



Until They Die A Natural Death:

Youth Sentenced to Life Without Parole in Massachusetts



CHILDREN'S LAW CENTER
OF MASSACHUSETTS

The photographs that appear in this report of youth sentenced to life without parole in Massachusetts are used with their permission. The remaining photographs—of juveniles in detention—are by Steve Liss, a photojournalist and Co-Founder of In Our Own Backyard, a non-profit organization of photographers dedicated to achieving social justice in the United States through their work. Donations may be made at www.inourownbackyard.us.



The original paintings and drawings that appear in this report are used with the permission of young artists from RAW Art Works in Lynn, Massachusetts. Since 1988, RAW has passionately pursued its mission to ignite the desire to create and the confidence to succeed in underserved youth, using the power of the arts to transform young lives, one artist at a time. RAW's free art therapy-based programs are designed to create a continuum of service to kids age 6 to 19.

RAW launched its programming when it won a contract with the Massachusetts Department of Youth Services to develop the first statewide art program for incarcerated youth. In 1994, RAW established RAW Space, in downtown Lynn, to serve at-risk youth and prevent them from entering lock up in the first place.

The artists whose work is shown in this publication have never been involved with the juvenile justice system. While many have been pressured to join gangs or become involved in illegal activities, they found a sense of belonging and identity at RAW instead.

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Founded in 1977, the Children's Law Center is a private, not-for-profit legal advocacy and resource center for indigent children of the Commonwealth. Its mission is to promote and secure equal justice and to maximize opportunity for low-income children and youth by providing quality advocacy and legal services. The Law Center provides individual legal representation in the areas of child welfare, education, and juvenile justice; offers trainings and technical assistance to parents, attorneys and helping professionals; and, engages in a myriad of systems reform efforts including research, appellate and legislative advocacy, impact litigation, and committee and task force work.

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Youth sentenced to serve life without the possibility of parole in Massachusetts will grow up, become adults, and remain in prison until they die a natural death. It is the harshest punishment available for a person of any age in Massachusetts, imposed on youth in an exceptionally severe manner: children ages 14, 15 and 16 charged with first degree murder are automatically tried as adults and, if convicted, receive a mandatory life without parole sentence—no exceptions. The juvenile court has no jurisdiction over the case, so the effect is more absolute than in other states where “reverse transfer” to juvenile court is often available or a prosecutor can choose where to file a case. In Massachusetts, the adult court has exclusive jurisdiction and can give no consideration to the youth’s age or life circumstances. For offenders this young, very few states go this far in ignoring the fundamental differences between children and adults before imposing a life without parole sentence. Although many states expose young children to life without parole sentences, only two states—Massachusetts and Connecticut—allow children as young as 14 to receive life without parole in this absolute manner.

Youth in Massachusetts who are too young to vote, be drafted, serve on juries, or even drive have been sentenced to life without parole. The Children’s Law Center identified and reviewed 46 of 57 such cases reported by the Massachusetts Department of Correction. These cases are an anomaly in the Northeast—neither New York nor New Jersey have any youth serving life without parole. The cases in Massachusetts and around the country (almost 2,500 total) also depart starkly from the global consensus against the sentence, which international law prohibits. Outside the United States, there are no youth incarcerated with no hope of release anywhere in the rest of the world.

Enactment of the current law in Massachusetts was a sweeping reaction to a national and local spate of juvenile homicides and faulty predictions about a coming wave of violence driven by juvenile “super-predators.” The widespread predictions turned out to be false and alarmist, and the underlying research discredited, but not before they propelled passage of the current law in 1996. The law was also a response to the insufficient juvenile court sentences of the 1980s, when the harshest punishment for a juvenile who was not transferred to adult court—even for murder—was incarceration to the age of 21. The juvenile court could not impose a lengthier sentence. And if the juvenile was transferred, the adult court—then as now—could impose no shorter sentence than incarceration for the rest of the child’s life. The old law failed

to hold juveniles accountable and the new law abandoned all hope for the redemption of young lives.

After the spike in crime rates in the early 1990s, the state’s homicide rates—particularly among youth under age 18—followed the national trend back downward. Violent crime among Massachusetts youth has declined markedly since the 1990s. Homicide rates for Massachusetts youth under age 18 peaked in 1992 and have not exceeded half the peak numbers since 1997. Since 1998, the homicide rate in this age group has been lower than it was 30 years ago. But the decisions made under the rushed and misinformed conditions of the 1990s remain.

Life without parole sentences may be an appropriate response to some adult crimes, especially in a state like Massachusetts that does not impose the death penalty. But the current law treats youth as young as 14 exactly like adults, regardless of their age, past conduct, level of participation in the crime, personal background and potential for rehabilitation.

This practice must be re-examined, especially in light of the recent advances in brain research that reveal dramatic anatomical differences between adolescent and adult brains—differences that are particularly relevant to the rehabilitation of youth. Juveniles are still developing cognitively, socially and neurologically. Teenagers

do not yet have adult decision-making capabilities, they are more vulnerable to outside pressures than adults, and their characters still are not fully formed. For these reasons, the United States Supreme Court, in striking down the juvenile death penalty, explained that juvenile offenders, no matter what the crime, are “categorically less culpable” than adult offenders. Most importantly, because adolescents still have relatively unformed characters, they have a substantially greater potential for change and rehabilitation than adults who commit a comparable offense. As a result of this inherent capacity to change, most juvenile offenders—even those who commit serious offenses—desist from crime as they grow into late adolescence and early adulthood. Youth who are sentenced to life without parole in Massachusetts are not the adults they will become, and change is inherent to their development.

