

Summary

“When I die, that’s when they’ll send me home.”

Approximately 227 youth have been sentenced to die in California’s prisons.¹ They have not been sentenced to death: the death penalty was found unconstitutional for juveniles by the United States Supreme Court in 2005. Instead, these young people have been sentenced to prison for the rest of their lives, with no opportunity for parole and no chance for release. Their crimes were committed when they were teenagers, yet they will die in prison. Remarkably, many of the adults who were codefendants and took part in their crimes received lower sentences and will one day be released from prison.

In the United States at least 2,380 people are serving life without parole for crimes they committed when they were under the age of 18. In the rest of the world, just seven people are known to be serving this sentence for crimes committed when they were juveniles. Although ten other countries have laws permitting life without parole, in practice most do not use the sentence for those under age 18. International law prohibits the use of life without parole for those who are not yet 18 years old. The United States is in violation of those laws and out of step with the rest of the world.

Human Rights Watch conducted research in California on the sentencing of youth offenders to life without parole. Our data includes records obtained from the California Department of Corrections and Rehabilitation and independent research using court and media sources. We conducted a survey that garnered 130 responses, more than half of all youth offenders serving life without parole in California. Finally, we conducted in-person interviews of about 10 percent of those serving life without parole for crimes committed as youth. We have basic information on every person serving the sentence in the state, and we have a range of additional information in over 170 of all known cases. This research paints a detailed picture of Californians serving life without parole for crimes committed as youth.

¹ In this report the words “youth,” “teen,” “juvenile,” “youth offender,” and “child” are used to mean someone under the age of 18.

In California, the vast majority of those 17 years old and younger sentenced to life without the possibility of parole were convicted of murder. This general category for individuals' crimes, however, does not tell the whole story. It is likely that the average Californian believes this harsh sentence is reserved for the worst of the worst: the worst crimes committed by the most unredeemable criminals. This, however, is not always the case. Human Rights Watch's research in California and across the country has found that youth are sentenced to life without parole for a wide range of crimes and culpability. In 2005 Amnesty International and Human Rights Watch published a report showing that nationally 59 percent of youth sentenced to life without parole are first-time offenders, without a single juvenile court adjudication on their records.

In 2007, Human Rights Watch surveyed youth offenders serving life without parole in California. In 45 percent of cases surveyed, youth who had been sentenced to life without parole had not actually committed the murder. Cases include that of a youth who stood by the garage door as a look-out during a car theft, a youth who sat in the get-away car during a burglary, and a youth who participated in a robbery in which murder was not part of the plan. Forty-five percent of youth reported that they were held legally responsible for a murder committed by someone else. He or she may have participated in a felony, such as robbery, but had no idea a murder would happen. She or he may have aided and abetted a crime, but not been the trigger person. While they are criminally culpable, their actions certainly do not fall into the category of the worst crimes.

Murder is a horrible crime, causing a ripple-effect of pain and suffering well beyond that of the victim. Families, friends, and communities all suffer. The fact that the perpetrator is legally a child does nothing to alleviate the loss. But societies make decisions about what to weigh when determining culpability. California's law as it stands now fails to take into consideration a person's legal status as a child at the time of the crime. Those who cannot buy cigarettes or alcohol, sign a rental agreement, or vote are nevertheless considered culpable to the same degree as an adult when they commit certain crimes and face adult penalties. Many feel life without parole is the equivalent of a death sentence. "They said a kid can't get the death penalty, but life without, it's the same thing. I'm condemned...I don't

understand the difference,” said Robert D., now 32 years of age, serving a life without parole sentence for a crime he committed in high school. He participated in a robbery in which his codefendant unexpectedly shot the victim.

The California law permitting juveniles to be sentenced to life without parole for murder was enacted in 1990. Since that time, advances in neuroscience have found that adolescents and young adults continue to develop in ways particularly relevant to assessing criminal behavior and an individual’s ability to be rehabilitated. Much of the focus on this relatively new discovery has been on teenagers’ limited comprehension of risk and consequences, and the inability to act with adult-like volition. Just as important, however, is the conclusion that teens are still developing. These findings show that young offenders are particularly amenable to change and rehabilitation. For most teens, risk-taking and criminal behavior is fleeting; they cease with maturity. California’s sentencing of youth to life without parole allows no chance for a young person to change and to prove that change has occurred.

