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RIGHTS
WATCH

WHEN I DIE... THEY'LL SEND ME HOME

Youth Sentenced to Life without Parole in California, An Update



“When I Die...They’ll Send Me Home”

**Youth Sentenced to Life in Prison without Parole in California
An Update**

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An Update

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I. Youth Sentenced to Die in California Prisons

When I die, that's when they'll send me home.

—Charles T., sentenced to life in prison without parole for a crime that occurred when he was under the age of 18.¹

The state of California has sentenced 301 youth to die in its prisons for crimes they committed under the age of 18.²

These youth have not been sentenced to death; in 2005 the Supreme Court found the death penalty unconstitutional for juveniles. 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. It is a final, irrevocable judgment. Their crimes were committed when they were teenagers, yet they will die in prison.³

301 California youth
have been sentenced
to life without parole.

“They said a kid can’t get the death penalty, but life without [parole], it’s the same thing. I’m condemned,” said Robert D., 36, who was in high school when he participated in a robbery during which his co-defendant shot the victim. “I don’t understand the difference.”⁴

A life without parole sentence is a final judgment that classifies the defendant incorrigible. When rendered, it is a decision to throw away the life of the defendant. It is also a judgment from which there is no turning back: once made, there is no mechanism to compel review and no way to account for the changed adult that the teen may become.⁵ In the case of teenaged defendants, the judgment is made before the individual is fully formed.

¹ Human Rights Watch interview with Charles T., serving life without parole, August 17, 2007. This name is a pseudonym. Unless otherwise stated in this report, pseudonyms are used for California inmates and the location where they are housed is not identified. These and other measures are taken to protect them from reprisals.

² In this report the words “youth,” “teen,” “juvenile,” “youth offender,” and “child” are used to refer to someone under the age of 18.

³ California is among the top four states with the highest numbers of youth sentenced to life in prison without parole. The others are Florida, Michigan, and Pennsylvania.

⁴ Human Rights Watch interview with Robert D., serving life without parole in California, July 13, 2007.

⁵ Some have argued that clemency, pardons, and commutation provide a viable review process. These can only be granted by the governor, and involve a process neither conducted in open court nor with the benefit of open review. It is a decision made in large part, behind closed doors, and one not immune to political influence. Moreover, it is extremely rare: in the history of the state no California governor has ever granted clemency/pardon to an individual serving life without parole, and only one youth sentenced to life without parole has had her case commuted to a lesser sentence. See footnote 88 in this report. Governor of California, Annual Reports on Acts of Clemency for the State of California, 1993-2010, obtained from the Office of the Governor of California, November 28, 2011 (copies on file with Human Rights Watch).



Kael S holds a certificate in a family picture. He was 16 in this photo and at the time of his crime. © 2008 Private

In 2008 Human Rights Watch published the report “When I Die, They’ll Send Me Home” and research on the sentencing of youth offenders to life without parole in California.⁶ It painted a detailed picture of people serving life without parole for crimes committed as youth.⁷ Since that report, several key factors have changed:

- The United States is now the only country in the world that imposes this sentence on youth for crimes committed under age 18.⁸
- The number of youth sentenced to life without parole in the US has risen to 2,570.⁹
- The number of youth sentenced to life without parole in California increased from 227 to 301.¹⁰

⁶ Human Rights Watch, *When I Die, They’ll Send Me Home: Youth Sentenced to Life without Parole in California*, January, 2008, <http://www.hrw.org/reports/2008/us0108/>.

⁷ This document updates that report and describes additional issues. For a thorough description of our research methodology, please see the 2008 report, pps. 7-10. This report draws from research that Human Rights Watch conducted between 2004 and 2011 on youth offenders serving life without parole sentences in the United States. Our data from 2006 to the present includes records obtained from the California Department of Corrections and Rehabilitation and independent research using court records and press reports. We composed a survey that yielded over 130 responses in 2007, more than half of all youth serving life without parole in California. Finally, we conducted in-person interviews with approximately 35 individuals serving life without parole for crimes committed as youth. We have basic information on every person serving the sentence in the state, and more than that in most cases. Although press accounts and court documents have shed more light on many of the prisoners’ stories, Human Rights Watch has not tried to verify each specific allegation made and recognizes that some may be embellished or altered in the telling. In addition, we have interviewed victims’ family members and victims’ rights advocates for their perspectives. See p.63 of the 2008 report for a summary of some of those interviews.

⁸ The University of San Francisco Law School Center for Law & Global Justice conducted international research on the use of the sentence of life without parole for juveniles and continues to monitor international juvenile sentencing laws and practices. It has found no cases of juvenile offenders serving the sentence outside the US. While several countries other than the US have laws that may permit sentencing of child offenders to a life without parole sentences, the Center for Law & Global Justice has found no cases outside the US in which the sentence is actually imposed on juveniles. Countries that have juvenile life without parole laws but do not in practice impose the sentence are: Antigua & Barbuda, Argentina, Australia, Belize, Brunei, Cuba, Dominica, Saint Vincent & the Grenadines, The Solomon Islands, and Sri Lanka. C. de la Vega & M. Leighton, “Sentencing our Children to Die in Prison: Global Law and Practice,” *University of San Francisco Law Review*, vol. 42, Spring 2008, p. 989. This updated study of a 2007 report of the same name clarified that Tanzania, South Africa, and Israel no longer allow juvenile life without parole sentences.

⁹ Human Rights Watch estimates that there are currently about 2,570 youth offenders serving life without parole in the US. Human Rights Watch, *World Report 2009* (New York: Human Rights Watch, 2009), United States Chapter, <http://www.hrw.org/world-report-2009/united-states/>, p. 538.

¹⁰The number cited for those serving life without parole for crimes committed under the age of 18 is based on several sources: data obtained by Human Rights Watch from the California Department of Corrections and Rehabilitation; research conducted by Human Rights Watch on individual cases in California; and data obtained by the American Civil Liberties Union of Michigan from the California Department of Corrections and Rehabilitation. (Documents on file with Human Rights Watch).

- The US Supreme Court declared this sentence unconstitutional for youth convicted of non-homicide crimes.¹¹
- At least 16 state legislatures have introduced legislation that would curtail or eliminate the sentence of life without parole for youth.¹²



Drachir P. was 16 in this photo and 17 at the time of his crime. © 2008 Private

Troubling Facts about California Law and Practice

Law and public opinion about the use of life sentences for youth have evolved in recent years. Nevertheless, our previous research shows that California’s use of this sentence remains particularly troubling. It would be logical to assume that life with no possibility for parole is a sentence always reserved for the worst of the worst, wholly irredeemable criminals. In fact, as of 2010, the sentence is only permitted for youth convicted of homicide crimes. But that fact obscures crucial details. Research by Human Rights Watch in California and across the country has found that youth are sentenced to life without parole for a wide range of crimes and culpability:

- **Nationally, it is estimated that over half of the youth sentenced to life without parole are first-time offenders** without a single juvenile court adjudication on their records.¹³

¹¹ *Graham v. Florida*, 130 S. Ct. 2011, 2034 (2010) (concluding that a life without parole sentence for juveniles is unconstitutional for non-homicide crimes.).

¹² Since 2006, 16 states have had legislation introduced: Alabama, Arkansas, California, Colorado, Florida, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, Nevada, Pennsylvania, Texas, and Washington. Colorado outlawed life without parole sentences for people under the age of 18 in 2006 and Texas eliminated the sentence for minors in 2010. Colorado Revised Statute §18-1.3-401(4)(b) (2009). Colorado’s new law was not retroactive. However, later, at the insistence of state lawmakers, the governor established a juvenile clemency advisory board in order to provide a process for review of original cases. Governor Bill Ritter, Jr., Governor of Colorado, Executive Order B-009-07, The Juvenile Clemency Board, August, 2007, http://www.njcn.org/uploads/digital_library/coclemency.pdf (accessed November 29, 2011). See also, Jessica Peck, “Colorado Voices: Second chance for teen killers?” *Denver Post*, November 26, 2011. Texas Penal Code Annotated §12.31(a)(1) (Vernon 2009).

