



UNIVERSITY OF
SAN FRANCISCO

CHANGE THE WORLD FROM HERE

School of Law
Center for Law and Global Justice
2130 Fulton Street
San Francisco, CA 94117-1080
Tel 415.422.3330
Fax 415.422.5440

Tuesday, November 13th, 2012

Connecticut Sentencing Commission
450 Capital Avenue
Hartford, CT, 06106

Re: Nov. 29th Public Hearing Regarding Outlawing Long Juvenile Sentences Without Possibility Parole

Dear Connecticut Sentencing Commission-

We are writing to express our support for the Juvenile Reconsideration Proposal that would outlaw long sentences that are the equivalent of life without parole for juvenile offenders. International law and practice prohibits a sentence of life without the possibility of parole when applied to juveniles- a lengthy term of years sentence that precludes parole for the offenders natural life is the functional equivalent of juvenile life without parole. Accordingly, the Juvenile Reconsideration Proposal would bring Connecticut's juvenile sentencing practices in-line with international norms and obligations.

The United States is the only country in the world that currently imposes life without parole sentences on juveniles. Connie de la Vega & Michelle Leighton, *Sentencing our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. Rev. 983 (2008). While a few countries other than other than the United States have statutory language that arguably permits sentencing juvenile offender to life without parole, there is no known person to be serving such a sentence anywhere in the world other than the United States. *Id.*

Pursuant to *Graham v. Florida* and United States Supreme Court jurisprudence, the laws of other countries and international practice and opinion are relevant to the determination of whether a sentence violates the cruel and unusual clause of the Constitution. *Graham*, 130 S.Ct. at 2033-34; *see also Roper v. Simmons*, 543 U.S. 551, 577 (2005). International consensus is against sentencing a juvenile to life without parole, and the United States is party to treaties that explicitly forbid it.

The global consensus against using the death penalty and JLWOP for juveniles was instructive in the United States Supreme Court's decisions to abolish those sentencing practices as cruel and unusual punishments in *Roper* with respect to the death penalty in *Graham* with respect to JLWOP for non-homicide crimes. *Roper*, 543 U. S. at 578; *Graham*, 130 S.Ct. at 2033-34. Similarly, the international prohibition against life without parole terms for minors, as well as other international principles, are relevant to whether a lengthy term of years sentence is constitutional. As evidence of international

practice and opinion, *Graham* recognized that Article 37(a) of the Convention on the Rights of the Child (CRC), “prohibits the imposition of ‘life imprisonment without possibility of release...for offences committed by persons below eighteen years of age.’” *Graham*, 130 S.Ct. at 2034.

A term of years sentence that is the equivalent of juvenile life without parole also fit within the prohibitions of Article 37(a) of the CRC because there is no real possibility of release within his lifetime. Moreover, the oversight committee for the CRC specifically recommends, “parties abolish all forms of life imprisonment for offences committed by persons under the age of eighteen. For all sentences imposed upon children the possibility of release should be realistic and regularly considered.” Comm. on Rights of the Child, Children’s Rights in Juvenile Justice, General Comment No. 10, U.N. Doc. CRC/C/GC/10 par. 77 (Apr. 25, 2.007) (emphasis added). Also, Article 37(b) of the CRC provides that imprisonment be used only as a measure of last resort and for the shortest appropriate time. U.N. Convention on the Rights of the Child, GA Res. 44/25, Annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (Nov. 20, 1989). Because long term of years sentences provides no possibility of release and is not the shortest appropriate time available, it is out of step with the CRC and thus international practice and opinion.

Consistent with international law, practice and opinion, an irreducible sentence of life imprisonment cannot be imposed on a child in any European country. In fact, the majority of European countries do not allow life sentences to be imposed on children at all. See Dirk Van ZylSmit, *Outlawing Irreducible Life Sentences: Europe on the Brink?*, 23 Federal Sentencing Reporter, No. 1, 39-48 (October 2010). The maximum youth prison sentence or similar sanctions of deprivation of liberty vary between three years in Portugal, four years in Switzerland, 8 years in Denmark (Criminal Code sec. 33) 10 years in the Czech Republic (Criminal Code art. 79), Estonia (Penal Code art. 173), Germany (Youth Courts Law sec. 18), Slovenia (Penal Code art. 89) and 15 years in Romania (Penal Code art. 123) and even longer terms up to (theoretically) life imprisonment with the possibility for parole in England/Wales, the Netherlands or Scotland (in the latter cases restricted, however, to juveniles of at least 16 years of age). *Id.* In general, the maximum is fixed at 10 years, sometimes allowing an increase of penalties of up to 15 years for very serious crimes. *Id.*

The United States remains the only country in the world to sentence a juvenile to life without parole in practice. Connie de la Vega & Michelle Leighton, *Sentencing our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. Rev. 983 (2008). In a 2007 study, 10 countries were identified as having laws that could permit the sentencing of juvenile offenders to life without parole- Antigua and Barbuda, Argentina, Australia, Beliza, Brunei, Cuba, Dominica, Saint Vincent and the Grenadines, the Solomon Islands and Sri Lanka. *Id.* Since that time, additional research has clarified that such a sentence is not possible in Belize or Brunei, and that there are no known cases of such a sentence being imposed in the remaining countries.¹

