

# The National Organization of Victims of "Juvenile Lifers"

## For the American Bar Association Annual Conference, Chicago, IL, July 31, 2009

While we believe that some important reforms to the US Criminal Justice system are not only possible, but necessary, they must be accomplished without doing any further harm to already devastated victims' families. We offer these observations on the national public policy debate currently underway regarding life sentences for violently criminal teens:

- The seriousness of these crimes and the impact on victims' families must be completely embraced and kept forefront.
  - Victims' Rights to be fully at the table in any matter pertaining to their cases is constitutionally and statutorily required in all 50 states and federally.<sup>i</sup>
- Offenders in teen years (that are not mentally ill) are developmentally culpable for wrongs committed.<sup>ii</sup>
- Each of the 50 states has a unique sentencing scheme, almost half with determinate sentencing.
  - There is no established "right" to "periodic review".
  - Parole boards are notoriously political and have a horrible record for making good decisions on releases.<sup>iii</sup>
- States all define "adult", criminal consequences and sentencing, and transfer mechanisms differently.<sup>iv</sup>
- Blatant or negligent misrepresentation of the facts of these cases, coupled with outright propaganda, has been employed by the well-funded advocacy effort for the offenders.<sup>v</sup>
  - Millions of dollars have been spent to aid offenders while not a dime spent to aid, educate, or outreach to victims.<sup>vi</sup>
- Internationally our juvenile and criminal justice system compares generally well with the rest of the world.
- The numbers are clear – most of these cases nationally are 17 and the bulk of the rest at 16.<sup>vii</sup>
  - Widespread agreement (note Texas recently) is possible for reforms for ages 15 and under.<sup>viii</sup>
- Prevention and easy access to guns should be a primary focus of the offender advocates, as it is the leading reason there are teens serving life sentences<sup>ix</sup>
- Cost to states to develop entire parole bureaucracies to address a handful of cases is entirely too large.
  - Parole is a very expensive bureaucracy to administer and recidivism can be frequently deadly.
  - Appeals and gubernatorial clemency are the Constitutional methods to address injustice.
    - Much can be done to provide more "political cover" to Executives to use clemency where needed.
- It is extremely difficult to become imprisoned in the United States, and there are many checks and balances at every level of the system. There are very few offenders who receive life sentences.<sup>x</sup>
  - A key area of reform must be returning judicial and legal discretion to these cases within broad standards.
- Victims have a Constitutional and Legal Right to be notified of matters pertaining to their cases, and any disposition that could change the sentence given the offenders in their cases. And LWOP is "different" –victims do not retain needed documentation and contacts to insure their access to due process in parole hearings.
- Prospective changes only to sentencing addresses victims' rights legally; but future victims deserve legal finality also.
- Parole hearings and indeterminate sentencing deny victims legal finality and, in a manner of speaking, simply transfer the life sentence from the offender to the victims' families.
- Neurological evidence is available to demonstrate how regular and unending parole hearings constitute torture to victims.<sup>xi</sup>
- The victims' families are key stakeholders in this public policy discussion. We cannot speak for them - they can only speak for themselves and therefore must be brought to the table if retroactive change is sought.

***"Periodic Review" does not solve the expressed concerns about juveniles' transfer to criminal courts for adult sentencing and literally tortures innocent victims' families. So what is the "Solution"?*** The younger the offender, the more legal protections should be provided before they can be transferred to criminal court. JLWOP can be "reformed" by eliminating the mandatory transfer of juvenile offenders to criminal courts, allowing it in the most egregious cases only, at the discretion of the judges and prosecutors expert in the facts of the individual cases. This addresses the concerns about JLWOP without hurting victims. Also determinations can be made whether or not parole (in those states that have it) would ever be granted in many serious cases, and that assessment balanced against the rights of victims not to have to endure the re-traumatization of hearings that would never result in offender release anyway. Advocates and Experts interested in JLWOP should have more compassion in their hearts for the innocent victims than the guilty offender. As with the universal ethic observed by all doctors, the Hippocratic Oath, first one must insure they DO NO MORE HARM. Currently all retroactive legislative proposals do more harm than good. Instead, support should be made to states to provide discretion and protections to any juvenile facing transfer to criminal court. Human Rights' concerns for juvenile offenders can be addressed by eliminating mandatory transfers and sentences. In any case, resources must be committed to support victims' families to be at the table in this national public policy discussion for any proposal that would have retroactive ramifications.

