by the Michigan Department of Corrections in April 2011, and from responses to surveys from individuals originally charged with first-degree murder in Michigan for crimes committed as youth and sentenced since 1975. One-quarter of all individuals whose original charge was first-degree murder could not be surveyed since they were no longer incarcerated. We received completed surveys from 87% of individuals who were contacted. Court documents such as trial transcripts, Pre-Sentence Investigation Reports, and Court of Appeals decisions were used to corroborate data acquired in the surveys. The MDOC's Offender Tracking Information System was also referenced to supplement the data. Follow-up interviews with the juveniles' trial or appellate counsel were used to obtain missing information.

Much of the data herein are based on MDOC data from 870 individuals and survey data from 573 individuals. The national trend analysis relied upon public records regarding juveniles serving life without parole sentences, gathered by The Sentencing Project in June 2010, and FOIA responses from state departments of corrections in 2011 and early 2012. The statistics on disciplined attorneys was obtained by examination of notices of discipline recorded in the "Disciplined Attorneys" database kept by the State of Michigan Attorney Discipline Board. Notices of discipline did not necessarily stem from juvenile criminal cases.

Notes

- 1 Sheryl Pimlott Kubiak & Terrence Allen, "Public Attitudes Toward Juveniles Who Commit Crimes: The Relationship Between Assessments of Adolescent Development and Attitudes Toward Severity of Punishment," *Crime & Delinquency* (2012).
- 2 *Id.* at 83.
- 3 Angela Wittrock, *Juvenile Lifers Spark Second Thoughts on Law as Pace of Crime Slows*, MLive.com, http://www.mlive.com/news/index.ssf/2011/11/juvenile_lifers_spark_second_t.html (accessed April 6, 2012).
- 4 See Laurence Steinberg, "A Social Neuroscience Perspective on Adolescent Risk-Taking," *Developmental Review* (2008).
- 5 See N. Dickon Reppucci, "Adolescent Development and Juvenile Justice," *American Journal of Community Psychology* (1999).
- 6 *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010).
- 7 *Id.* at 2030.
- 8 The seven states are Delaware, Florida, Massachusetts, Michigan, Mississippi, New Hampshire, and Pennsylvania.
- 9 Mich. Comp. Laws §712a (1972).
- 10 Neelum Arya, Campaign for Youth Justice, "State Trends: Legislative Victories from 2005 to 2010 Removing Youth from the Adult Criminal Justice System," April 2011, available online at: <http://www.campaignforyouthjustice.org/key-research/national-reports.html#statetrends>, April 2011 (accessed April 6, 2012).
- 11 Mich. Comp. Laws §764.1f (2006). Under the traditional waiver of jurisdiction, the prosecutor is required to make a motion before the juvenile court judge. The judge must then hold a hearing to determine whether the interest of the child and the public are best served by transferring the juvenile to adult court. The factors the court is required to evaluate include: seriousness of the crime, the juveniles culpability in the offense, the juvenile's prior record, the juvenile's programming history, and the adequacy of programming and punishment available in the juvenile system. See Mich. Ct. R. 3.950.
- 12 Between the years of 1988 and 1997, a judge could sentence the youth as a juvenile if under 17, requiring release at the age of 21. The court could not impose a lesser sentence than life without parole if sentenced as an adult.
- 13 Mich. Comp. Laws §712A.2d (2006).
- 14 The states that mandate LWOP for accomplices to felony murder include Alabama (Ala. Code §13A-6-2(a)(3)), Arkansas (Ark. Code Ann. §5-10-101(2)(B)), Florida (Fla. Stat. Ann. §777.011), Iowa (Iowa Code Ann. §703.2; Conner v. State, 362 N.W.2d 449, 455 (1985)), Massachusetts (Com. v. Nychypor, 643 N.E.2s 452, 455-56 (1994)), Michigan (People v. Aaron, 299 N.W.2d 304, 329 (1980)), Minnesota (Minn. Stat. §609.05, subd 2; §609.185(a)(3); State v. Pierson, 530 N.W.2d 784, 789 (1995)), Mississippi (§97-3-19(2)(e); Prater v. State, 18 So.3d 884, 891-92 (2009)), Nebraska (Neb. Rev. Stat. §28-206), New Hampshire (N.H. Rev. Stat. Ann. §626:8; State v. Rivera, 27 A.3d 676, 679-80 (2011)), North Carolina (N.C. Gen. Stat. §14-17; State v. Yarborough, 679 S.E.2d 397, 403 (2009)), Pennsylvania (Pa. Cons. Stat. Ann. §2502(b)), South Carolina (S.C. Code Ann §16-3-20; State v. Crowe, 188 S.E.2d 379, 382 (1972)), and South Dakota (S.D. Codified Laws §22-3-3; Miller v. Leapley, 472 N.W.2d 517, 581 (1991)).
- 15 *Graham*, 130 S.Ct. at 2031.
- 16 The head prosecutor in Michigan, Attorney General Bill Schuette, referenced the Heritage Report, "Adult Time for Adult Crime: Life Without Parole for Juvenile Killers and Violent Teens" (2009) in arguing that the United States is not in violation of international human rights norms as the United States is not a signator to the Convention on the Rights of the Child.
- 17 This number is a conservative estimate of the average amount of time those adults, who were charged with 1st degree homicide, negotiated pleas and have since been released, spent behind bars as it includes both time spent in jail before sentencing and the parole period after release.
- 18 *U.S. v. Ruiz*, 536 U.S. 622, 632 (2002).
- 19 Daniel, M. Filler, Silence and the racial dimension of Megan's Law, 89 Iowa L. Rev., 1535, 1559 (2004).
- 20 *Id.* at 1561.
- 21 *Graham*, 130 S. Ct. at 2032.
- 22 Thomas Grisso, *Clinical Evaluations for Juveniles' Competence to Stand Trial: A Guide for Legal Professionals*, 13 (2005).
- 23 *People v. McCauley*, 287 Mich. App. 158, 163; 782 N.W.2d 520, 524 (2010).
- 24 *Id.* at 164, 782 N.W.2d at 524.
- 25 *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2397 (2011).

