The Juvenile Death Penalty Initiative

THE LEGISLATURES OF THE REMAINING 20* STATES SHOULD PASS LAWS PROHIBITING CAPITAL PUNISHMENT FOR THOSE WHO COMMIT THEIR OFFENSES WHEN UNDER THE AGE OF 18

SUCH A REFORM WOULD:

1) Reconcile the states’ criminal justice policies with other legal doctrines which recognize the immaturity of adolescents to make significant, life-altering decisions;

2) Recognize the substantial and recent research from the social and medical sciences which demonstrates that adolescents are developmentally different than adults, and while these differences do not excuse them from responsibility for criminal behavior, they do substantially lessen their culpability;

3) Reaffirm that adolescents -- because their personalities are not yet fixed -- are more amenable to rehabilitation and less deserving of the ultimate sanction of our criminal justice system; and

4) Align the states’ practices with the evolving standards of decency both within the United States and throughout the world.

*(19 states if one includes the fact that the Missouri Supreme Court found the juvenile death penalty cruel and unusual punishment under the 8th Amendment of the U.S. Constitution.)
A majority of states have recognized that subjecting adolescents to the death penalty is contrary to basic principles of American justice and to evolving standards of decency. Of the thirty-eight states that permit the death penalty, only twenty now have statutes permitting the execution of persons for crimes committed under the age of eighteen. Of those twenty states, only twelve have juvenile offenders on their death rows. Of those twenty states, only seven have carried out actual executions since the reinstatement of the death penalty in 1976.

- In 1988, the United States Supreme Court held that it would be cruel and unusual punishment under the Eighth Amendment of the United States Constitution to execute offenders under the age of sixteen. Since the Supreme Court’s decision, however, several states and the United States have modified their laws to abolish or restrict the application of the death penalty to juveniles.

- In 1988, when the federal death penalty was reinstated, and later in 1994 when it was further expanded, Congress specifically excluded offenders under the age of 18 from eligibility.

- In 1993, the Washington State Supreme Court eliminated the juvenile death penalty under state constitutional law. Two more states excluded juveniles when they reinstated the death penalty: Kansas (1994) and NY (1995).

- In 1999, the State of Montana ended the death penalty for juvenile offenders while the Florida Supreme Court raised the age of eligibility from sixteen to seventeen in its state.

- In 2002, the State of Indiana eliminated the death penalty for juvenile offenders.

- In 2002, the United States Supreme Court held (in Atkins v. Virginia) that executing the mentally retarded now constitutes cruel and unusual punishment. The Court stated that, “Because of their disabilities in areas of reasoning, judgment, and control of their impulses ... they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct” (emphasis added). According to neuroscientists, adolescents have diminished capacities identical to those of the mentally retarded.

- In 2003, the Missouri Supreme Court found the juvenile death penalty to be cruel and unusual punishment as a matter of U.S. Constitutional law.
• Thus far in 2004, both South Dakota and Wyoming enacted legislation eliminating the death penalty for juvenile offenders.

• In the midst of a national reexamination of capital punishment and discoveries regarding adolescence, other states have introduced legislation to eliminate the juvenile death penalty. These include: Kentucky, Florida, New Hampshire, Arizona, Virginia, Mississippi, Delaware, Alabama, and possibly others when legislatures go into session.

• Fewer and fewer juries are sentencing juveniles to death. In the entire United States, the rate declined to only 7 in 2000, 7 in 2001, 4 in 2002 and 2 in 2003.

THE STATES SHOULD CONSIDER AND RESPECT RECENT ADVANCES IN THE MEDICAL AND SOCIAL SCIENCES WHICH CONFIRM THAT ADOLESCENTS ARE DEVELOPMENTALLY DIFFERENT FROM ADULTS

The social and behavioral sciences have long known that adolescence is a transitional period of life where cognitive abilities, emotions, judgment, impulse control and identity are still developing. Teenagers, by their very nature, are less mature, less able to assess risk, make good decisions, and control anger. Similarly, they are more susceptible to peer pressure and other external influences. These traits are particularly common among the troubled youth who become embroiled in our justice systems during adolescence. The abilities of these youths to survive adolescence with their life prospects intact are also often affected by learning disabilities, behavior disorders, mental illness, abuse, neglect, and trauma.