### The National Organization of Victims of "Juvenile Lifers"

President, Maggie Elvey; Vice-President, Dora Larson; Secretary, Jennifer Bishop-Jenkins;

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<sup>i</sup> [www.victimlaw.org](http://www.victimlaw.org)

<sup>ii</sup> <http://www.willsworld.com/brain%20overclaim%20syndrome.pdf>

<sup>iii</sup> <http://www.cor.state.pa.us/stats/lib/stats/ParolePaper.pdf>

<sup>iv</sup> [http://en.wikipedia.org/wiki/Age\\_of\\_majority](http://en.wikipedia.org/wiki/Age_of_majority)

<sup>v</sup> There are many examples. A press release in August from us will detail even more of these. Just a few examples include a critique by a defense attorney that can be read at [http://sb399.com/images/SB\\_399\\_Comments\\_by\\_Daniel\\_Horowitz.pdf](http://sb399.com/images/SB_399_Comments_by_Daniel_Horowitz.pdf), also at [http://www.willsworld.com/hb\\_1695\\_resolved.htm#flawswefoundinthereport](http://www.willsworld.com/hb_1695_resolved.htm#flawswefoundinthereport), and at [http://www.secondchancelegislation.org/articles/juvenile\\_life\\_without\\_parole\\_profiles.pdf](http://www.secondchancelegislation.org/articles/juvenile_life_without_parole_profiles.pdf) the ACLU publishes offender Barbara Hernandez' version of the events of the case, claims that are complete and factually disputed by the official court record and the forensic evidence; facts that have been affirmed by several courts in trial and appeal, repeatedly. The trend of offender advocates publishing "propaganda" that sounds good, based on versions they hear only after interviewing the offenders themselves, has created an often false picture of these horrific cases.

<sup>vi</sup> The budget for the Illinois Coalition for the Fair Sentencing of Children, in this one state alone, has been verbally reported to NOVJL to be upwards of a \$500,000, probably more. While the offender advocates have not been willing to share publicly their exact budget figures, there are many full time and part time staff people working on this issue nationally and in states, and there have been dozens of published "glossy reports" distributed nationally that have been funded by Soros Grants, DLA Piper Law Firm, JEHT grants, Human Rights Watch, and others. These groups and others have committed significant funds to this advocacy effort over the last four years. Victims have requested that some small resources, such as one month's time of a clerical level staff person who could research victim names and locations, be dedicated to victim outreach, education, and relationship-building towards an end of restorative justice dialogue. Those requests have been denied.

<sup>vii</sup> <http://www.hrw.org/en/reports/2005/10/11/rest-their-lives>

<sup>viii</sup> Texas, a state infamous for the "toughest" crime climate in the nation, became only the second state to reform JLWOP in June 2009 when it prospectively abolished JLWOP for offenders 15 and under.

<sup>ix</sup> 68% of all violent crime is gun-related nationally (Centers for Disease Control) and the most recent figures for offenders ages 12-17 can be found at Puzanchera, C. and Kang, W. (2008). "Easy Access to the FBI's Supplementary Homicide Reports: 1980 - 2006" Online. Available: <http://ojjdp.ncjrs.gov/ojstatbb/ezashr/> Focusing preventative efforts at the problem of easy access to guns will by far net the most positive results in preventing teen incarceration for extremely violent crimes.

<sup>x</sup> [www.ndaa.org](http://www.ndaa.org)

<sup>xi</sup> Information based on NOVJL interviews of victims family members who regularly have attended parole hearings. Some names of those interviewed that were willing to be public: Terry Mayborne, Betty Degnan Finn, Kurt Kaner, and members of the Tate family, murdered by Susan Atkins of the Manson family. Torture is defined by Dictionary.Com as "extreme anguish of body or mind; agony."

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