In California, it is not just the law itself that is out of step with international norms and scientific knowledge. The state’s application of the law is also unjust. Eighty-five percent of youth sentenced to life without parole are people of color, with 75 percent of all cases in California being African American or Hispanic youth. African American youth are sentenced to life without parole at a rate that is 18.3 times the rate for whites. Hispanic youth in California are sentenced to life without parole at a rate that is five times the rate of white youth in the state.

California has the worst record in the country for racially disproportionate sentencing. In California, African American youth are sentenced to life without parole at rates that suggest unequal treatment before sentencing courts. This unequal treatment by sentencing courts cannot be explained only by white and African American youths’ differential involvement in crime.

Significantly, many of these crimes are committed by youth under an adult’s influence. Based on survey responses and other case information, we estimate that in nearly 70 percent of California cases, when juveniles committed their crime with codefendants, at least one of these codefendants was an adult. Acting under the

influence and, in some cases, the direction of an adult, however, cannot be considered a mitigating factor by the sentencing judge in California. In fact, the opposite appears to be true. Juveniles with an adult codefendant are typically more harshly treated than the adult. In over half of the cases in which there was an adult codefendant, the adult received a lower sentence than the juvenile.

Poor legal representation often compromises a just outcome in juvenile life without parole cases. Many interviewees told us that they participated in their legal proceedings with little understanding of what was happening. “I didn’t even know I got [life without parole] until I talked to my lawyer after the hearing,” one young man said. Furthermore, in nearly half the California cases surveyed, respondents to Human Rights Watch reported that their own attorney did not ask the court for a lower sentence. In addition, attorneys failed to prepare youth for sentencing and did not tell them that a family member or other person could speak on their behalf at the sentencing hearing. In 68 percent of cases, the sentencing hearings proceeded with no witness speaking for the youth.

While some family members of victims support the sentence of life without parole for juveniles, the perspective of victims is not monolithic. Interviews with the families of victims who were murdered by teens show the complex and multi-faceted beliefs of those most deeply affected. Some families of victims believe that sentencing a young person to a sentence to life without parole is immoral.

California’s policy to lock up youth offenders for the rest of their lives comes with a significant financial cost: the current juvenile life without parole population will cost the state approximately half a billion dollars by the end of their lives. This population and the resulting costs will only grow as more youth are sentenced to spend the rest of their lives in prison.

California is not the only state that sentences youth to life without parole. Thirty-eight others apply the sentence as well. However, movement to change these laws is occurring across the country. Legislative efforts are pending in Florida, Illinois, and Michigan and there are grassroots movements in Iowa, Louisiana, Massachusetts,

Nebraska, and Washington. Most recently, Colorado outlawed life without parole for children in 2006.

If life without parole for youth under age 18 were eliminated in California, other existing state law provides ample protection for public safety. California's next harshest penalty for murder secures a minimum of 25 years in prison. There are no reductions in the minimum time served for a murder conviction. Even then, parole is merely an option and won only through the prisoner's demonstrating rehabilitation. If they do earn release after 25 years or more, they are statistically unlikely to commit a new crime of any type. Prisoners released after serving a sentence for a murder have the lowest recidivism rate of all prisoners.

Public awareness about this issue has increased recently through newspaper and magazine articles and television coverage. With a significant number of the country's juvenile life without parole cases in its prisons, California has the opportunity to help lead the nation by taking immediate steps to change this unnecessarily harsh sentencing law.

Methodology

This report is based on data from the California Department of Corrections and Rehabilitation obtained in April 2007, as well as Human Rights Watch's media and court records searches, in-person interviews, and a survey of people in California serving life without parole for crimes committed under the age of 18.