¹ Additional research clarifies that “life sentence” in Belize means 18-20 years without parole. Second Periodic Report by Belize to the Committee on the Rights of the Child ¶ 85, U.N. Doc. CRC/C/65/Add.29 (July 13, 2004). In Brunei, while an offender under 18 may be detained during “His Majesty the Sultan and Yang Di-Pertuan’s pleasure,” the statute also provides that the child or young person (ages 14-18) may be released at any time and

The United States is a party to several treaties that have been interpreted by their oversight bodies to prohibit juvenile life without parole sentences. Under the Constitution, the states must uphold these treaty obligations. In determining whether the United States Constitution permits the challenged sentence, this Court should consider the mandates of the Supremacy Clause, which provides that “[a]ll Treaties made... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.” U.S. Const. art. VI, cl. 2. As Justice Stevens has stated: “[o]ne consequence of our form of government is that sometimes States must shoulder the primary responsibility for protecting the honor and integrity of the Nation.” *Medellin v. Texas*, 552 U.S. 491, 536 (2008) (Stevens, J. concurring). In a follow-up opinion on the denial of habeas corpus relief, Justice Stevens again emphasized the point: “I wrote separately to make clear my view that Texas retained the authority and, indeed, the duty as a matter of international law to remedy the potentially significant breach of the United States' treaty obligations...” *Medellin v. Texas*, 129 S.Ct. 360, 362 (2008) (Stevens, J., dissenting).

Accordingly, Connecticut has an obligation to ensure that its criminal punishments comply with the United States' international treaty obligations. Thus, this Sentencing Commission must consider treaties to which the United States is a party, including: (1) the International Covenant on Civil and Political Rights (“ICCPR”), 999 U.N.T.S. 171, entered into force, Mar. 23, 1976, ratified by the United States; and (2) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), 1465 U.N.T.S. 85, entered into force, June 26, 1987, ratified by the United States, Oct. 21, 1994. In ratifying the ICCPR, Congress stated, “The United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the State and local governments;...” . Senate Committee, on Foreign Relations, ICCPR, S. Exec. Rep. No. 102-23, at 19 (1992).

the case must be reviewed at least once a year. Children and Young Person's Order 2006, Section 45(1), (3), and (5). Four additional countries have been identified as having similar ambiguous statutory language - Zambia, Sierra Leone, Fiji, and Tonga - but there is no evidence that any of these countries in fact imposes JLWOP. Each of these countries is party to the Convention on the Rights of the Child. While the penal codes in these jurisdictions have ambiguous language regarding JLWOP, the wording of the statutes suggests that there remains some mechanisms for review of life sentences or for potential release. Section 25(1) of the Fijian Penal Code specifies that “the court shall sentence such person to be detained during the Governor-General's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Governor-General may direct, and whilst so detained shall be deemed to be in legal custody,” providing discretion in the sentencing. Tongan Penal Code Section 91(2) notes that “[e]very person who attempts to commit murder shall be liable to imprisonment for life or any less period,” and Tongan Courts have looked to human rights instruments regarding the validity of punishments. See *Fangupo v. Rex*; *Fa'ooa v. Rex* [2010] TOCA 17; AC 34 of 2009; AC 36 of 2009 (147 2010) (Tonga) (overturning sentence of judicial whipping because contrary to Tonga's international legal obligations under the Convention Against Torture). Additionally, in Sierra Leone, section 216 of the Criminal Procedures Acts specifies that the juvenile should be confined to a chosen place as may be directed by the president and for a stated period of time until a juvenile's reformation and transformation is guaranteed. Although this does not prohibit JLWOP, it does suggest that there is evaluation of juveniles during incarceration and upon rehabilitation the potential for release. Finally, the Penal Code Act of Zambia Section 25(2) notes that “the court shall sentence him to be detained during the President's pleasure; and when so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct.” This, in conjunction with subsection (3), which states that “the presiding Judge shall forward to the President a copy of the notes of evidence taken at the trial, with a report in writing signed by him containing such recommendation or observations on the case as he may think fit to make” indicates that some discretion remains after the juvenile has been sentenced.

In 2006, the Human Rights Committee, oversight authority for the ICCPR, determined that allowing a life without parole sentence contravenes Article 24(1), which states that every child shall have “the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State” and Article 7, which prohibits cruel and unusual punishment. Concluding Observations of the Human Rights Committee: The United States of America, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, para. 34, (Dec. 18, 2006). Article 14(4) of the ICCPR further requires that criminal procedures for juvenile persons should take into account their age and desirability of promoting their rehabilitation. International Covenant on Civil and Political Rights, Dec. 16, 1966, S. TREATY DOC. NO. 95020 (1992), 999 U.N.T.S. 171, Article 14(4).[hereinafter ICCPR].)

The Committee Against Torture, the official oversight body for the Convention Against Torture, in evaluating the United States' compliance with that treaty, found that life imprisonment of children “could constitute cruel, inhuman or degrading treatment or punishment” in violation of the treaty. Committee Against Torture, Conclusions and Recommendations of the Committee Against Torture: United States of America, at para. 34, U.N. Doc. CAT/USA/CO/2 (July 25, 2006).

As such, the Connecticut Sentencing Commission should adopt the Juvenile Reconsideration Proposal ensuring that juveniles, who would otherwise spend their lives in prison, have the hope of receiving a parole hearing.

Sincerely-

A handwritten signature in cursive script that reads "Dana Isaac".

Dana Isaac
Project to End Juvenile Life Without Parole
University of San Francisco, School of Law
Center for Law and Global Justice