¹³ Human Rights Watch and Amnesty International, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, October 2005, <http://hrw.org/reports/2005/us1005/index.htm>, pp. 27-28. As of 2005, an estimated 59 percent of youth sentenced to life without parole were first-time offenders. This figure is based on national research. We do not have California-specific data. California law does not prohibit trying first-time offenders as adults and imposing adult sentences for murder, including life without parole. By “first-time offender” we mean a person without a single adult or juvenile offense.

“From a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”

—US Supreme Court in *Roper v. Simmons* 2005

- **Nearly half of the youth sentenced to life without parole did not actually commit the murder.**¹⁴ Cases include that of a youth who stood by the garage door as a lookout during a car theft, a youth who sat in the getaway car during a burglary, and a youth who participated in a robbery.¹⁵ While tragically a victim was killed in each of these crimes, murder was not part of the plan, or the youth convicted was not the one who physically committed the murder.¹⁶
- **Many of these youth committed their crimes under the influence of an adult.** In 2008, we estimated that in nearly 70 percent of California cases in which there were co-defendants, at least one of these co-defendants was an adult.¹⁷
- **It is estimated that in more than half the cases where there was an adult co-defendant, the adult received a lower sentence than the young person who was sentenced to life without parole.**¹⁸
- **Racial disparities in California’s use of this sentence are significant:** 85 percent of youth sentenced to life without parole are people of color. African American youth are sentenced to life without parole at a rate that is 18.3 times the rate for white youth.

¹⁴ Human Rights Watch, *When I Die, They’ll Send Me Home: Youth Sentenced to Life without Parole in California*, January, 2008, <http://www.hrw.org/reports/2008/us0108/>, p. 36. As of 2008, an estimated 45 percent of youth sentenced to life without parole did not actually commit the murder.

¹⁵ California Penal Code §190.2(d) states that a person who is not the actual killer but one who acts with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony which results in the death of someone, will face the same penalties as if he or she had been the actual killer.

¹⁶ While these teenagers are certainly criminally culpable, they cannot be classified as the most culpable. Other studies have found similar rates for juveniles convicted of felony murder and aiding and abetting. For example, nearly half of youth sentenced to life without parole surveyed in Michigan were sentenced for felony murder or aiding and abetting, and 33 percent of youth life without parole cases investigated in Colorado had convictions based on the felony murder rule. See American Civil Liberties Union of Michigan, “Second Chances, Juveniles Serving Life without Parole in Michigan’s Prisons,” 2004, <http://www.aclumich.org/pubs/juvenilelifefers.pdf> (accessed November 6, 2007), p. 4; Human Rights Watch, *Thrown Away: Children Sentenced to Life without Parole in Colorado*, February 2005, <http://hrw.org/reports/2005/us0205/>, pp. 18-19. For more information, please see the Methodology section of the 2008 report, *When I Die, They’ll Send Me Home*, <http://www.hrw.org/reports/2008/us0108/>, p. 7.

¹⁷ Human Rights Watch, *When I Die, They’ll Send Me Home: Youth Sentenced to Life without Parole in California*, 2008, p.35.

¹⁸ *Ibid*, p. 36. As of 2008, in an estimated 56 percent of the cases in which there was an adult co-defendant, the adult received a lower sentence than the young person who was sentenced to life without parole.

Hispanic youth in California are sentenced to life without parole at a rate that is five times that for white youth in the state.¹⁹

- **Youth are often poorly represented and do not always adequately understand legal proceedings.** Many youth offenders whom Human Rights Watch interviewed did not grasp the most basic aspects of their trial proceedings.²⁰

International Norms: The US Stands Alone

Since our report in 2008 on this issue, the last countries outside the US ceased to sentence youth offenders to life without possibility of parole.²¹ As such, the US stands alone in its use of this sentence with people under the age of 18.

The US Supreme Court noted this in its own recent ruling: There is an “overwhelming weight of international opinion against” juvenile life without parole.²² Moreover, the sentence of life without parole for people under 18 violates international law, which strictly prohibits the use of life without parole for those who are not yet 18 years old at the time of the crime.²³ International standards of justice hold that a life without parole sentence is

¹⁹ Ibid, pp. 24-29. If just arrest data is examined, the disparity remains significant: African American youth arrested for murder are sentenced to life without parole in California at a rate that is 5.83 times that of white youth arrested for murder. Overall, in the 25 states where data is available, African American youth arrested for murder are sentenced to life without parole at a rate that is 1.56 times that of white youth arrested for murder.

²⁰ Ibid, pp. 37 & 40. “I didn’t even know I got [life without parole] until I talked to my lawyer after the hearing,” one young man said. Survey response from Jeff S., serving life without parole in California, to Human Rights Watch, July 26, 2007. In nearly half the California cases surveyed, the youth’s own attorney did not ask the court for a lower sentence. These attorneys failed to perform a most fundamental duty of defense and stood by while a client, a minor, was sentenced to life in prison with no possibility of parole.

²¹ C. de la Vega & M. Leighton, “Sentencing our Children to Die in Prison: Global Law and Practice,” *University of San Francisco Law Review*, vol. 42, Spring 2008, p. 989.

²² *Graham v. Florida*, 130 S. Ct. 2011, 2034 (2010) (concluding that juvenile life without parole sentence is unconstitutional for non-homicide crimes).

²³ The first major human rights treaty ratified by the US, the International Covenant on Civil and Political Rights (ICCPR), has been interpreted to prohibit this sentence. The oversight body created under the ICCPR, the Human Rights Committee, instructed the US to: “Ensure that no such child offender is sentenced to life imprisonment without parole,” and to “adopt all appropriate measures to review the situation of persons already serving such sentences.” United Nations Human Rights Committee (HRC), “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, United States of America,” CCPR/C/USA/CO/3/Rev.1, December 18, 2006, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go6/459/61/PDF/Go645961.pdf?OpenElement> (accessed December 20, 2011), para. 34. In addition, the Convention on the Rights of the Child has also been interpreted as prohibiting the use of life without parole for children, and its oversight body, The Committee on the Rights of the Child, is urging governments to ban all life sentences for juveniles. Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, signed by the US on February 16, 1995, art. 37(a). Although the US has not ratified the Convention on the Rights of the Child, it has signed the treaty and is obliged to refrain from actions which would defeat the treaty’s object and purpose. See Vienna Convention on the Law of Treaties, concluded May 23, 1969, 1155 U.N.T.S. 331, entered into force January 27, 1980. The US may also be



Brian C. in a photo taken when he was 17 years old, the same age he was at the time of his crime. © 2008 Private

not warranted under *any* circumstances for a minor because youth offenders lack the experience, education, and mental development of adults and must be given a reasonable opportunity to obtain release based on demonstrated maturity and rehabilitation.

Adolescents Differ from Adults

Human beings change in dramatic ways over time. Experience and a growing body of scientific evidence confirm that tremendous change naturally occurs during the years leading up to adulthood. “As a transitional period,” reports a study by Temple University Professor of Psychology Laurence Steinberg and others, “adolescence

is marked by rapid and dramatic [individual] change in the realms of biology, cognition, emotion, and intrapersonal relationships.”²⁴ Research has further clarified that it is not just a cognitive difference between adolescents and adults, but a complex combination of ability to make good decisions and social and emotional capability that result in a difference in “maturity of judgment.”²⁵

The fact that young people continue to develop into early adulthood suggests that they may be particularly amenable to change.²⁶ “The reality that juveniles still struggle to define their

violating its treaty obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment whose oversight body, The Committee against Torture, told the US that the sentence could constitute “cruel, inhuman or degrading treatment or punishment.” United Nations Committee against Torture (CAT), “Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, United States of America,” CAT/C/USA/CO/2, July, 25, 2006, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go6/432/25/PDF/Go643225.pdf?OpenElement> (accessed December 20, 2011), para. 34.

²⁴ Laurence Steinberg et al., “The Study of Developmental Psychopathology in Adolescence: Integrating Affective Neuroscience with the Study of Context,” in Dante Cicchetti and Donald Cohen, eds., *Developmental Psychopathology* (Oxford: John Wiley & Sons, 2006), Chapter 18, p. 710.

