



The
PRISONS AND CORRECTIONS SECTION
respectfully submits the following position on:

JUVENILE LIFE WITHOUT PAROLE SENTENCES

The Prisons and Corrections Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Prisons and Corrections Section only and is not the position of the State Bar of Michigan. To date, the State Bar does not have a position on this matter.

The total membership of the Prisons and Corrections Section is 145.

The position was adopted at a meeting of the Section's Council. The number of members in the decision-making body is 14. The number who voted in favor to this position was 8. The number who voted opposed to this position was 0. The number who abstained from this position was 0.



Report on Public Policy Position

Name of Section:

Prisons and Corrections Section

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Regarding:

Juvenile Life Without Parole Sentences

Date position was adopted:

May 6, 2006

Process used to take the ideological position:

The Policy Statement was presented to the members of the Council and a discussion was held. It was moved that the Policy Statement be adopted and it was.

Number of members in the decision-making body:

14 voting members

Number who voted in favor and opposed to the position:

8 voted yes; zero voted no; zero abstention

FOR SECTIONS ONLY:

- This subject matter of this position is within the jurisdiction of the section.
- The position was adopted in accordance with the Section's bylaws.
- The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:**Arguments for the position:**

The law has recognized that children under the age of eighteen are less responsible than adults. Children are presumed to lack the capacity to make decisions related to their education or medical treatment, vote, sign

contracts, use alcohol, or serve on juries.¹ Recent bills in the Michigan House and Senate would require students to be eighteen before being allowed to drop out of school.² For more than one hundred years, states have operated separate juvenile courts, formed on the premise that children are less responsible than adults and more likely to benefit from rehabilitative programs, and that they should be kept separate from adult criminals.

These historic assumptions have been supported by recent scientific research on brain development in adolescence showing that parts of the brain related to “executive functioning,” which includes judgment and decision-making abilities, are still developing throughout the teenage years. There is biological evidence that adolescents are less able to anticipate the effects of their actions and conform their behavior to the law, diminishing their capacity to form *mens rea* and their culpability under the law.³

Last year in Roper v. Simmons⁴ the U.S. Supreme Court ruled that execution of individuals convicted of crimes committed before the age of eighteen is cruel and unusual punishment, in light of the implications of recent findings on brain research and the historic recognition of the differences between children and adults. However, nationwide there are still thousands of individuals who have been sentenced to die in prison, without any consideration of parole, for crimes committed as juveniles.

National reports by the New York Times, Human Rights Watch, and Amnesty International have brought new attention to the number of juveniles sentenced to life without parole, and the inherent injustice in the sentence.⁵ Mandatory transfer and sentencing laws require that juveniles receive the maximum sentence even if they acted as accomplices to adults, and judges are unable to adjust the sentence to account for individual maturity, culpability, and potential for rehabilitation.⁶ Due to immaturity and incomplete brain development, juveniles are less competent to stand trial than adults,⁷ and are more likely to make false confessions or otherwise be wrongfully convicted.⁸ And once sentenced, adolescent defendants are sent to adult prisons, where they are at greater risk of assault, sexual abuse, and suicide.⁹

¹ Human Rights Advocates, “Administration of Justice Agenda Item 13: Life Imprisonment without Possibility of Release for Youth Offenders who were under the age of 18 at the time of committing the offense.” Report to the 60th Session of the UN Commission on Human Rights, citing Victor Streib, Execution and Life in Prison Without Parole for Kids who Kill, (Dec. 2002).

² Michigan HB 4029; SB 4 (2005).

³ Elizabeth Cauffman & Laurence Steinberg, “Immaturity of Judgment in Adolescence: Why Adolescents may be less culpable than adults”, 19 Behav. Sci. Law 741-760 (2000).

⁴ 543 U.S. 551; 125 S. Ct. 1183; 161 L. Ed. 2d 1 (2005).

⁵ See Adam Liptak, “Jailed for Life after Crimes as Teenagers,” The New York Times October 3, 2005; Human Rights Watch, Amnesty International. The Rest of Their Lives:Life without Parole Sentences for Child Offenders in the United States. (October 2005).

⁶ Second Chances: Juveniles Serving Life Without Parole in Michigan, ACLU of Michigan (2004).

⁷ Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Repucci, and Robert Schwartz, “Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants.” Law and Human Behavior, 27(4) (2003).

⁸ Steven Drizin & Richard Leo, “The Problem of false confessions in the post-DNA world.” (2004). Samuel Gross, Kristen Jacoby, Daniel Matheson, Nicholas Montgomery, & Sujata Patel, “Exonerations in the United States 1989 through 2003,” Gideon Project, OSI 2004.

⁹ James Austin, Kelly Johnson, & Maria Gregoriou, “Juveniles in adult prisons and jails: A National Assessment.” U.S. Department of Justice, Bureau of Justice Assistance. (October 2000), citing Community Research Center, “Juvenile Suicides in Adult Jails. Juvenile Transfer Series. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention,” (1980).