Yet, in Massachusetts, there are people who have served 25 years or more for childhood crimes. The fiscal costs of their lifetime incarceration are significant—Massachusetts taxpayers pay roughly \$2.5 million dollars to incarcerate a youth for the rest of his or her life in state prison.

The Law Center identified and reviewed the cases of 46 people serving such sentences in Massachusetts. We were able to interview 42 of this group. In 41 percent of the cases we reviewed, the youth sentenced to life without parole were first-time offenders, meaning they had no prior record. Because the sentence is mandatory in every case, however, the sentencing judge was not allowed to consider the youth’s prior conduct or any other factor usually important when determining punishment. In a substantial proportion of the crimes—40 percent—juveniles acted alongside at least one adult co-defendant. Juvenile criminal conduct typically occurs with others and the cases we reviewed revealed that when juveniles acted with co-defendants, they were almost always with adults. The adult co-defendants, however, are frequently serving less severe sentences or have already been released.

Across the cases, youth were sentenced to life without parole for varying levels of participation in the crime and even if they were not the principal actor. Twenty percent of the people we spoke with are serving juvenile life without parole for felony murder. This means that the juvenile participated in a felony, but the prosecutor did not need to prove that the juvenile actually committed the murder. In one such case, an unarmed youth participated in a robbery and is now serving life without parole because of a murder committed by one of his co-defendants.

Recurring throughout the records and personal accounts of the children sentenced to life without parole were endemic experiences

of violence that sometimes originated in a child’s home, sometimes in the community. As young children and in their early teenage years, before their arrests, many of the youth were themselves victims of serious physical abuse or lost close family members to homicide.

The records also reveal that life without parole sentences are disproportionately imposed on African American youth in Massachusetts. Black youth make up only 6.5 percent of the state population of all children under age 18, but are 47 percent of those sentenced to serve life terms without the possibility of parole for a childhood offense.

There is no question that young people can commit horrible crimes. Murder is a brutal and devastating act that causes permanent pain and anguish for survivors of the victim. The devastation is the same regardless of the age of the offender. That is why youth who commit such crimes must be held accountable and receive a substantial punishment. The question we must consider—whether such youth are completely unredeemable—cannot be answered when someone is 14, 15 or 16 years old.

We know that some youth are capable of changing and benefiting from second chances. This report shares two such examples of youth who were sentenced before Massachusetts enacted the mandatory juvenile life without parole sentence. One example is David D. After David served 15 years, the Parole Board concluded unanimously that he had rehabilitated himself. Today, he returns to lock-up only as a guest, invited by the Massachusetts Department of Youth Services to talk with young people about how to make better decisions, how to think before they act violently and do harm to others. Not every case is like David’s. But his case shows the importance of establishing a meaningful opportunity for review of juvenile life sentences. Periodic review after a lengthy sentence restores to youth in Massachusetts a fair opportunity to prove rehabilitation. It also brings the state in line with international practice and human rights standards.

Fair sentencing for youth does not mean that we return to the plainly inadequate juvenile court sentences for homicides in the 1980s. But it does mean that we stop imposing the state’s harshest adult punishment on children. If, as we recommend here, life sentences for juveniles mirrored the life sentences imposed on adults for second degree murder, the sentence would be reviewed by the Massachusetts Parole Board after a minimum of 15 years, but could continue for a maximum of lifetime incarceration. The Parole Board would conduct a careful review to determine whether, years later, youth offenders continue to pose a threat to the community. There would be no right to parole or release. Each individual would simply be given a chance to prove that they have earned the right to release through rehabilitation, that growing up has changed them.



The Massachusetts Law That Sentences Youth to Life Without Parole

Under current Massachusetts law, a child as young as 14 can receive a life sentence without the possibility of parole. This is the harshest sentence available in Massachusetts—a state with no death penalty—and it is a sentence to die in prison. Currently, there are 57 people in Massachusetts prisons who have received life without parole sentences for crimes that occurred before their eighteenth birthday.¹ Before they were old enough to vote, buy cigarettes, or serve on the juries they appeared before, they were sent to prison for the rest of their lives.

“The imposition of a life sentence without possibility of parole is a solemn and awesome act. Like a sentence of death, it is intended to remove a person from our midst for the rest of his natural life. It is more awesome when imposed on one as young as [16 year-old Gregory L.], who may expect to live out his young manhood, middle, and late years all in confinement.”

—Justice Charles Fried, *Commonwealth v. [Gregory L.]* (1995)

Youth age 14, 15 and 16 charged with first or second degree murder are automatically tried as adults in Massachusetts Superior Court.² There is no opportunity for judicial transfer to juvenile court, often known as “reverse transfer” in other states. Nor can the District Attorney decide to file such cases in juvenile court, as they can in other states. In fact, the juvenile court has no jurisdiction over such cases in Massachusetts. And all 17 year-olds, no matter what the charge against them, are considered adults under the state’s criminal law. Massachusetts is one of only nine states that set the upper age of juvenile court jurisdiction at 16.³

After the District Attorney charges a juvenile in adult court, there is no point in the proceedings when the judge or the jury can consider the juvenile’s age, history or potential for rehabilitation. Like an adult, if a child is convicted of first degree murder, he or she receives a mandatory life without parole sentence.⁴ There are no exceptions. Neither the judge nor the jury have any opportunity or authority to impose a lesser sentence.⁵ Upon conviction, the law automatically says that the child is irredeemable and should have no opportunity to prove his or her rehabilitation.