²⁵ Elizabeth Cauffman and Laurence Steinberg, “(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults,” *Behavioral Sciences and the Law*, vol. 18, 2000, p.741. See also Laurence Steinberg, Elizabeth Cauffman, et al, “Age Differences in Sensation-Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model,” *Developmental Psychology*, 44, 2008, pp.1764-1778; and M. Gardner and Laurence Steinberg, “Peer Influence on Risk Taking, Risk Preference, and Risky Decision making in Adolescence and Adulthood: An Experimental Study,” *Developmental Psychology*, 41, 2005, pp.625-635.

²⁶ The malleability of a youth’s brain development suggests that young people through their twenties may be especially capable of change as they grow older and attain adult levels of development. Dante Cicchetti and Donald Cohen, eds., *Developmental Psychopathology* (Oxford: John Wiley & Sons, 2006), Chapter 18, Laurence Steinberg et al., “The Study of Developmental Psychopathology in Adolescence: Integrating Affective Neuroscience with the Study of Context,” p. 727.

identity,” noted the US Supreme Court in its 2005 *Roper v. Simmons* decision, “means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”²⁷ Both criminologists and development experts agree that, “[f]or most teens, these [risky or illegal] behaviors are fleeting. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.”²⁸

\$663 million:
The cost of imprisoning
for life all youth
currently sentenced to
life without parole in
California.

The Financial Cost of Sentencing Youth to Life without Parole in California

The concerns regarding this sentencing practice are amplified in California’s current climate of dire fiscal shortages. Locking up teens for life has a negative effect on the state’s budget. Even if the estimated average yearly cost per inmate in the California prison system remains static, the current youth life without parole population will cost the state approximately \$663 million dollars by the end of their lives, a number that will only increase as more youth are sentenced to spend the rest of their lives behind bars.²⁹ Between 1990 and 2008, California spent between \$66 and \$83 million incarcerating childhood offenders sentenced to life without parole, according to experts at the University of California at Berkeley and Tulane University.³⁰

²⁷ *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

²⁸ *Ibid.*

²⁹ This figure is based on the annual cost of incarcerating each prisoner per year in California of \$44,688, California Department of Corrections and Rehabilitation, “Corrections: Year at a Glance,” Fall 2010, http://www.cdcr.ca.gov/news/docs/cdcr_year_at_a_glance2010.pdf, (accessed December 21, 2011) p. 2.; a population of 301; the exact age of each person in California currently sentenced to life in prison without parole for a crime that occurred under the age of 18; and an average life expectancy in California of 78.2 years. There are no publicly available reliable estimates of life expectancy in California’s prisons. CJL Murray, SC Kulkarni, et al., “Eight Americas: Investigating Mortality Disparities across Races, Counties, and Race-Counties in the United States,” *Public Library of Science Medicine*, vol. 3, no. 9, September 12, 2006, www.medicines.plosjournals.org. All of the estimates used here are conservative: They assume no inflation, a scenario that is unlikely and some would say impossible, even in a recession. In addition, the estimates do not account for the increasing medical costs of elderly inmates.

³⁰ Patrick Vinck, Ph.D., director and co-Founder of the Berkeley/Tulane Initiative on Vulnerable Populations, April 12, 2007. Cost estimates were based on two state estimates of the cost of incarcerating each prisoner per year in California: \$34,150 per year and \$43,000 per year. Compare, California Legislative Analyst’s Office, “Criminal Law Primer for California,” January 1, 2007, <http://www.lao.ca.gov/LAOPApp/PubDetails.aspx?id=1543> (accessed October 28, 2007), p. 66 (estimating the annual cost to incarcerate a prisoner as over \$43,000); and California Department of Corrections and Rehabilitation, “Facts and Figures,” 4th Quarter 2005, <http://www.corr.ca.gov/divisionsboards/aoap/factfiguresarchive/factsfigures4thq2005.html> (accessed October 28, 2007), (stating that the annual cost to incarcerate a prisoner in California is \$34,000.) As referenced above, the cost to incarcerate inmates in California has increased since 2007.



Nick V. in a photo taken when he was 16, the same age he was at the time of his crime. © 2008 Private

Newly convicted youth offenders sentenced to life without parole will cost the state additional sums. Each new youth offender sentenced to life without parole will cost the state another \$2.7 million. If California were to enact legislation permitting the review and possible release of some of these individuals, the state would save significant sums. This is true even if the alternative sentence is lengthy. For example, if each year just 10 of these individuals were released after serving 25 years in prison, over a 25 year period the state would save an estimated \$301 million.

Dramatically Changing Legal Perspectives: Recent Decisions about Teens and Criminal Law

In recent years, the US Supreme Court has issued three opinions about teens and criminal law. Each confirms a fundamental fact: teenagers are different from adults. And each reinforces a fundamental legal precept: these differences must be recognized in the sentencing and criminal justice arenas.

In 2005 the US Supreme Court held the death penalty unconstitutional for youth under the age of 18.³¹ Then, in 2010, the Supreme Court held unconstitutional the sentencing of juveniles to life without parole for non-homicide crimes.³² The following year, the court set a new standard for minors' consenting to police questioning that is more protective than that used with adults.³³ "These cases represent a new jurisprudence," said Barry Krisberg, director of Research and Policy of the Chief Justice Earl Warren Institute on Law and Social Policy at the University of California, Berkeley School of Law. "In each case the court made a decision based on the fact that people under the age of 18 have different abilities and needs than adults. These cases stand for the proposition that our laws must change to reflect that reality."³⁴

³¹ *Roper v. Simmons*, 543 U.S. 551 (2005).

³² *Graham v. Florida*, 130 S. Ct. 2011 (2010).

³³ *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

³⁴ Human Rights Watch telephone interview with Barry Krisberg, Director of Research and Policy, Chief Justice Earl Warren Institute on Law and Social Policy at the University of California, Berkeley School of Law. 11/23/11, Berkeley, California.

In the first of these cases, the court noted that under law the rights of teens are limited in many legal contexts: “The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.”³⁵ The *Roper v. Simmons* and *Graham v. Florida* cases both held that the characteristics of youth make their culpability different from that of adults:

“Age is a reality that courts cannot ignore.”

— U.S. Supreme Court in *J.D.B. v. North Carolina* 2011

As compared to adults, juveniles have a “‘lack of maturity and an underdeveloped sense of responsibility’”; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “not as well formed.”³⁶

People under age 18 cannot buy cigarettes or alcohol, sign a rental agreement, or vote in an election. In *J.D.B. v. North Carolina*, the court declared that age is “a reality that courts cannot ignore”³⁷ and that “[o]ur history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.”³⁸ Indeed, the court acknowledged that our society consistently holds youth to a different standard in non-criminal cases, but tends to ignore this factor when it comes to criminal prosecution.³⁹

Inherent in these decisions are two fundamental facts: teenagers are still developing into the adults they will be, and they have potential to change for the better: “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”⁴⁰

³⁵ *Roper v. Simmons*, 543 U.S. 551, 561 (2005) (citing *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).

³⁶ *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010) (citing *Roper v. Simmons* 543 U.S. 551, 569-570 (2005)).

³⁷ *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2406 (2011).

³⁸ *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2404 (2011) (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115-116 (1982)). “The legal disqualifications placed on children as a class – e.g. limitations on their ability to alienate property, enter into a binding contract enforceable against them, and marry without parental consent – exhibit the settled understanding that the differentiating characteristics of youth are universal.” *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011).

³⁹ *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2404 (2011) (citing Restatement (Third) of Torts § 10, *Comment b*, p. 117 (2005)). “In negligence suits, for instance, where liability turns on what an objectively reasonable person would do in the circumstances, ‘all American jurisdictions accept the idea that a person’s childhood is a relevant circumstance’ to be considered.”

⁴⁰ *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

“Society changes.
Knowledge accumulates.
We learn, sometimes,
from our mistakes.

Punishments that did
not seem cruel and
unusual at one time
may, in the light of
reason and experience,
be found cruel and
unusual at a later
time...”

— US Supreme Court Justice
Stevens concurring in
Graham v. Florida, 2010

In the case of teenaged defendants, the judgment of life without a parole sentence is made before the individual is fully formed. In *Graham v. Florida*, the court held that good judgment may be impossible in this situation:

To justify life without parole on the assumption that the juvenile offender forever will be a danger to society requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable.⁴¹

The court did not reach the question of homicide cases because the case facts in *Graham v. Florida* were that of a non-homicide crime.⁴² A Supreme Court decision in mid-2012 is expected in the cases of two 14-year-olds sentenced to life without parole.⁴³

⁴¹ *Graham v. Florida*, 130 S. Ct. 2011, 2029 (2010).