- 26 *Id.* at 2397, citing *Roper v. Simmons*, 543 U.S. 551, 569 (2005).
- 27 The Michigan parole board is vested with sole authority to determine whether a prisoner should be granted release. See Mich. Comp. Laws Ann. §791.235 (2006).
- 28 We use the terms shooter and non-shooter to differentiate between those juveniles who committed the homicide, and those who were found guilty not because they committed the homicide, but because they participated in the underlying felony or in some way aided the person who homicide. We recognize some homicides were not the result of gun violence. However, 72% percent of all homicides involving juveniles involved the use of guns, all of which were the legal property of adults. See Office of Juvenile Justice and Delinquency Prevention, "Statistical Briefing Book," December 2001, available online at: <http://www.ojjdp.gov/ojstatbb/offenders/qa03103.asp?qaDate=2009> (accessed April 6, 2012).
- 29 Eileen Poe-Yamagata and Michael A. Jones, National Council on Crime and Delinquency, "And Justice for Some, Differential Treatment of Youth of Color in the Justice System," January 2007, available online at: http://nccd-crc.org/nccd/pubs/2007jan_justice_for_some.pdf, (accessed April 6, 2012).
- 30 These estimates come from the most recent data available, which is 2008. National Center for Juvenile Justice, "Easy Access to Juvenile Court Statistics: 1985-2008," for more information, see: <http://www.ojjdp.gov/ojstatbb/ezajcs/> (accessed April 6, 2012).
- 31 United States General Accounting Office, "Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities," 1990, available online at: <http://www.gao.gov/assets/220/212180.pdf> (accessed April 6, 2012).
- 32 Prosecutors with limited resources may choose to pursue cases perceived as more disturbing to a majority of the community and which receive a significant amount of publicity. See e.g. Hans Zeisel, Race Bias in the Administration of the Death Penalty: The Florida Experience, 95 Harv. L. Rev. 456, 466-67 (1981).
- 33 Legal scholars have acknowledged that youth are particularly vulnerable to false confessions. See, e.g. Steven A. Drizin & Richard A. Leo, The Problem of False Confessions in the Post-DNA World. 82 N.C. L. Rev. 891, 945 (2004)(describing the over-representation of youth in false confession cases).
- 34 Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §5633 (2006).
- 35 In the fall of 2011, a UN expert on torture called on all countries to ban the practice of solitary confinement, citing the severe mental pain and suffering experienced by those with mental disabilities and juveniles. For more information, see Special Rapporteur, Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, delivered to the General Assembly, A/66/268 (Aug. 5, 2011).
- 36 Thirty-eight percent (38%) of youth sentenced to life without parole were represented by counsel that have been publicly sanctioned or disciplined by the Michigan Bar Association for egregious violations of ethical conduct.
- 37 Exec. Order No. 2011-12, Indigent Defense Advisory Commission, Executive Office of the Governor, available online at: http://www.michigan.gov/documents/snyder/EO_2011-12_366247_7.pdf (accessed April 6, 2012).
- 38 American Civil Liberties Union, "Faces of Failing Public Defense Systems: Portraits of Michigan's Constitutional Crisis," 2011, available online at: <http://www.aclu.org/racial-justice/faces-failing-defense-systems-portraits-michigans-constitutional-crisis> (accessed April 6, 2012).
- 39 National Legal Aid & Defender Association, "A Race to the Bottom, Speed and Savings over Due Process: A Constitutional Crisis," June 2008, available online at: http://www.mynlada.org/michigan/michigan_report.pdf (accessed April 6, 2012).