Moreover, recent advances in medical research reveal that the normal adolescent’s brain is developing even into late adolescence. Utilizing the new technologies of brain imaging devices, scientists have found that those areas of the brain that regulate self-control, emotions, judgment, intelligence and identity (the frontal and temporal lobes and corpus callosum) do not stop developing until at least the age of eighteen. These findings contradict previously held beliefs that the brain was fully developed by fourteen. Such beliefs led some to the erroneous conclusion that teenagers were, therefore, fully responsible for their actions and not likely to benefit from rehabilitative interventions. However, we now know that because even their brains are not fully mature, they do not handle social pressure, instinctual urges, and other stressors the way adults do. This makes adolescents more prone than adults to immature, reckless and dangerous behavior.

As a result of these findings, organizations like the American Psychiatric Association and the American Academy of Child and Adolescent Psychiatry have followed the lead of the American Society of Adolescent Psychiatry and have recently adopted policies opposing the death penalty for offenders under the age of eighteen. This opposition is based more upon a scientific point of view than a legal or moral one.
ENDING THE JUVENILE DEATH PENALTY
WOULD RECONCILE A STATE’S PRACTICE WITH
LONG STANDING LEGAL PRINCIPLES BY WHICH PUNISHMENT IS
IMPOSED ACCORDING TO THE
DEGREE OF CULPABILITY OF THE OFFENDER

Given that adolescents are less mature, they are less culpable than adults who commit similar acts, but have no such explanation for their conduct. Indeed, immaturity is the reason we do not allow those under 18 to assume the major responsibilities of adulthood such as military combat service, voting, entering into contracts, serving on juries or grand juries or making medical decisions. We do not consider them mature enough to consume alcohol until they are 21. Moreover, because they are not fully developed, teens are more malleable and far more capable of change and rehabilitation than adults.

This is not to say that juvenile offenders do not know right from wrong and should not be seriously punished. It is to say that juveniles are, by definition, less culpable than adults and should not be subject to the ultimate level of punishment.

NEARLY ALL OF THE JUVENILE OFFENDERS ON
AMERICA’S DEATH ROWS WERE SEVERELY DAMAGED CHILDREN
SUFFERING FROM PSYCHOLOGICAL, FAMILY, AND NEUROLOGICAL
DISORDERS

A 1987 New York University Medical Center study of the juveniles on the death rows of four states revealed that every one suffered from some form -- or combination -- of neurological impairment, brutal sexual and/or physical abuse, psychotic disorders antedating incarceration or intellectual impairment.

This research was updated by Chris Mallet, Ph.D. in 2003 (Criminal Law Bulletin, Volume 39, No.4). Dr. Mallet gathered substantial information from a number of sources on 53 of the 80 juveniles then on America’s death rows. The study found that, “Each juvenile offender on death row experienced on average four separate traumatic life determinant factors during their childhood or adolescence.” Factors included family dysfunction, mental health disorders, abuse and neglect, mental retardation, learning problems, drug or alcohol addiction, poverty, child welfare, involvement in the juvenile justice system and organic brain damage.

These kinds of disturbances inhibit natural growth and development and, according to the American Society for Adolescent Psychiatry, profoundly “exacerbate the existing vulnerabilities of youth.”
THE STATES SHOULD JOIN THE GROWING NUMBER OF NATIONS WHICH HAVE RECOGNIZED THAT THE EXECUTION OF JUVENILE OFFENDERS VIOLATES INTERNATIONAL HUMAN RIGHTS STANDARDS

In continuing to execute juvenile offenders, the United States of America acts in defiance of international law and international consensus. Such executions have all but ended around the world except in the United States. Indeed, in the past 13 years, more juvenile offenders have been executed in the United States than in all of the other nations in the world combined. Since 1990, executions of juveniles have occurred in eight countries: Iran, Nigeria, Pakistan, Saudi Arabia, the United States, Yemen, China, and the Democratic Republic of Congo. Both Yemen and Pakistan have now amended their laws to exclude such executions while Saudi Arabia and Nigeria deny that they have executed juvenile offenders. In the year 2000, only three countries reportedly executed juvenile offenders, the Democratic Republic of Congo (1) Iran (1) and the United States (4). In 2002, only the United States executed juvenile offenders (3); in 2003 only China (1) and the US (1). In 2003, Iran’s parliament began the process of enacting laws banning the death penalty for offenders under the age of 18.