⁴² The case before the *Graham v. Florida* court concerned a life without parole sentence for armed burglary with assault and attempted robbery. There were approximately 129 cases nationally in which a juvenile had been sentenced to life without parole for a non-homicide conviction. As a result of the *Graham v. Florida* decision, all juvenile offenders sentenced to life without parole in California were convicted of homicide. Those who were not were entitled to be resentenced to a sentence with the possibility of release.

⁴³ *Jackson v. State*, 194 S.W.3d 757 (Ark. 2004), cert. granted sub nom. *Jackson v. Hobbs*, 80 U.S.L.W. 3280 (2011); *Miller v. State*, 63 So. 3d 676 (Ala. Crim. App. 2010), cert. granted sub nom. *Miller v. Alabama*, 80 U.S.L.W. 3280 (2011).

II. Recommendations to California Leaders

Public awareness about sentencing youth to life without the possibility of parole has increased substantially in recent years.⁴⁴ Public opinion has shifted, and a growing chorus of bipartisan and diverse voices agree it is time to change the practice.⁴⁵ With a significant number of the country's youth life without parole cases in its prisons, California has the opportunity to lead the nation by taking immediate steps to change this unnecessarily harsh sentencing law.

Existing California law provides for lengthy sentences with no guarantee of release. California can protect public safety, and ensure the rights of victims, while at the same time recognizing that young people differ from adults.

California leaders should take the legislative and policy making steps necessary to:⁴⁶

- Abolish the sentence of life without parole for youth who were below the age of 18 at the time of offense;

⁴⁴ The national and California-based news coverage of the issue of life without parole for juveniles as well as alternatives to extreme sentences for youth has been extensive in recent years. One indication of changing perspectives on the issue of life without parole for juveniles is the number of major newspapers in California that published editorials in favor of Senate Bill 9 which, if passed, would permit review and the possibility of resentencing to a parole-eligible sentence in juvenile life without parole sentences. Editorial examples: "For juvenile lifers, a chance: SB 9 would let youthful offenders request a parole hearing. That's both sensible and humane," Los Angeles Times, August 21, 2011; "What to do with children who kill," San Diego Union-Tribune, August 22, 2011; "Following up on parole policy for juveniles," San Francisco Chronicle, August 16, 2011; "California Juveniles doing life in prison deserve opportunity for a second chance," San Jose Mercury News, August 24, 2011; and "Giving young lifers a chance at redemption," Ventura County Star, August 20, 2011.

⁴⁵ See, for example, The Right on Crime, "The Conservative Case for Reform: Fighting Crime, Prioritizing Victims, and Protecting Taxpayers, Statement of Principles" signed by with national signatories William J. Bennett, former US secretary of education and federal "Drug Czar"; Jeb Bush, former governor of Florida; Ward Connerly, American Civil Rights Institute and former regent of the University of California; Newt Gingrich, former speaker of the US House; Edwin Meese, III, former US attorney general; Grover Norquist, Americans for Tax Reform; and Pat Nolan, Justice Fellowship and former speaker of the California Assembly, <http://www.rightoncrime.com/the-conservative-case-for-reform/statement-of-principles>, (accessed November 24, 2011). This group's priorities include opposition to the use of life without parole for juveniles: "Implement policies that require reviews of sentences given to people convicted of crimes committed under age 18 to determine whether, years later, they are fit to return to society." See also "Statement in support of elimination of juvenile life without parole sentencing," a letter signed by over 35 current and former prosecutors and judges in support of changing state and federal laws to ensure that cases in which life sentences were imposed on those who were juveniles at the time of the offense receive meaningful periodic reviews. Undated, (copy on file with Human Rights Watch); Miriam Aroni Krinsky, "Disrupting the Pathway the Pathway from Foster Care to The Justice System—A Former Prosecutor's Perspective on Reform," Family Court Review, vol. 48 no. 2, April 2010, pp.322–337.

⁴⁶ Our recommendations have not changed since 2008 when we first reported on this issue in California, and can be found in full in the original report. Human Rights Watch, *When I Die, They'll Send Me Home: Youth Sentenced to Life without Parole in California*, January, 2008, <http://www.hrw.org/reports/2008/uso108/>, p. 11. The recommendations here are a summary.

- Provide periodic review of every youth offender's eligibility for parole and a meaningful opportunity for release; and
- Provide opportunities for rehabilitation, education, and vocational training.

III. Parallel Cases, Starkly Different Results

In California the determination of which youth are sentenced to life without parole and which are not is the result of many factors, some of which have little to do with the youth's level of participation in the crime and the likelihood he or she will offend again.

Christian Bracamontes and Martin Hernandez's cases have remarkable similarities: both were 16 at the time of their crimes, neither played an active role in the murder that resulted from the robberies, and both were offered parole-eligible sentences if they pled guilty. With hindsight, one teen made a good decision when he accepted that offer. The other will stay in prison until death.



Christian Bracamontes smiles in a portrait taken when he was 16 years old, the same year he committed a crime that resulted in a life without parole sentence. © 2008 Private

Christian Bracamontes: Sixteen and Facing Life in Prison with No Parole

When Christian Bracamontes was 16 he made a split-second decision that had disastrous consequences: he followed a friend into a robbery. “What was I thinking?” he says now, 13 years later, recalling his teenage self with exasperation. “I don’t know why I followed him.”ⁱ Within minutes the situation turned tragic when his friend shot and killed the victim. Bracamontes sits in a California State prison. He will never get out.

At the time of the crime, Bracamontes was living with his father, mother, and three younger sisters in a two-story suburban home down the street from his school. He was a good older brother; his sisters looked up to him, his family says. “He loved baseball,” his mother remembers.ⁱⁱ His family still lives in the same house, and old baseball trophies sit prominently on a shelf above the front door; gold letters read: 1996, 1997. “He still wanted to be a professional baseball player when he was 16,” she told us. The day of the crime, however, he was breaking the law, painting graffiti. Now, years later, he is aware of how one thing led to another.

He and his friend Jose Morales rode their bikes to a local storm drain area intending to graffiti, Bracamontes explained. Once there, Bracamontes said that Morales opened his backpack and showed him he had a gun inside. “I was surprised. I asked him why he had it,” Bracamontes remembers. Morales, two years older than Bracamontes, told him it was for protection.



Arturo and Martha Macedo, Christian Bracamontes's parents, at home in Fontana, October, 2011. © 2011 Patty Williams

“Jose was doing his thing, painting, and a group of kids came down into the wash and asked if we wanted to buy weed,” Bracamontes remembers. They told them no, and the others left. Morales turned to Bracamontes. “He said to me, ‘Do you want to rob them?’ I said, ‘I don’t care,’” Bracamontes said.ⁱⁱⁱ

Morales got his gun out of his backpack and the two walked over to Thomas Williams, who had offered the marijuana to them earlier. They asked Williams for marijuana, and when he stood up to sell it to them, Morales pulled out his revolver and pointed it at Williams, demanding he hand over the marijuana.^{iv} Bracamontes remembers when Morales pulled out the gun, Williams challenged him, “If you don’t kill me, I’ll kill you.” At that point, Bracamontes thought the bluff had been called. “I turned to pick up my bike, I thought that it was over, we were leaving.” As he bent to pick up his bike from the ground shots rang out. Both boys fled. “I didn’t think he had hit him. My ears were ringing. I was so scared.” Bracamontes said he was sick to his stomach that day and the next he broke out in a rash on his arms and neck and was sent to the nurse’s office at school.^v

Later he was arrested. “They told me I was facing murder,” he explained. Charged with murder in the first degree with special circumstances, he faced a sentence of life without parole.^{vi} He was offered a lesser charge and a 15-to-life sentence if he pled, but he insisted on going to trial. He had a difficult time comprehending how he could plead guilty to a murder he had not committed, he told us. He remembers he simply could not imagine being in prison for even 15 years, let alone forever: “Taking a deal—it’s like admitting I did the murder.” He was found guilty at trial and sentenced to life without parole. Meanwhile, Morales, who actually shot the victim, accepted a plea bargain and got a sentence that will allow him one day to ask the parole board for release.