Across the country, there are approximately 2,484 people serving life without parole for crimes that occurred when they were under the age of 18.⁶ Each of these cases ignores the acknowledged differences between children and adults and violates international human rights law. There is no other country in the world that has people serving this sentence for childhood crimes.⁷

In many states, like Massachusetts, the sentence is mandatory for at least one type of adult offense and, by a variety of court transfer mechanisms, can be imposed on young children.⁸ **Massachusetts stands apart, however, in giving the adult court exclusive jurisdiction over murder cases against children as young as 14 and then imposing a mandatory life without parole sentence for all first degree murder convictions, regardless of the circumstances. Only Connecticut has similar laws.**⁹ Two additional states—Louisiana and Washington—couple exclusive adult court jurisdiction or mandatory transfer to adult court with mandatory life without parole for youth ages 15 and 16, respectively.¹⁰

In New England, Massachusetts has more than six times as many people serving life without parole for youth crimes as any other state.¹¹ **In the nearest urban states, New York and New Jersey, there is no one serving the sentence for a childhood crime. Like Massachusetts, neither New York nor New Jersey allows the death penalty. Life without parole is the most severe sentence in those states, but has been used only in adult cases.** Although Pennsylvania leads the nation in the number of people serving life without parole for juvenile offenses, Massachusetts has the next largest number of people serving such a sentence among the Northeastern states.¹²

The law in Massachusetts has not always been this harsh. The current law was established 13 years ago, in 1996, in a hurried response to a tragic case and at the height of faulty but frightening predictions about a coming surge of youth violence.

JUVENILE TRANSFER: ALL OR NOTHING

Ever since the creation of the Boston Juvenile Court in 1906, the Commonwealth has recognized that children differ from adults

in their legal capacity and culpability—or blameworthiness. The separate juvenile court systems that developed in every state in the country throughout the first half of the twentieth century intended to place youth in facilities separate from adults, and to substitute treatment and rehabilitation for punishment of juvenile offenders.

The ability to transfer children from juvenile to adult court was reserved for those charged with the most serious, violent offenses, including homicides. From 1975-1990, transfer proceedings were permitted in Massachusetts, but not required, for children between ages 14 and 17 charged with homicide.¹³ Transfer proceedings consisted of two hearings: “Part A,” a hearing to determine if there was probable cause to believe that the juvenile committed the offense, and “Part B,” a hearing to determine whether the child presented a significant danger to the public and whether s/he was amenable to rehabilitation in the juvenile justice system. At the conclusion of the Part B hearing, the juvenile court judge would issue specific, written findings explaining the court’s decision.

“The different treatment accorded youths in the juvenile justice system is justified in large part by the belief that children have far greater capacity to reform than adults. Adults have additional years of experience and accumulated habits that make changes more difficult and unlikely, whereas juveniles are more likely to be influenced and molded by proper environment and education.”

– Report of the Boston Bar Association’s Task Force on Juvenile Justice, 1993

The laws governing transfer in Massachusetts have been the subject of upheaval and the source of dramatic sentencing disparities. Changes to the transfer statute have invariably been made in response to the turmoil of a recent and tragic loss of life. In October 1990, 28 year-old Kimberly Rae Harbour was viciously raped, beaten and stabbed to death by a large group of youths in Dorchester. Charges were brought against eight individuals, five of whom were under age 17. Just two months later, in response to the murder, the Massachusetts Legislature enacted changes to the transfer law that required a transfer hearing in all first or second degree murder cases. The law created a presumption that the transfer criteria were met (i.e. that the juvenile was dangerous and not amenable to

NOT ENOUGH TIME

Of the 21 individuals who were considered juveniles under Massachusetts law at the time of the offense, the Children’s Law Center identified 16 who were tried before the legislative elimination of the judicial transfer procedure. We were able to obtain and review the juvenile court’s written decision ordering transfer in 10 of the 16 cases. We also obtained transcripts of the juvenile transfer proceedings in 7 of the 16 cases, as well as other available portions of the juvenile court records in some cases.

In almost all of the cases the Law Center reviewed, the prevailing reason for transfer to adult court was that the judge believed there was not enough time for proper treatment and rehabilitation in the Department of Youth Services (DYS). Transfer hearings could take a year or more to complete. If the juvenile court decided to keep the case, commitment to DHS and access to DHS programs would often last only a matter of months before the juvenile turned 18 and would be released. The law permitted DHS to extend a commitment to age 21 based on a showing that the youth was dangerous to the public because of a mental disease or defect.¹⁶ Most judges viewed the prospect of extended commitment as too uncertain for purposes of determining the juvenile’s continued access to treatment and programming.