Human Rights Watch made a Public Records Act request in June 2006 to the California Department of Corrections and Rehabilitation (CDCR) for public records regarding juveniles sentenced to life without parole. The data was provided to us in April 2007. The data from the CDCR includes name, prisoner number, race, gender, birth date, date of offense, age at time of offense, controlling county, and the facility where the individual was held at the time. According to this data, 227 individuals who were under 18 at the time of their crimes were sentenced to life without parole in California as of April 2007. All but four had been sentenced since 1990. Independent Human Rights Watch research determined that three of the names provided by the CDCR were not people serving life without parole, and four additional people who are not on the CDCR list were also sentenced to life without parole for crimes they committed as juveniles. These additional cases were found through interviews and general internet searches. Given the inaccuracies in the data provided to us by the CDCR we believe that there are likely additional youth offenders serving life without parole who are not on the list.

In 2006 and 2007, Human Rights Watch researchers, pro bono attorneys, and numerous volunteers used online legal and press resources to research individual California cases. Based on media sources and online court records, we found information pertaining to 173 of the 227 known cases.

In July 2007, Human Rights Watch sent a five-page survey to all people on the CDCR's list. A copy of the survey is included here in Appendix A. The survey permitted short narrative answers, and some respondents included addendums with lengthy answers. The cover letter explained the survey's purpose and informed recipients that their real name would not be used in published materials and that there would

be no personal gain from the information provided. One hundred twenty-seven people responded to the survey, representing more than 50 percent of the known population. The survey is five pages long and asks questions in five sectors, including personal background, information about the case, their experience of trial and sentencing, conditions in prison, and their feelings. Several sample responses are included in Appendix B.

Twenty-seven in-person interviews were conducted in California prisons, representing more than 10 percent of the California juvenile life without parole population. All but one of the interviews were carried out by Human Rights Watch researchers and volunteers; one was conducted by Patricia Arthur, a Senior Attorney at the National Center for Youth Law. No incentives were offered or provided to persons interviewed. Interviewees were assured of confidentiality and gave a signed consent for their information to be used by Human Rights Watch.

We conducted interviews in eight prisons, five in southern California and three in central or northern California. We selected interviewees based on several factors. First, we chose people whose cases were at least four years old to increase the likelihood that their appeals had concluded in order to avoid potential interference with their cases. Second, we sought locations in which there were several potential interviewees. We chose to conduct the interviews at a number of locations in order to obtain a variety of experiences and account for differences in inmate classification or specific prison policies. We looked for a racial or ethnic mix of interviewees that would provide a sample reflecting a racial makeup more or less similar to that of California's general population. Finally, where we had additional information about the nature of the case, we sought to select individuals representing a variety of cases.

Interviews were conducted at prisons, typically in a small room located in the visiting area. Although the room had a window, the door was closed for privacy. Some interviews took place in a large visiting room, and the interviewer and subject sat in a corner, as much as possible out of earshot of guards and other prisoners. In three cases, interviews were conducted through glass, with the interviewee and interviewer talking over a telephone. In those and one other case, interviewees had feet shackled and hands cuffed and locked to a chain around their waists.

Interviews lasted from 30 minutes to three and a half hours. In most cases there was one interviewer; in a few, two interviewers were present. Just one prisoner was interviewed at a time.

Much of the data used in this report is self-reported. Human Rights Watch did not have the resources necessary to obtain court records and transcripts of trials, which would have provided substantial additional data to that provided by survey respondents. California's criminal justice system is county-based, and has 58 counties. Each case would require a request, in some cases, in-person, for court records at the county courthouse where the case was heard. Many court records are already in storage due to the age of the case. Once records are obtained, a transcript of proceedings would have to be commissioned.

However, Human Rights Watch's survey and interviews were set up in ways to reduce the risk of informants providing misleading responses. For example, the anonymity of the information decreased the chance that respondents fabricated information for personal gain. Some questions were cross-checked for accuracy. In addition, while varying in scope and depth, information collected from other sources on over 170 of the 227 known cases of youth offenders serving life without parole, such as court opinions and newspaper accounts of cases, also allowed us to corroborate information reported in the survey, giving confidence in the general accuracy of survey responses and interview testimony.