With plenty of time to think, and the maturity that comes with the passage of years, Bracamontes now has a sense of clarity about his actions that day: “I think about the family who lost the man killed. I think about their pain, and I wish I could take it away, or do something for them. If I could do that day over, I would have told Jose, ‘No,’ and stopped him from robbing them.”

He is held in a small, coveted prison unit formerly known as the “Honor Yard,” a placement for particularly well-behaved, problem-free inmates. Prior to being moved there he worked in plumbing. Now, he is on the janitorial crew and hopes to be permitted to be certified again as a plumber. But his real hopes are for something that cannot happen. “My dream is to be released one day. I just want to go to work each day and be with my family. I’d like to work with kids, and help them not end up in this place.”

Martin Hernandez: Chance Yields a Different Outcome

As a member of a local labor union, Martin Hernandez, 35, drives a forklift and manages traffic on a large construction project.^{vii} Three nights a week he leaves work and goes straight to evening college classes. His life is jam-packed with study, work, church, and volunteering. It was not always this way. At age 16 he faced a future inside prison with no possibility of parole.

Nearly 20 years ago Hernandez was a 16-year-old gang member already in trouble for vandalism and loitering with other gang members, failing school, and drifting ever farther from the reach of his single-parent mother. In violation of probation, Hernandez was out drinking with other gang members one night when police arrived and broke up the party. Hernandez fled and followed a friend into the back of a truck. Both of them were very drunk, and his friend passed out almost immediately.

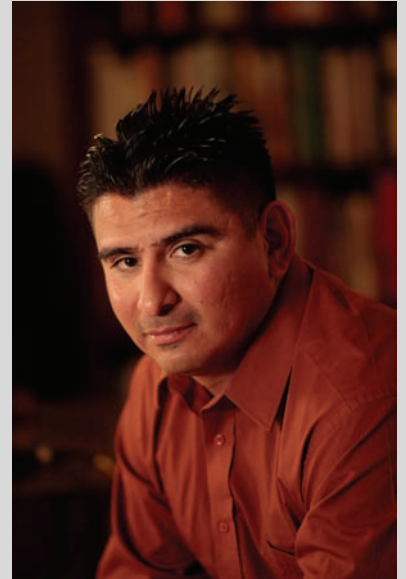
Some of those in the truck decided to commit robberies to get money for beer and gas. In the first of two incidents, Hernandez was sober enough to get out of the truck when it stopped and followed the others when they ran down the street. Some of them attempted to rob a man and one stabbed the victim. That victim survived the attack. Hernandez did not see the stabbing—he was standing behind the others—and did not know that it occurred. He went back to the truck with the others, and when they stopped a second time, he got out to throw up. As he did, the truck drove a few blocks away where a second victim was robbed and stabbed. That victim later died.^{viii} Hernandez and the others were charged with murder in the first degree with special circumstances. The presumptive sentence was life without parole.

His lawyer told him he was likely to be found guilty if he went to trial, and he would never leave prison, he said. Hernandez told us he did not believe it at first; he had not intended to kill the man and was not the one who killed him. It was hard to comprehend that he would be found guilty of murder. But the case dragged on. He remembers reality sank in as he listened to the district attorney talk about him in court. “He kept saying ‘people like him’... ‘people like him,’” Hernandez remembers. “That this type of sentence is reserved for people like me.” What he understood that to mean was:

‘He’s uneducated, he’s a gang member, he came from,’ you know, ‘a single parent home and he was involved in this horrible crime. So ... let’s lock him up and throw away the key.’ I was and would always remain a failure because that’s what people like me did.

He was offered a lower sentence of 15 years to life, and pled guilty. Sent to prison, he made a decision: he decided to stop believing he was worthless and doomed to failure as the prosecutor had described him. “The moment I stopped believing that, everything changed drastically.” A faith commitment helped steer his new direction. He changed his focus. He said, “I earned two associate [college] degrees and graduated with honors.” He embraced a sense of duty toward others: “I became a GED tutor and a college math tutor [for other inmates.] I helped graduate over a hundred inmates,” he told us. He described also working with organizations inside prison serving needy people on the outside; for example, raising money to buy school supplies for children whose parents were overseas soldiers.

Since he had pled to a parole-eligible sentence, he appeared before the parole board. After serving nearly 17 years in prison, he was paroled. Now, three years later, he lives on his own, works, goes to school. His days are busy, he says, but he still makes the time to speak at schools and juvenile halls, urging young people to stay out of trouble. He says he believes it is important to give to his community, and he does.



Martin Hernandez, now 35. Hernandez was 16 when he committed a crime that could have resulted in a life without parole sentence. Instead he served 17 years in prison before being paroled in 2010. © 2011 Patty Williams



Martin Hernandez works in construction by day and at night attends college. © 2011 Chip Warren

IV. Changed Lives

Donté Corothers: No Second Chance

In October 2011 Donté Corothers turned 34 years old. It was a birthday with particular significance: that year marked the point in his life when he had spent as much time locked up as he had free. A lot can change in half a lifetime; it has for Corothers.



Donté Corothers in a photo taken in prison in February 2009. Corothers was sentenced to life without parole for a crime he committed when he was 17. He is now 34, and will stay in prison until he dies. © 2011 Private

At 17, he was a gun-carrying gang member who, he says, in a drunken and drugged stupor, killed someone he called his best friend, Damon Dowell.⁴⁷ When he was sentenced at 18, a newspaper article described him as young and seemingly unresponsive to what was going on around him: “With chains encircling his narrow waist and a blank look on his face, Donte Leon Corothers sat in court yesterday, impassively listening as the door closed on his youth and freedom.”⁴⁸

Now 34, Corothers has left illegal behavior long behind, rejecting the negative influences around him in a California Substance Abuse Treatment Facility State prison.⁴⁹ Tears stream down his face when he talks about what he did. He thinks about how Dowell’s family feels. “If I could go back, I would change what I did,” he says.

His prison record is not what one might expect of a young gang-banger sent to prison for life without parole. No new crimes, no assaults. Early on, he attempted suicide but now seems to be focused on the positive.⁵⁰ He works daily in the prison kitchen and is considered a “critical worker,” he says, which means even when everyone else is locked down, he is permitted to work outside his cell. He describes with pride the quality of his work and says his supervisors like him and even dissuaded him from seeking a different position in a different area because they did not want to lose him. He tries to live like he is going to get out one day: “The way I do my time ... people ask me when I am getting out” because someone not getting out would not work as hard, he told us. In his prison files are letters attesting to his “good behavior and great communication.”⁵¹

⁴⁷ Human Rights Watch interview with Donté Corothers, Corocoran, California, October 17, 2011. This name is not a pseudonym.

⁴⁸ Greg Moran, “Teen gets life term for murdering Oceanside pal,” *San Diego Union-Tribune*, February 7, 1997.

⁴⁹ Human Rights Watch interview with Donté Corothers, Corocoran, California, October 17, 2011.

⁵⁰ Prison records show just two “mutual” fights and a suicide attempt as the only arguably violent actions of Corothers since entering prison. California Department of Corrections and Rehabilitation Behavioral File (C-file) of Donté Corothers, obtained by Human Rights Watch October 17, 2011 (copy on file with Human Rights Watch).

⁵¹ For example: Letter signed by Corrections Officer K. Paulo, February 10, 2011, California Department of Corrections and Rehabilitation Behavioral File (C-file) of Donté Corothers, obtained by Human Rights Watch October 17, 2011 (copy on file with Human Rights Watch).

Melanie Washington: A Survivor's Perspective

In the 14 years since Damon Dowell's tragic death other people have changed too. At the time of Corothers's sentencing, Dowell's mother, Melanie Washington, described her pain as her "own private prison." "Am I a survivor?" she asked, and at the time the answer seemed like it might be "no."⁵² She describes her son as a loving young man, who was playful but intensely embraced life. "[My son] Dee had a beautiful personality. He wanted to help kids who were in trouble. He wanted to help Donté ... help him get out of the gang. I told Dee he was in over his head."⁵³ Dee's death was almost unbearable. A single mother, she described Dee as the "glue," "the backbone," and the love of the family. Washington

told the sentencing court, "Donté should never see the streets again" and that "[a]s far as I can see, this boy doesn't care about himself or the family he has broken."⁵⁴ She left the courtroom satisfied with a life without parole sentence, but is not anymore. "I had not a clue what that sentence meant," she says now, looking back. "I thought he'd get out when he was 75 or something." She remembers looking at Corothers in court throughout the trial, "I kept looking at him. He was so small. I was looking at a little boy."