For **JEREMIAH F.**, the juvenile court concluded that “rehabilitation of this juvenile would require confinement in a secured facility for a period of not less than four years.” But by the time of his transfer hearing, Jeremiah had already had his seventeenth birthday—leaving just one guaranteed year in DHS custody. DHS testified before the court that it rarely extended commitments beyond age 18. The court was constrained to find that Jeremiah’s “possible stay there would fall short by at least two or three years to permit reasonable rehabilitation to avoid any danger to society.”

The point was not that Jeremiah could not be rehabilitated, but that there was not enough time to rehabilitate him in DHS. This was exactly what the law asked juvenile courts to consider. The only other option available to the court was transfer to the adult system, where Jeremiah’s eventual rehabilitation would have no meaning at all. Jeremiah is now 40 years old—he has been in prison for 24 years.

Transfer to adult court was ordered in **ROBERT N.**’s case even after DHS concluded that confinement in a secure facility for up to 24 months was the most appropriate treatment plan. His DHS caseworker reported to the juvenile court that Robert’s records and behavior “suggest that he could be successfully treated in a secure facility” in two years. The only appropriate secure treatment program available for Robert was too short, however—only 9-12 months. Absence of an adequate treatment program for 15 year-old Robert meant that he was tried as an adult. Now 44 years old, Robert has served 28 years.

rehabilitation).¹⁴ The juvenile could try to prove this was not the case and the juvenile court still made the ultimate decision whether to transfer.

While mandating transfer hearings, the Legislature let stand a stark imbalance between the sentences in juvenile court and adult court. If a child remained in juvenile court, the maximum sentence—even for murder—was commitment to the Department of Youth Services (DYS) until age 21.¹⁵ If a child was transferred to adult court, life without parole was the mandatory sentence. In essence, judges had to decide between all or nothing. Some juveniles were serving 4-5 years, and others were serving life without parole.

In 1991, the shooting deaths of 15 year-old Corey Grant and 11 year-old Charles Copney in Roxbury devastated their families and their community. Devastation became anger when one of the three juveniles accused of the shootings was not transferred to adult court. In response, the Legislature again enacted another set of changes in the law that allowed District Attorneys to appeal a juvenile court's decision not to transfer a child to adult court and addressed the imbalance between juvenile and adult court sentences for first degree murder.¹⁷

After the 1991 amendments, a child tried in juvenile court could be sentenced to serve 20 years, and had to serve a minimum of 15 years before becoming eligible for parole.¹⁸ The juvenile would remain in DYS custody until his or her eighteenth birthday, and then serve the balance of the sentence in an adult prison.

The 1991 amendments were meant to protect public safety and ensure a substantial punishment without abandoning all hope for redemption of young lives. After a yearlong study, the Boston Bar Association's Task Force on Juvenile Justice reported in 1993 that the mandatory minimum sentence met the important need for retribution, but failed to promote and protect rehabilitation. The Task Force recommended modifications that would have rewarded participation in treatment, education and skill development in DYS. They were ignored.

The recommendations were drowned out by lawmakers and commentators in Massachusetts and around the country who were swept up in the false prophecies of a juvenile crime wave. In Massachusetts, some lawmakers adopted the now infamous mantra "adult time for adult crime" and refused to accept the balanced approach enacted in 1991. Prominent researchers like John DiIulio, Jr. provided fuel for the fire. Professor DiIulio notoriously predicted in 1995 that the turn of the century would bring a youth population of "super-predators."¹⁹ By 2001, he

NOT ENOUGH TIME, CONT'D.

The inadequacy of available programs was a recurring theme in the transfer orders we reviewed. Programs for treating youth who commit violent offenses must, above all else, be located in secure, locked facilities in order to protect public safety. In order to achieve rehabilitation, the programs must also offer youth therapeutic treatment, education and skill development opportunities. Over the years, DYS could not always meet these dual demands, as in the case of one youth who was transferred to the adult system because the only secure DYS facility provided no clinical treatment, and the only therapeutic program that could offer treatment was not in a secure facility.

A similar case involved a 16 year-old boy who had repeated seventh grade three times and then eighth grade twice before dropping out of school. The juvenile court judge concluded that he needed schooling and skill development, but transferred him to adult court because if committed to DYS, the boy would spend 6-8 months in a secure facility rather than a treatment center. "Under the regulations," the judge found, "there is no individual treatment plan which is particularly tailored for the needs of any particular juvenile."



Louis R., 17 in this photo, is serving juvenile life without parole for a crime committed when he was 16. He is now 46. © 2009 Private.

By its nature, the adult system is tailored to the needs of adult offenders, not juveniles. It is not equipped to handle youth like **LOUIS R.**, a 16 year-old who, according to the juvenile court, functioned at that time at a third grade level in reading and math and had "not progressed intellectually, emotionally or socially beyond the age of eight." Nevertheless, because Louis would reach the chronological age of 18 just ten months from his transfer hearing, he was tried as an adult.

admitted that his theory had been disproved and discredited, but not before it wrought havoc on juvenile sentencing laws.