Human Rights Watch and Amnesty International report that Michigan has the third-highest number of juveniles serving life without parole, following Louisiana and Pennsylvania.¹⁰ This prevalence is not due to high crime rates, but rather Michigan's particularly harsh laws dealing with juveniles charged with serious crime. In Michigan, children may be sentenced to life without parole for first-degree murder, which includes both premeditated and "felony murder."

Michigan is one of only eleven states that excludes seventeen-year-olds from juvenile court jurisdiction altogether. Seventeen-year-olds are automatically considered to be adults for the purposes of criminal prosecution.¹¹ Roughly half of juvenile lifers in Michigan were seventeen years old at the time of the offense, and were never even considered for juvenile treatment.

Fourteen, fifteen, and sixteen year olds may be charged with first-degree murder in the criminal division of circuit court, or automatically transferred from juvenile to criminal court at the prosecutor's request.¹² This provision, often called the "automatic waiver," is now the predominant method for charging juveniles (under seventeen) with murder. Due to mandatory adult sentencing passed in 1996, once a juvenile is convicted in criminal court, a life without parole sentence is mandatory.¹³ The judge may not impose a juvenile disposition, or any shorter sentence, regardless of the individual's age, maturity, or involvement in the crime.

Children of any age may be charged with first degree murder in juvenile court, and the prosecutor may "designate" the case for adult proceedings. This is the only method for trying children under age fourteen as adults.¹⁴ The case stays before the juvenile court judge, and once convicted, that judge determines whether to sentence the juvenile to life without parole, order a juvenile disposition, or delay imposing any adult sentence while the youth receives a juvenile disposition.¹⁵ The third option is often called a "blended sentence," because a juvenile may be committed to a juvenile facility until age twenty-one, and then be sent to prison. This decision is based on statutory factors, including the seriousness of the offense, the juvenile's culpability, prior record of delinquency and responsiveness to delinquency programming, the dispositional options available, including adequacy of punishment or programming available.¹⁶

In designated cases, judges maintain some discretion to consider the individual juveniles culpability and capacity, and the sentencing decision is made after a trial and fact-finding, an advantage that criminal court judges do not have. So-called "blended" sentences allow the court to delay the decision to sentence a youth even further, providing the opportunity to assess the youth's progress in rehabilitative programming, and keeps young teenagers out of prison until they are more physically and mentally mature. However, juvenile courts are unable to impose a prison term less than life without parole. Once a youth reaches age twenty-one the court must decide whether to impose the adult sentence (life without parole) or to dismiss the case.

¹⁰ Human Rights Watch, Amnesty International. The Rest of Their Lives: Life without Parole Sentences for Child Offenders in the United States, (October 2005).

¹¹ MCL 712A.2.

¹² MCL 712A.2.

¹³ MCL 769.1.

¹⁴ MCL 712A.2d.

¹⁵ MCL 712A.18 (1)(n).

¹⁶ MCL 712A.18 (1)(n) (2006).

Problem 1:

Juvenile life without parole sentences present the same problems as executions with respect to differences in competency and criminal responsibility that are recognized in Roper v. Simmons. However, Michigan law does not recognize the differences between juvenile and adult offenders in imposing life without parole sentences.

Recommendation 1a: Michigan should consider statutory changes that would prospectively eliminate life without parole sentences for juveniles.

Recommendation 1b: Michigan should provide relief, in the form of parole eligibility, for individuals sentenced to life without parole as juveniles.

Problem 2:

Transfer and mandatory sentencing provisions enacted in 1988 and 1996, along with exclusion of seventeen-year-olds from juvenile court jurisdiction, create statutory presumptions that juveniles are equally responsible as adult offenders. The presumption that children are the same as adults for purposes of life without parole sentences is contrary to historic practice, common wisdom, and recent brain research. These provisions also rob the courts of discretion to consider individual juveniles' maturity, culpability or role in the offense, or potential for rehabilitation.

Recommendation 2a: Michigan should consider statutory and rule changes to address the statutory exclusion of seventeen-year-olds from juvenile court jurisdiction.

Recommendation 2b: Michigan should consider statutory and court rule changes that would reduce the transfer of juveniles to adult courts, and restore judicial discretion to impose juvenile or blended sentences.

Problem 3:

In cases tried in juvenile court, the dispositional alternatives are a life without parole sentence, or commitment to a juvenile facility until age 21. For a fifteen- or sixteen-year-old, the choice is between life without parole and a term of five years for a first-degree murder. There is no middle ground for prosecutors or jurists who are reluctant to send a child away forever, but do not want to let that child "get away with murder."

Recommendation 3a: Michigan should amend the current sentencing law, or add new provisions, so that courts may impose a term less than the mandatory adult sentence.

Recommendation 3b: Michigan should adopt changes to the sentencing guidelines to provide fair and reasonable administration of prison terms less than life without parole for youth convicted of first-degree murder.