Her son's death inspired her to act. "I didn't want his life to be gone in vain," she said. She founded Mentoring—A Touch from Above (MATFA), an organization that mentors jailed youth, helping them "take responsibility for their actions and re-enter the community as responsible young men." MATFA went on to become an award-winning program.⁵⁵

She knows she has helped change many young people's lives. That experience changed her perspective, too. "I'm dealing with the same kids ... kids who, like Donté, killed someone. I see it differently now. Come on. Life without parole for a child? Children do foolish things because they are children. When a child commits a crime, there should be a lot more to it than just throwing him in prison."

She reached out to Corothers, writing and eventually meeting him in prison. "He was a kid in court when I saw him [last]. Now he was a man. He laid his head on my shoulder and cried." Now years later, she says, "I think Donté could come out and give back to the world." She believes the possibility of parole should exist if someone can show a repentant heart, remorse, and prove that "they're getting their life right."



Melanie Washington's son Dee was murdered by Corothers. She believes Corothers has something to offer society and should be given the chance to work towards parole. © Diandra Jay

⁵² Greg Moran, "Teen gets life term for murdering Oceanside pal," *San Diego Union-Tribune*, February 7, 1997.

⁵³ Human Rights Watch interviews with Melanie Washington, in person and via telephone, Long Beach, California, August 13, 2007, October 9, 2007, and October 25, 2011.

⁵⁴ Letter from Melanie Washington to the District Attorney and Probation Officer, undated (copy on file with Human Rights Watch).

⁵⁵ "The Founder and MATFA's History," *Mentoring: A Touch From Above website*, 2010, <http://www.matfa.org/aboutus.html> (accessed November 28, 2011).



Vance Webster, now 47, sits in a conference room at his work. Webster would have faced a life without parole sentence for a crime that occurred when he was 16 if it happened just a few years later when laws changed. Instead, he was paroled after 28 years in prison. © 2011 Elizabeth Calvin/Human Rights Watch

Vance Webster: A Person Changes a Lot in 25 Years

“Hopeful kids don’t join gangs. It’s what they are running from, not to.”

Vance Webster is quoting Father Greg Boyle, the director of an anti-gang program, but Webster’s own life could not more clearly illustrate the words of the clergyman who directs a Los Angeles nonprofit.

Thirty-five years ago, Webster was 12 years old when he found himself homeless and alone in a neighborhood not known for its safe streets. His mother had kicked him out of the house when an unsympathetic boyfriend moved in. “I went from being a straight ‘A’ student to hating the world,” he said.⁵⁶ He became a part of a gang and that same year

he had his first run-in with the law. At age 16 he was charged with murder in the first degree and robbery and faced a 25-to-life sentence. It was 1981. A few years later California law changed, and the penalty could have been life without parole.

He turned down a series of plea offers predicated on cooperation with law enforcement, in part due to fear of reprisal from gang members, he said. There was more to it than that, though; he did not really believe he could end up with a life sentence:

I didn’t understand a lot of what my lawyer was saying. He did say, “You’re going to spend the rest of your life in prison [if you don’t take this plea deal.]” [As] a kid, though, you tend to think, “No, this is impossible,”...I kept thinking, “You can’t give me life.”

But the court did: he was sentenced to life in prison *with* the possibility of parole. He landed in prison and eventually turned his focus to learning. He finished high school and enrolled in other programs. “I signed up for whatever I could,” he said, finding he could learn from anything. “I didn’t have a drinking problem, but I went to AA [Alcoholics Anonymous].”

After 28 years and seven months, he was paroled. Forty-seven years old, he has been out for just about three years. He works by day and goes to school at night. “I’m taking classes in sociology,” he explained. “I hope to transfer to University of Southern California. I want to finish my degree.” Earlier this year he ran a marathon for the first time. “That was on my bucket list: 26.2 miles. It rained the whole way,” he said laughing.⁵⁷

⁵⁶ Human Rights Watch interview with Vance Webster, Los Angeles, California, November 18, 2011.

⁵⁷ Human Rights Watch interview with Vance Webster, Los Angeles, California, November 18, 2011.

Webster now works as a member of the management team of Homeboys, a large nonprofit organization in Los Angeles with an operating budget of over \$8 million a year.⁵⁸ He started out as a security guard and was promoted.⁵⁹ He now wears many hats at Homeboys, including that of a motivational speaker on gang prevention, talking widely to colleges, high schools, and others. He co-facilitates classes in public speaking and alternatives to violence.

Father Greg Boyle is the director of Homeboys and said he feels fortunate to have Webster as an employee. He describes Webster as steady, wise, an excellent worker and instrumental member of the organization's security team. He relies on him to deal with particularly difficult situations, which he says Webster is adept at resolving "with great reconciliation." "He is a remarkable man who does not waste time lamenting what he was denied, but [instead is] fully alive and grateful."⁶⁰



Vance Webster stands with a volunteer organizing a clothes closet for needy people in Los Angeles. Webster works full-time at a non-profit organization and takes college classes at night. © 2011 Elizabeth Calvin/Human Rights Watch

⁵⁸ Homeboy Industries, Return of Organization Exempt from Income Tax, United States Internal Revenue Service Form 990, 2009, http://dynamodata.fdncenter.org/990_pdf_archive/954/954800735/954800735_200912_990.pdf. (accessed November 29, 2011).

⁵⁹ Mandalit Del Barco, "Priest's Answer to Gang Life Faces Hard Times," *National Public Radio Website*, May 21, 2010, <http://www.npr.org/templates/story/story.php?storyId=127019188> (accessed November 28, 2011).

⁶⁰ Human Rights Watch email communication with Father Gregory Boyle, S.J. Executive Director, Homeboy Industries, Los Angeles, to Human Rights Watch, November 28, 2011.

V. Arbitrary Outcomes

Murder is a terrible crime. Pain and suffering change families, friends, and communities permanently. The fact the perpetrator is underage does nothing to alleviate the loss. But societies do make decisions about what to weigh when determining punishment. Federal law increasingly recognizes that people under the age of 18 are different from adults, and criminal law should reflect that fact.⁶¹ Current California law fails to take this into account in criminal sentencing. People 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. They then face adult penalties. California laws and courtroom practices do not fairly and accurately take into consideration the realities of youth, and the results can be unjust.



Patricia L., in a photo taken when she was 15 years old. She was 16 at the time of her crime. © 2008 Private

Plea Bargaining with a Teenager

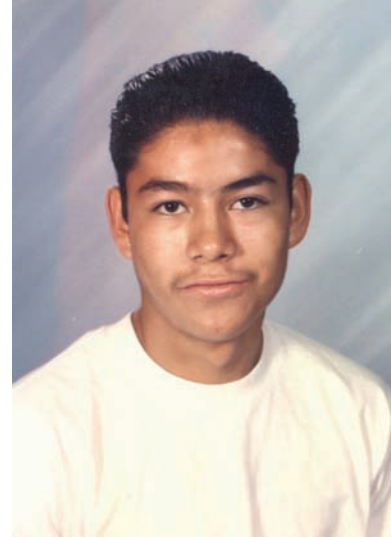
Christian Bracamontes and Martin Hernandez’s cases (see *Parallel Cases* above) share similarities. Yet today, years later, one sits in prison and will be there until he dies and the other served time and is out, working and going to school. “This is a capricious result,” concludes Sue Burrell, a staff attorney with the Youth Law Center in California.⁶² “These dramatically different outcomes are the result of decisions made by teenagers about whether to take a deal or not. It is not a reflection of who deserves to be in prison for the rest of their lives.”