In 1996, at the height of these false and alarmist predictions, another bad case made bad law. Fifteen year-old Eddie O'Brien was accused of stabbing to death the mother of his friend and next-door neighbor. The crime was brutal in the extreme. However, Eddie had no prior record and a strong family support. His former teachers, coach, and neighbors testified at his transfer hearing and described "a good kid." When a District Court judge retained Eddie's case in a juvenile session of the District Court, commentators immediately warned that automatic trial in adult

RECOMMENDATIONS IGNORED: The Boston Bar Association's Task Force on Juvenile Justice

After the 1990 and 1991 changes to the juvenile transfer and sentencing laws, the BBA commissioned a study to examine the impact of the new laws.²⁰ The Task Force included prosecutors, defense attorneys, a clinical psychologist and a law student. Several conclusions and recommendations arose from their yearlong study, particularly concerning the mandatory minimum sentences:

- “The mandatory minimum sentencing provisions [...] gainsay the efficacy of treatment and the possibility of reform. They remove juveniles’s incentive to participate in the treatment process, and make it far more likely that the positive effects of treatment the juvenile receives in the juvenile system will be subsequently undone in the state prison environment.”
- “Recognizing that the mandatory minimum sentencing provisions may serve retributive goals, and perhaps, act as a deterrent, however, the Task Force proposes a legislative compromise that would retain such sentences for juveniles committed to DYS for murder unless they can prove that they are in fact ready and capable of rejoining society.”²¹
- “The Task Force’s modifications provide that the mandatory minimum sentences would be fully enforced if, at age twenty-one, the juvenile could not demonstrate that he or she has taken advantage of the rehabilitative services DYS has provided, and that he or she no longer presents a significant danger to the public.”
- “While this burden of proving rehabilitation would be onerous, the opportunity to prove his or her own reform would introduce a critical incentive for the juvenile’s treatment. Further, the opportunity would be consistent with the notion that decisions about juveniles should be made on the basis of their individual characteristics, not simply on the basis of the crimes they commit.”

court for all children charged with murder was the only way to be safe from a new generation of violent juveniles.

The Commonwealth appealed the District Court’s transfer ruling and the Supreme Judicial Court ordered a second transfer hearing. The new judge transferred Eddie to adult court.

Before there was time to examine commentators’ predictions and the efficacy of treating children exactly like adults, the Legislature rushed to enact the current law: giving adult court exclusive jurisdiction over children between ages 14 and 17 charged with first or second degree murder. Since then, homicide rates for adolescents under age 18 disproved the fear of young “super-predators” that shaped this law. As opposed to the vast increase in juvenile crime that was predicted in 1996, the state’s youth homicide rates had already peaked in 1992. Since 1998, the homicide rate for youth under age 18 has been lower than it was 30 years ago.²²

A rightful call for retribution—for youth to pay a greater price when they commit heinous crimes—motivated the initial legislative changes to juvenile sentencing in the early 1990s. Commitment to DYS and release at age 18 or 21 did not protect communities from potentially dangerous youth, did not permit enough time for rehabilitation, and did not go far enough in extracting a punishment.²³ The current law, however, extracts from every convicted youth the same punishment as an adult, regardless of age, past delinquency conduct, level of participation in the crime, home background, special education concerns, or potential for rehabilitation.

Executive clemency in the form of sentence commutation by the Governor does not afford youth a meaningful opportunity for review of these sentences. No petitions for reduction of a sentence have been granted in Massachusetts—for any crime—since 1997.²⁴ This stark trend illustrates why a political clemency process such as commutation can not solve a human rights problem such as life without parole for juveniles.

In Massachusetts, life without parole is the worst possible sentence and should be reserved for the worst offenses. Although youth can commit the same acts as adults, their immaturity makes their acts less culpable. The next section of this report discusses the proven developmental differences between youth and adults, which caused the United States Supreme Court to conclude that “juvenile offenders cannot with reliability be classified among the worst offenders.”²⁵

Making Good on Second Chances

DAVID D.

David D. was one of the first youth to be sentenced in juvenile court after the 1991 amendments to the juvenile sentencing laws. He served 15 years for a first degree murder adjudication and then became eligible for parole. The parole hearing was a chance for David to prove that he is not the same person he was at age 16, that he had been rehabilitated. Release after 15 years of incarceration was not guaranteed. The Parole Board could have denied parole and granted David a review hearing one year later.

In prison, David took advantage of every school program, work program and counseling session available to him. The old law permitted him to stay in DYS custody until he was 21 years old before being transferred to DOC. In DYS, he finished the credits necessary to receive a diploma from his public high school and began taking college level courses. David says of this time:

“Being incarcerated allowed me to see who the true David really was, to prove to myself, family and others that doubted me in changing. At 16, I didn’t know who I was. I did not have the tools to sort through traumatic personal experiences. I now have the tools and capacity to be in control of my actions and my life. I have worked hard. I am still working on myself, and plan to do so for the rest of my life.”²⁶

David continued his studies, counseling and work programs in DOC. He also became a mentor and teacher’s assistant for younger prisoners. During the 15 years, he had only one disciplinary infraction for fighting with another prisoner, when he was 18 years old.

The Parole Board’s decision to grant David parole was unanimous. The Board concluded that “the intended goals of [David’s] sentence and the criminal justice system have been met. [David] from all accounts, has rehabilitated himself[.]”

David is now 32 years old. Since his release, he has pursued a productive and stable life in his community with his characteristic determination. In addition to his full-time job in mental health services, he works weekly shifts in a building supply store. He continues to mentor young people by finding time to return to DYS—now as a guest speaker. At the invitation of his former Program Director, David regularly visits the DYS secure facility and talks with youth in two of the units about his experiences and how to learn and grow in DYS custody.