- 40 Complaint at 31, *Duncan v. State*, 284 Mich.App. 246, 774 N.W.2d (2009), *aff'd* on other grounds, 486 Mich. 906, 780 N.W.2d 843 (2010), reconsideration granted, order vacated, 486 Mich. 1071, 784 N.W.2d 51 (2010) order vacated on reconsideration, 488 Mich. 957, 790 N.W.2d 695 (2010) and order reinstated, 488 Mich. 957, 790 N.W.2d, 695 (2010) and *rev'd*, 486 Mich. 1071, 784 N.W.2d 51 (2010) order vacated on reconsideration, 488 Mich. 957, 790 N.W.2d 695 (2010)(Nos. 278652, 278858, 278860).
- 41 The RAND Corporation reviewed Philadelphia's indigent defense system, and compared murder case outcomes for cases assigned to court-appointed private attorneys and those assigned to public defenders. The study found that public defenders significantly reduced both the conviction and amount of time served for their clients, as compared to those represented by court-appointed private attorneys. James M. Anderson & Paul Heaton, The RAND Corporation, "How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes," December 2011, available online at: http://www.rand.org/content/dam/rand/pubs/working_papers/2011/RAND_WR870.pdf (accessed April 6, 2012).
- 42 The following states now prohibit the LWOP sentence for youth in certain circumstances: Alaska, Colorado, Kansas, Oregon, Texas (for those under age 17) and Virginia.
- 43 The states include Connecticut, Illinois, Mississippi, Arizona, Colorado, Virginia, Delaware, Indiana, Nevada, Utah, Washington, and Texas. For more information, see Arya, "State Trends."
- 44 Michigan Committee on Juvenile Justice, "Michigan's Statewide Juvenile Crime Analysis Report," March 2008, available online at: <http://michigancommitteeonjuvenilejustice.com/publications/disproportionate-minority-contact.html> (accessed April 6, 2012).
- 45 US Census Bureau, State & County QuickFacts, available online at: <http://quickfacts.census.gov/qfd/states/26000.html> (accessed April 6, 2012).
- 46 Texas still allows the life without parole sentence for 17 year-olds. Tex. Penal Code Ann. §12.31.
- 47 International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR (No. 16) at 52, U.N. Doc. A/6316 (1966), entered into force Mar. 23, 1976, Art.24; Convention on the Rights of the Child (CRC), G.A. res. 44/25, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990, Art. 37(a).
- 48 For example, see CRC, Art. 37(b)("The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time").
- 49 See ICCPR, Art. 6(5)("Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age").
- 50 For more information, see <http://www.rightoncrime.com/priority-issues/juvenile-justice> (accessed April 6, 2012).
- 51 The Detroit Regional Chamber of Commerce, "Reforming Michigan's Corrections System," available online at: www.detroitchamber.com/index.php?option=com_content&view=article&id=716 (accessed April 6, 2012).
- 52 Wittrock, "Juvenile Lifers Spark Second Thoughts on Law as Pace of Crime Slows."
- 53 American Civil Liberties Union, Juvenile Life Without Parole Initiative, "Second Chances: Juveniles serving life without parole in Michigan prisons" 2004, available online at: <http://www.aclu.org/human-rights-racial-justice/second-chances-juveniles-serving-life-without-parole-michigan-prisons> (accessed April 6, 2012).

Where, after all, do universal human rights begin?
In small places, close to home —
so close and so small that they cannot
be seen on any maps of the world.

Yet they are the world of the individual person;
the neighborhood he lives in;
the school or college he attends;
the factory, farm, or office where he works.

Such are the places where every man,
woman and child seeks
equal justice,
equal opportunity,
equal dignity
without discrimination.

Unless these rights have meaning there,
they have little meaning anywhere.
Without concerted citizen action
to uphold them close to home,
we shall look in vain for progress
in the larger world.