Prosecutors may take into consideration a defendant’s age and role in a crime when determining what type of plea to offer. However, this means that the freighted, irrevocable decision about whether to accept the offer rests with those who are least prepared: young people facing serious criminal charges who may have been offered the deal in the first place in part because of their lack of maturity. Some youth turn down offers because they

⁶¹ See footnotes 27-29.

⁶² Human Rights Watch email communication with Sue Burrell, staff attorney, Youth Law Center, San Francisco, California, November 23, 2011.

do not understand the implications. “For the system to really work, an attorney must carefully explain the process to a client. When that client is a teenager, it adds a whole other dimension,” explains Cyn Yamashiro, director of Loyola Law School’s Center for Juvenile Law and Policy in Los Angeles. “The attorney has to know how to explain things and help a young client in decision-making in a developmentally appropriate manner. Most attorneys in this state representing youth under these circumstances do not have training to address the specialized needs of young clients.”⁶³



Saul Paul G., in a photo taken when he was 16 years old - the same age he was at the time of his crime. © 2008 Private

Prosecutor John Davis offered Bracamontes a deal to plead to a lower charge and receive a sentence of 15 years-to-life. Bracamontes turned it down and was sentenced to life without parole. Davis alluded to the fact that Bracamontes may not have fully understood that his ancillary role in a robbery that ended up in a murder made him just as responsible as the triggerman under California law. “A lot of kids don’t understand aiding and abetting,” he told the *Press Enterprise* after sentencing.⁶⁴ Martin Hernandez agrees. At the age of 16, he said, “it was very difficult to digest what was happening in court and understand” the things his lawyer told him. Vance Webster remembers how “I used to sit there [while my lawyer talked to me] ... saying ‘yes, yes, yes’...but what he said was going in Chinese and coming out Japanese, and I don’t understand either one of those languages.”⁶⁵

Hernandez said he is grateful for the counsel of a juvenile hall chaplain and his lawyer who worked hard to ensure he understood the reality of a life without parole sentence. “My attorney ... he seemed to have cared about my situation a lot more than I did at the time.”

But both Webster and Hernandez remember other, less constructive adult influences, too: adults they met in jail who encouraged them to challenge the system and push their cases to trial. “You’d be sitting with them in the van to the courthouse, and they’d all say, ‘Don’t

⁶³ Human Rights Watch interview with Cyn Yamashiro, director, Center for Juvenile Law and Policy, Loyola Law School, Los Angeles, November 18, 2011.

⁶⁴ Mike Kataoka, “No-Parole Life Sentence Handed Down in Slaying,” *Press Enterprise (Riverside)*, January 29, 2000.

⁶⁵ Human Rights Watch interview with Vance Webster, Los Angeles, California, November 18, 2011.



Michael A., in a photo taken when he was 16 years old. He was 17 at the time of his crime. © 2008 Private

plead guilty! Take it to trial; make them work for it. You won't get that long sentence," Hernandez says.⁶⁶ At an age when few things are clear, those conflicting voices reinforced their confusion and, ultimately, for many, their poor choices too.

Teens Can Perceive Time Differently

Young people do not just have a hard time grasping the legal issues surrounding their cases, they also have trouble comprehending the sheer length of the sentences.

Some youth sentenced to life without parole in California told Human Rights Watch they did not absorb the significance of plea deals because they could not fathom the length of the prison term. Robert D. described why he turned down an offer: "When they offered [my codefendant and me] 30 years, a flat 30 years, not 30 to life—we were 17 [years old.] We didn't understand. Thirty years? I was 17 and in 30 years I'd be 47. That seemed like forever to me."⁶⁷

No One Can Predict Who a Teenager Will Be At Age 40

People in their late teens are still developing, and the direction of that development is not one that can be predicted with reliability. In 2005 the US Supreme Court noted, "It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."⁶⁸

Jonathan Laba, deputy director of the Pacific Juvenile Defender Center, says that it is difficult, if not impossible, for a court to accurately judge a youth and predict the type of person that he or she will become. "They are just starting out in life. In most cases they cannot provide the court with a record of a successful work experience, a high school or college degree obtained, or other indicators of adult success. As a result, the crime itself

⁶⁶ Human Rights Watch interview with Martin Hernandez, Hawthorne, California, November 10, 2011.

⁶⁷ Human Rights Watch interview with Robert D., serving life without parole in California, July 13, 2007.

⁶⁸ *Roper v. Simmons*, 543 U.S. 551, 573 (2005).

and factors such as gang involvement can take on a heightened importance in the sentencing process. These things do not tell the whole story.”⁶⁹

In fact, at the time of sentencing, Bracamontes, who is now serving life without parole, would have likely looked like the better candidate for possibility of release than either Martin Hernandez or Vance Webster, both of whom are now out. Bracamontes was not gang-involved, Hernandez and Webster were; Bracamontes was attending school, and passing, while Hernandez and Webster were doing poorly; Bracamontes’s family was intact, with two parents involved in their son’s life of baseball games and school, while Hernandez’s family was struggling to get by on his mother’s sole income, and Webster was on his own.

Years passed, however, and Hernandez and Webster both proved to be much more complex and promising individuals than would be suggested by the simple facts of their teen lives and the crimes for which they were convicted. Twenty years after Hernandez’s conviction and nearly 30 after Webster’s, both men are living purposeful lives and giving back to their communities. Yet for the 301 people sentenced to life with no possibility of parole as youth, there is no opportunity to review the cases years or even decades later. “When I die, that’s when they’ll send me home,” said Charles T., a young man serving life without parole.⁷⁰

Other Existing Sentencing Law Provides for Public Safety

There is no question that young people who commit serious crimes must be punished. The parents of youth offenders serving life without parole whom we interviewed and the young people themselves agree. “[There’s] no doubt in my mind that he should be where he is, [in prison],” the mother of a 17-year-old who was sentenced to life without parole told us. “Just not forever.”⁷¹

⁶⁹ Human Rights Watch email communication with Jonathan Laba, deputy director of the Pacific Juvenile Defender Center, Martinez, California, December 13, 2011. Laba is a criminal defense attorney and an adjunct faculty member at Berkeley Law and Golden Gate University Schools of Law.

⁷⁰ Human Rights Watch interview with Charles T., serving life without parole in California, August 17, 2007.

⁷¹ Human Rights Watch telephone interview with the mother of Brian C., Benicia, California, November 12, 2007.



William R. when he was 16 years old. He was 17 at the time of his crime. © 2008 Private

It is important to note that, were California to eliminate life without parole sentencing for youth offenders, the law would still provide ample protection for public safety. Existing California law requires lengthy sentences and mandatory minimums. Coupled with California's restrictive parole review process and practice, release from prison is distant and unlikely for all but those who can unequivocally prove they merit a chance to be paroled. For example, California's next harshest penalty for murder is 25-years-to-life in prison, with no reductions for the minimum time served. In other words, offenders receiving this sentence must serve 25 years before their first parole hearing. In addition, current law requires mandatory, consecutive sentencing enhancements that add years, and in many cases, decades to the base sentence of 25-to-life.⁷²

In addition, those who are ultimately released are not likely to commit new crimes, according to the US Department of Justice. Overall, prisoners who serve a sentence for homicide and are released are the least likely of any type of offender to commit new crimes. After release, convicted homicide offenders are less than half as likely to be convicted of any new crime than released assault, burglary, or drug offenders.⁷³

Changes in California Law Have Reduced Checks and Balances

Changes in California law have removed many safeguards and points for review that once existed for youth who are charged in these cases. Judicial discretion and decision-making have been severely limited. Laws mandate the automatic filing of many juvenile cases in adult court, resulting in youth being tried as adults and facing adult penalties. In addition,

⁷² For example, the sentence for a first degree murder committed with a firearm must include the firearm enhancement of a second, consecutive 25-to-life sentence, making the sentence 50-years-to-life. California Penal Code Section §12022.53(d) (2011).

⁷³ About 21 percent of released prisoners who are convicted homicide offenders are convicted of a new crime (any felony or serious misdemeanor) within three years of release. By contrast, the reconviction rate of released assault offenders was 44 percent, burglary offenders was 54 percent, and drug offenders 47 percent. US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, "Recidivism of Prisoners Released in 1994," June 2002, <http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf> (accessed November 30, 2007), p. 7.