“When I talk to the kids in DYS,” David told us, “I try to tell them to remember: you are human yourself, don’t be afraid to ask for help, because we all do—even the hardest individuals. Just don’t throw away your life to prove your ego.”

Under today’s law, David would almost certainly be sentenced to spend the rest of his life in prison for his crime. The facts of his case are similar to some of the cases of people serving juvenile

life without parole. David shot a man at point blank range during an attempted robbery. His background, too, had much in common with the people we spoke with serving life without parole for childhood crimes. In his Boston neighborhood, David’s single mother struggled to raise four children, one with severe mental and physical disabilities. When David was still in grade school, David’s father killed his girlfriend and then himself. David became withdrawn, pulled away from his family and started associating mostly with older peers. As a young teenager, he was heavily involved in using and selling drugs. The violence his father had turned on himself and his girlfriend was echoed in David’s community.

David says that one of the most important steps he took was not to return to that community. He is fortunate, he explains, to be able to make such choices and have new experiences. “I know one thing: my victim will forever be a part of my life—the fact that it is at his expense that I have what I have now.” David is doing his best to honor the opportunity he has been given.

MICHAEL C.

Like David, the facts of Michael C.’s case have much in common with the life without parole cases we examined. Michael was a member of a gang in Dorchester. Although he did well in school and had a strong relationship with his parents, he described having two lives: a home life and a street life. In his street life, he could have status and, from the age of 13, “easy money” from selling drugs. When he was 16, Michael was shot at several times by two gang members while he was sitting in a car outside a convenience store. The car was parked on a street that was dominated by a rival Dorchester gang. A bullet hit his shoulder, just missing his head. Weeks later, Michael learned that the person who shot at him was nearby. He armed himself to retaliate; when he found the person who had shot at him, he shot several times from some distance away and one bullet killed the victim.

Michael was tried in juvenile court. Because his crime occurred before the 1991 amendments, Michael was released at age 18. The gang life and the easy money he could make were still a strong pull. “But I was given a chance and I wanted to change. I knew I couldn’t go back to it.”²⁷

When he got out of DYS, Michael’s family was no longer living in Dorchester. They had moved to the suburbs to be closer to Michael while he was in custody. Michael decided to go even further away from his old life and went to college in Virginia to study communications. He played college basketball and finished three years of college before electing to work full-time. He moved back to Massachusetts when his mother was diagnosed with cancer.

In 2000, he married his high school sweetheart. They now have two daughters in grade school. “My daughters are my world, my life,” he told us.²⁸ Michael is grateful for the chance he was given to leave his street life behind, to change and to have a family of his own. “Some call it a success. I call it growing up.”

Why Adolescents Are Different From Adults

Adolescents are not adults. They are still developing psychosocially and their brains, not just their bodies, are not yet fully grown.

“To a degree never before understood, scientists can now demonstrate that adolescents are immature not only to the observer’s naked eye, but in the very fibers of their brains.”

Brief of the American Medical Association and American Psychiatric Association, et. al. as Amici Curiae In Support of Respondent, at 10, *Roper v. Simmons*, 543 U.S. 551 (2005).

Cognitively, teenagers do not yet have adult decision-making capabilities. They are more vulnerable to outside pressures than adults, and their characters still are not fully formed. This means that, relative to adults, teens are less likely to consider the consequences of their actions, to understand other people’s perspectives, or to control their impulses.²⁹ In making decisions, teens place more emphasis on the present and are less likely to focus on the long-term consequences of their decisions. They are apt to give greater weight to short-term risks and benefits.³⁰

It is even harder for teens to appreciate the potential consequences of their actions when they are with their peers—whether they are being pressured directly to take risks or seeking peer approval. Teenagers spend three times as much time talking with their peers as with adults and it is in this context that youth make many of their riskiest decisions.³¹ Of the prisoners the Law Center spoke with in Massachusetts, 70% acted with at least one other co-defendant. Forty-three percent acted with at least two co-defendants.

“The susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult.” *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

Mirroring these behavioral differences are significant biological differences between the adolescent and adult brain. Using groundbreaking magnetic resonance imaging (MRI) and other technologies that emerged in the late 1990s, neuroscientists have discovered that the adolescent brain goes through striking changes and that brain

maturation is not complete even in older adolescents.³² This is especially so in the areas of the brain that are involved in impulse control, like the prefrontal cortex located in the brain’s frontal lobes. The prefrontal cortex regulates “executive” functioning, such as decision-making, future planning and the ability to assess risks before acting. The frontal lobes are among the last regions of the brain to fully mature and may not be fully developed until a person is in his or her mid 20s.³³

In the absence of a fully-developed frontal cortex, adolescent decision-making relies on the amygdala, the area of the brain associated with impulsive and aggressive behaviors. The amygdala is one of the most primitive parts of the brain and among the earliest to develop.³⁴ It governs instinctive, automatic “flight or fight” responses. Adult brains have fully developed prefrontal cortices that serve to modulate the amygdala’s responses. Teenage brains, on the other hand, are in the process of developing the ability to modulate such “gut” responses.³⁵

These are significant biological differences between adolescents and adults that correspond with the behavioral differences parents and psychologists have observed for decades.³⁶ The new lessons of brain science, because they graphically illustrate the developmental differences between teens and adults, have received national attention in magazines like *Time* and television shows like *Frontline*.³⁷

All of this brain growth and psychosocial development does not happen in a perfectly linear fashion. The scientific research reveals significant individual variation in the rates of brain and psychosocial maturation. Again, this is not new to parents, who know first-hand that adolescents do not suddenly complete development and transition into adulthood at a certain age.