Pseudonyms are used for all inmates and the facility where people are located, and other identifying facts are not revealed in the report. The level of violence in California's prisons and the likelihood that information people provided Human Rights Watch would be used by prisoners or others to cause harm makes the protection of subjects a priority. The topics addressed in the survey are deeply personal and concern difficult situations in the respondents' lives. People responding had varying degrees of trust that Human Rights Watch could protect them from retaliation. Some respondents expressed fear about whether the information might be used against them by other prisoners or guards. References to violence they have seen in prison, a description of the crime, or even an answer to

the question about what they wish they could convey to the victims is information that could result in retaliation.

Inmates were not the only people who were willing to share personal details of their lives for this report. Human Rights Watch also interviewed five family members of victims who had been murdered by juveniles and who shared with us deeply personal pain and loss. It was our intention to provide insight to the spectrum of victim perspectives on the issue of life without parole for juveniles. These individuals were found by searching online and by word of mouth. We contacted victims' rights groups, and asked for suggestions. One interviewee was referred by a chaplain, another was suggested by an interviewee who knew another victim with a very different perspective than her own. In another case we were able to identify the family member of a victim through the survey response. We then asked for permission to contact her. While this small group is in no way a representative sample of all victims, we hope their perspectives will provide some insight into the complexity and richness of victim responses. All of the victims interviewed were activists on different issues, including victims' rights, anti-violence work, mentoring at-risk youth, and abolition of the death penalty. The fact that they are activists made it possible for us to find them. In all cases, these victim family members agreed to the publication of their real names.

Recommendations

To the Governor of California

- Support the abolition of the sentence of life without parole for youth under the age of 18.
- Where youth are sentenced to prison terms, ensure meaningful opportunities for rehabilitation, education, and vocational training.
- Periodically assess the eligibility of youth offenders to parole.

To the California State Legislature

- Enact legislation abolishing the sentence of life without parole for youth who were under the age of 18 when they committed their crime.
- Enact legislation that creates meaningful opportunities for rehabilitation, education, and vocational training for people who are sentenced to life terms.

To State and County Officials

- Ensure indigent juvenile defendants facing life without parole receive adequate legal representation that meets their specific needs.

To State Judges

- Refuse to impose the sentence of life without parole on youth who committed their crime under the age of 18 on the grounds that California's law violates international law.

To California District Attorneys

- Support abolishment of the sentence of life without parole for juveniles in California law.
- Exercise the discretion provided under California law to recommend sentences other than life without parole for juveniles.

To Defense Attorneys

- Ensure that defendants and their families understand the procedures, defense strategies, and seriousness of the charges, including the possible sentence of life without parole, so that they can fully exercise their rights.
- Vigorously defend the rights of juvenile clients in adult court at all stages of the case, including trial plea bargaining and the sentencing phases.

Sara K.

Sara was raised by her mother who was addicted to drugs and abusive. She met her father only three times in her life.

Starting at age nine, Sara suffered from severe depression for which she was hospitalized several times. She attempted suicide on multiple occasions. At age 11, Sara met “G.G.,” a 31-year-old man. Soon after, G.G. sexually assaulted Sara and began grooming her to become prostitute. At age 13, Sara began working as a prostitute for G.G. She continued being sexually assaulted by him and being used as a prostitute until just after she turned 16, when she robbed and killed him.



Sara K. was 15 in this photo and 16 at the time of her crime.
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Sara had never been arrested before. Sara’s boyfriend’s friend who was much older and a rival of G.G. was involved in the murder but was never prosecuted, she said. A report to the court confirms that she had a much older male co-offender and states that she was highly vulnerable to exploitation by him.

Sara was tried as an adult and sentenced to the rest of her life in prison, even though the California Youth Authority (CYA), which is responsible for making pre-sentencing assessments, determined that she was amenable to the training and treatment offered in the juvenile system. In its evaluation of Sara, CYA concluded that Sara was motivated to make positive changes in her life and expressed a desire to participate in rehabilitative programming. A psychiatric evaluation concluded that she was treatable.

In 2007, Sara turned 29. Comparing herself to the 16-year-old she was 13 years ago, she said, “The way I think now is very different than the way I thought then.” In prison, she said, she does whatever she can to keep up her hope. “I survive in here spiritually. I can’t give up. I read. I do whatever I can to be a better person.”

—Human Rights Watch interview with Sara K.,
serving life without parole in California, April 6, 2007