Several international treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the American Convention of Human Rights prohibit the use of the death penalty against juveniles.

- Every country in the world, except for the United States and the collapsed state of Somalia, have ratified the UN Convention on the Rights of the Child which includes a prohibition on the juvenile death penalty (representatives from Somalia recently informed the UN that it would ratify the treaty).

- The United States has ratified the International Covenant on Civil and Political Rights (ICCPR), which specifically prohibits executing juveniles, but has reserved the right to continue executing juveniles.

- The UN High Commission for Human Rights, which interprets the ICCPR, has concluded that the United States reservation should be considered void because it violates the object and purpose of the treaty.

- In October 2002, the Inter-American Commission on Human Rights held that the prohibition of the juvenile death penalty is a jus cogens norm of international law. The United States is therefore violating a binding international law.
The United States appeals to human rights and decency in other areas while it continues to violate this fundamental tenet of international human rights law. By disregarding international agreements and continuing to be unresponsive to its allies, the United States is establishing itself as a human rights violator rather than an enforcer.

At its best, the United States serves as an example and a protector of human rights throughout the world. However, the continued execution of juvenile offenders alienates the United States from the international community. Each execution further damages our legitimacy as a leader in the protection of human rights, particularly the rights of children.

**CONCLUSION**

A growing number of governmental, legal, scientific, mental health, religious, and child advocacy organizations have announced their public opposition to the execution of juvenile offenders. These include such diverse groups as the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry, the American Bar Association, the National Bar Association, the American Academy of Psychiatry and the Law, the American Society for Adolescent Psychiatry, the NAACP, the Child Welfare League of America, Amnesty International, Human Rights Watch, Physicians for Human Rights, Children’s Defense Fund, Youth Law Center, the National Council on Crime and Delinquency, the National Educational Association, the Constitution Project, the Juvenile Law Center, the National Mental Health Association, the Apostolic Nunciature, the Coalition for Juvenile Justice, the U.S. Catholic Conference of Bishops, the Episcopal Church, the United Methodist Church, the American Baptist Churches USA, the Unitarian Universalist Association, Murder Victims Families for Reconciliation and many more.

A group of Nobel Peace Prize winners including President Jimmy Carter, Mikhail Gorbachev, Archbishop Desmond Tutu, the Dalai Lama, Betty Williams, Mairead Corrigan-Maguire and former South African apartheid President F.W. DeKlerk issued this statement in 2003: “The death penalty is a particularly cruel and unusual punishment that should be abolished. It is especially unconscionable when imposed on children.” (emphasis added) Pope John Paul II, the European Union, the Council of Europe, the United Nations High Commissioner of Human Rights and leaders from individual countries in Europe have strongly conveyed to the U.S. their opposition to the juvenile death penalty. Diplomatic and economic pressure to bring individual states in line with international standards of decency are only likely to increase in the coming days.

Finally, support for the juvenile death penalty has declined substantially throughout the United States. An ABC New poll conducted just after the John Lee Malvo trial verdict found that 62% of Americans prefer life without parole for juvenile offenders, while only 21% favored the death penalty. A Gallup poll released in May, 2002 found that only
26% of Americans support the death penalty for juvenile offenders. This was the exact number found by a 2000 national poll conducted by the *Houston Chronicle*. Polls in Georgia, Texas, Kentucky, Missouri, and Oklahoma also failed to show any significant support for the juvenile death penalty in those individual states.

**In the passage of a bill excluding juvenile offenders from the death penalty, the remaining 20 states would join the rest of the nation and the international community in recognizing that executing juvenile offenders is contrary to basic principles of justice and contemporary standards of decency.**

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