Nevertheless, the law and public safety require clearer boundaries between youth and adulthood. Although brain development continues into the 20s, age 18 traditionally marks the legal age of majority for almost all purposes, as well as the age of adulthood for purposes of criminal prosecution in close to 40 states and internationally. Given the trajectory of adolescent development, the judgments of most teenagers under age 18 do not reflect a fully matured brain.

Many areas of the law in Massachusetts already recognize that teenagers under age 18 are not as mature as adults. Youth cannot vote until they turn 18, nor can they serve on juries, enter into contracts, buy tobacco products or get tattoos. This is because we do not believe that youth are able to exercise such privileges and responsibilities wisely, and we are concerned they will be susceptible to outside pressures.³⁸ The more we learn about brain science, the better we understand the importance of these age distinctions.

However, youth as young as 14 years old, who are legally children for every other purpose in Massachusetts, are uniformly tried and sentenced as adults once charged with murder.

YOUTH'S INHERENT CAPACITY TO CHANGE

Perhaps the most important difference between children and adults is that, because adolescents still have relatively unformed characters, they have a substantially greater potential for change and rehabilitation than adults who commit a comparable offense. Researchers Elizabeth S. Scott and Laurence Steinberg report that the steep drop-off in criminal activity after age 17 “reflects the reality that most adolescents desist in late adolescence or early adulthood. Only a small group of young offenders—about 5 percent by many estimates—will persist in criminal activity in adulthood. The upshot is that the vast majority of teenage offenders are individuals whose offenses are linked to adolescence and who are not destined to become criminals.”³⁹ In short, adolescents are not the adults they will become and change is inherent to their development.

As they grow up, adolescents are uniquely capable of reform and rehabilitation. In its decision striking down the juvenile death penalty in 2005, the United States Supreme Court explained it this way:

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. 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.⁴⁰

A later section of this report addresses the enormous fiscal cost of incarcerating youth for the rest of their lives despite the evidence that most adolescent offenders desist from crime by the time they are 30.



Drawing by Steven Goler, Jr.

Honoring the special vulnerabilities and growth potential of young people was a primary motivation for establishing the juvenile court in Massachusetts. The express purpose of the juvenile court is to treat youth, “not as criminals, but as children in need of aid, encouragement and guidance.”⁴¹ To this end, juvenile court allows judges some discretion to determine the appropriate disposition for an individual juvenile offender. For serious, violent juvenile offenses, the discretion is more limited. For juveniles between ages 14 and 17 in adult court facing murder charges, there is no discretion at all.

The marked differences between children and adults outlined here are not an excuse for juvenile violence. Children should not get a “pass” or “free ride” or a “ticket out.” Nor should they be punished—as they are now—as if they were adults. Punishment is meant to correspond to culpability. Culpability is a matter of blameworthiness—it is the idea that a person can be accountable for his or her actions because s/he was aware of their wrongfulness. Not everyone who commits the same crime is equally culpable nor equally deserving of a certain punishment. This is why premeditated homicides are punished more harshly than a murder committed impulsively. This is also why children under age 18 and people who are mentally retarded cannot receive the death penalty.

In 1988, the United States Supreme Court made what it described as an “obvious” conclusion in *Thompson v. Oklahoma* that “less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult.”⁴²

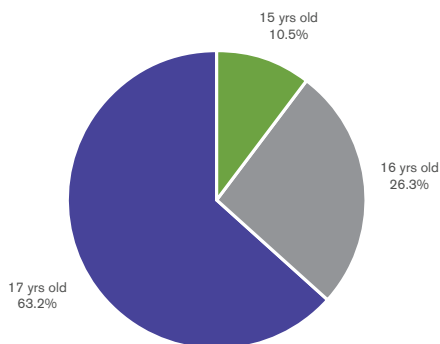
Massachusetts has no death penalty, but juveniles in Massachusetts sentenced to life without parole will die in prison. Even as adults in their 30s and 40s, they will have no chance to show that growing up and their efforts at rehabilitation have changed them.

The Youth Sentenced to Serve Life Without Parole in Massachusetts

All of the 57 people serving life terms without the possibility of parole in Massachusetts for crimes that occurred when they were under age 18 received mandatory adult sentences in adult court. At the time of the offense, none of them were old enough to serve on the juries they appeared before.

Twenty-one of those individuals were under age 17, which means they were considered juveniles by Massachusetts law.⁴³ Fifteen were 16 years old and six were 15 years old at the time of offense.⁴⁴ There is no one serving the sentence for a crime that occurred at age 14, although juveniles as young as 14 face the sentence in adult court. Seventeen year-olds are regarded as adults under the criminal laws of the Commonwealth, but would still be juveniles in most other states and most other countries. For that reason, we have included them in this report.