California’s juvenile life without parole statute restricts the discretion of judges, limiting their ability to impose a lesser sentence. Key factors in the process include:

- **Judges no longer determine whether a youth is tried in juvenile court in these cases.** Once charges are filed in these cases, there is no point at which a judge can decide whether a young person should be in juvenile court or adult court.⁷⁴

- **Prosecutors decide whether to file the case with “special circumstances” and judges cannot alter this.**

Prosecutorial charging decisions are made early in a case, and prosecutors have no mandate to investigate the defendant’s social history, maturity, or amenability to rehabilitation.⁷⁵ Once filed with the special circumstance allegation, a trier of fact must determine whether the allegation is true and, if it is, then the presumptive sentence in these youth offender cases is life without parole.

- **Juries play no role in determining the sentence and do not know life without parole is a possibility.**

Juries do not know—and are instructed to not consider—what kind of punishment is to be meted out.⁷⁶

- **California case law makes life without parole the presumptive sentence for judges to impose in these cases.**

Once found guilty, the default sentence in these cases is life without parole unless the judge finds “good reason” to impose 25-years-to-life.⁷⁷ California appellate attorneys

⁷⁴ California Welfare and Institutions Code § 602(b). Prior to 2000, in most juvenile cases a judge determined whether a juvenile should be tried as an adult or stay in the juvenile justice system where he or she would have access to developmentally-appropriate rehabilitative and educational services. A judicial decision to send a youth to the adult system is based on evidence presented to the court and the court’s weighing of factors such as the youth’s prior criminal history, his or her maturity and amenability to rehabilitative services, and the seriousness of the crime.

⁷⁵ California Welfare and Institutions Code §§ 602(b) and 707(2011). In addition, judges were once allowed to strike a special circumstances finding, and now they are not. In the cases of 16- and 17-year-olds, striking the special circumstances finding would make the mandated sentence a parole-eligible one. California Penal Code § 1385.1, effective June 6, 1990, prohibits a trial court from striking a special circumstance finding in order to reduce a sentence of life imprisonment without possibility of parole. *People v. Ybarra*, 166 Cal.App.4th 1069, 1093 (2008).

⁷⁶ California Criminal Jury Instruction number 706, Special Circumstances: Jury May Not Consider Punishment: “In your deliberations, you may not consider or discuss penalty or punishment in any way when deciding whether a special circumstance, or any other charge, has been proved.” Judicial Council of California Criminal Jury Instructions (2011), CALCRIM No. 706, http://www.courts.ca.gov/partners/documents/calcrim_juryins.pdf (accessed November 23, 2011). Only in a death penalty case does a jury give input on the nature of the sentence. California Penal Code Section §190.1 (2011).

⁷⁷ In *People v. Guinn*, 28 Cal.All.4th 1130 (1994), the court held that the sentence of life without parole must be imposed unless the court finds good reason to choose the less severe sentence of 25 years to life in these cases.

with experience in youth offender cases believe judges rarely exercise the discretion they do have in these cases.⁷⁸

- **After the typical criminal appeals, there is no other regulated, open process for review of these cases. The life without parole sentence is final.**

Criminal appeals succeed only when there has been a prejudicial error by a lower court. Just 4 percent of decisions are reversed on appeal, and the average criminal defendant has exhausted his or her state appeals a year and three months after being sentenced.⁷⁹ In the case of a youth life without parole sentence, this means it becomes final while the youth offender is still quite young. After that, only extraordinary appeals are available and then under very limited circumstances. Clemency, pardon, and commutation can only be granted by the governor. No California governor has ever granted a pardon to an individual serving life without parole. In fact, never in California history has a person sentenced life without parole been granted parole.⁸⁰

⁷⁸ For example: “While a trial court has discretion to sentence a youth to 25-years-to-life, rather than a life without parole sentence (California Penal Code Section § 190.5, subd. (b)), the reality is that once a life without parole special circumstance is found true by a jury, judges do not exercise their discretion. While it may happen, I am aware of no case in which a court has reduced an LWOP sentence to a term of 25-years-to-life.” Human Rights Watch email communication with L. Richard Braucher, staff attorney with the First District Appellate Project, San Francisco, California, November 23, 2012. Braucher has practiced criminal appellate law in California since 1994.

⁷⁹ In California, the median time for an appeal to be decided is 404 days. Four percent of criminal cases appealed in California are reversed on appeal. Judicial Council of California, 2010 Court Statistics Report, Statewide Caseload Trends, 1999–2000 Through 2008–2009, 2010, <http://www.courts.ca.gov/documents/csr2010.pdf> (accessed November 24, 2011), pp. 17 & 26.

⁸⁰ In 2010 Governor Schwarzenegger did not grant clemency or a pardon but did commute the sentence of Sarah Kruzan from life without parole to 25-years-to-life. Kruzan was serving life without parole for killing the man who had raped her when she was 12 years old, afterwards using her as his prostitute. She was 16 years old at the time of the crime. Although her sentence was commuted, she has not yet been reviewed for parole. Governor of California, Annual Reports on Acts of Clemency for the State of California, 1993-2010, obtained from the Office of the Governor of California, November 28, 2011 (copies on file with Human Rights Watch).

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ⁱ Human Rights Watch interviews with Christian Bracamontes, Imperial, California, and Lancaster, California, July 17, 2007 and September 24, 2011. This name is not a pseudonym.

ⁱⁱ Human Rights Watch interview with Martha Macedo, Fontana, California, November 18, 2011.

ⁱⁱⁱ Human Rights Watch interviews with Christian Bracamontes, Imperial, California, and Lancaster, California, July 17, 2007 and September 24, 2011.

^{iv} Grover Trask, District Attorney, County of Riverside; “Statement of District Attorney Under Penal Code Section 1203.1, Crimes for which the Defendant was Convicted and Sentenced,” September 6, 2002, filed with the Superior Court, County of Riverside. This document is the District Attorney’s post-trial summary of facts (copy on file with Human Rights Watch).

^v Human Rights Watch interviews with Christian Bracamontes, Imperial, California, and Lancaster, California, July 17, 2007 and September 24, 2011.

^{vi} At this time we believe that all youth serving life without parole in California have been convicted of murder with special circumstances. The California Penal Code delineates the circumstances which increase the seriousness of a murder conviction, including a murder committed during the course of a felony, a murder related to gang activity, murder for financial gain, and murder by means of lying in wait, among 22 total special circumstances. California Penal 190.2. Bracamontes’s charge was based on the special circumstance of “in the course of a felony,” which was the robbery that Morales initiated.

^{vii} Human Rights Watch interview with Martin Hernandez, Hawthorne, California, November 10, 2011. This name is a pseudonym.

^{viii} Transcript of Parole Consideration Hearing, State of California, Board of Parole Hearings, August 12, 2008 (copy on file with Human Rights Watch) and Human Rights Watch email communications with Barbara Dunn, Attorney at Law, Arcadia, California, to Human Rights Watch, December 12 through 28, 2011. Ms. Dunn represents the individual known here as Martin Hernandez.

WHEN I DIE...THEY'LL SEND ME HOME

Youth Sentenced to Life without Parole in California, An Update

The sentence of life without parole is a sentence to die in prison. Today, the United States is the only country in the world to impose this sentence on youth for crimes committed under age 18.

In California over 300 youth have been sentenced to life without parole. This update to the 2008 Human Rights Watch report *When I Die, They'll Send Me Home* presents current data on the number of youth sentenced to life without parole in California, and details significant legal changes in recent years. It also describes the cases of several young people convicted of murder: two sentenced to parole-eligible sentences who served many years in prison and are now out and contributing to their communities, and two sentenced to life without parole who will die in prison.

Law and public opinion about life sentences for youth have evolved in recent years. Experience and a growing body of scientific evidence confirm there is tremendous emotional and mental growth during the late teens, and that young people differ from adults. As US Supreme Court Justice John Paul Stevens has stated: "Society changes. Knowledge accumulates. We learn, sometimes, from our mistakes..."

California's law permitting juveniles to be sentenced to life without parole for murder was enacted before major advances in understanding adolescent brain development, and fails to recognize that teenagers are particularly amenable to change and rehabilitation. All youth should have the chance to prove they have changed, and to earn parole.



*California State Prison, Centinela
in Imperial County, California.*

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