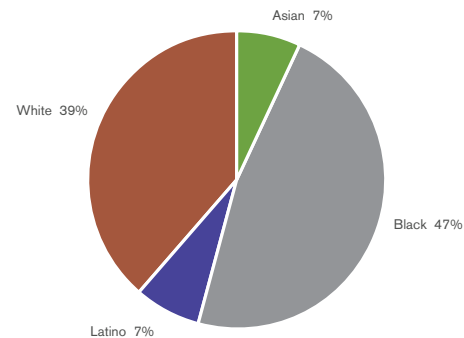
YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN MASSACHUSETTS BY AGE AT OFFENSE



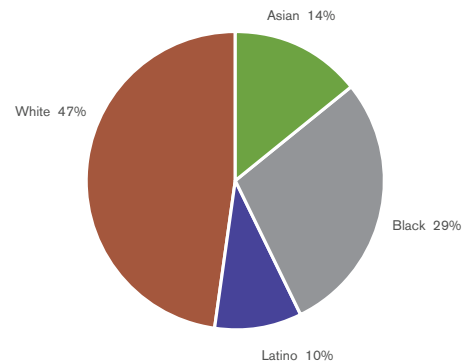
All of the children sentenced to life without parole in Massachusetts have been boys. Today, the oldest person serving the sentence is 52; the youngest is 20 years old. Most were sentenced and admitted to the Massachusetts Department of Correction (DOC) at age 17 or 18.⁴⁵

African American youth in Massachusetts are disproportionately affected by the state's juvenile life without parole sentence. Although they make up only 6.5% of the population of all children under age 18, African American youth are 47% of those sentenced to serve life terms without the possibility of parole for a childhood offense.⁴⁶ Sixty-one percent of youth under age 18 sentenced to life without parole in Massachusetts are people of color. Although white youth make up 75.2% of all youth under age 18, they are just 39% of those serving the sentence. Latino youth are represented in low numbers—just 7% of people serving the sentence for crimes that occurred when they were under age 18. They are 10.5% of all youth under age 18 in the state.

YOUTH UNDER AGE 18 SENTENCED TO LIFE WITHOUT PAROLE BY RACE

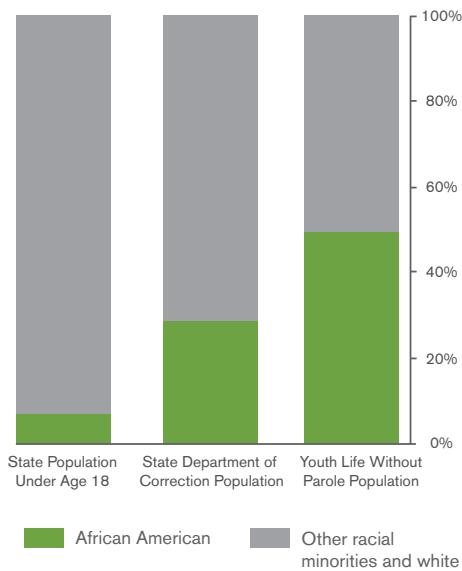


YOUTH UNDER AGE 17 SENTENCED TO LIFE WITHOUT PAROLE BY RACE



African American youth are also overrepresented as compared to the overall population of people in the custody of DOC. Twenty-eight percent of the state's prison population is African American, as compared to 47% of those sentenced to life without parole under age 18. Notably, by this measure, Latino youth are again underrepresented: Latinos make up 28% of the state's prison population, but only 7% of the youth life without parole population.⁴⁷

BLACK YOUTH UNDER AGE 18 SENTENCED TO LIFE WITHOUT PAROLE COMPARED TO STATE AND DOC POPULATIONS



A NOTE ABOUT OUR REVIEW OF CASES

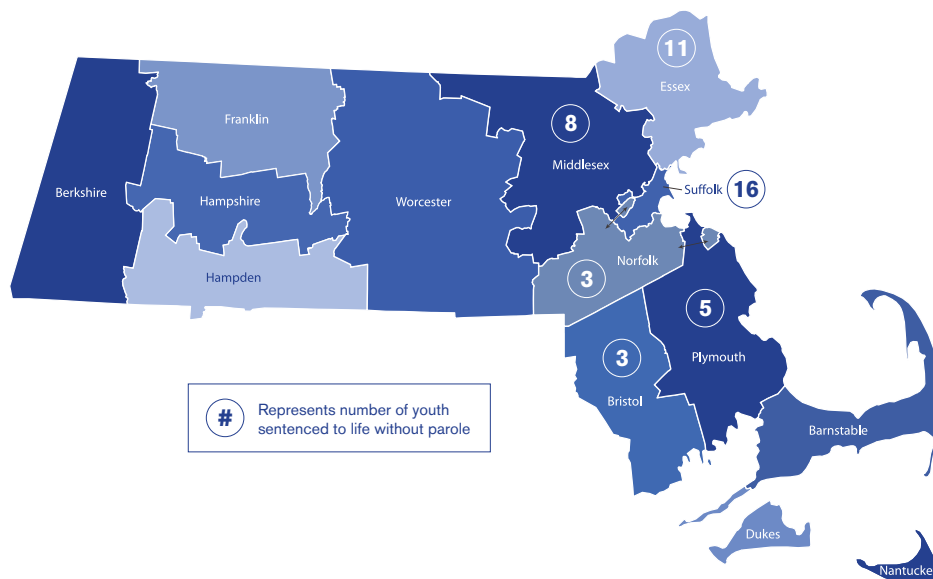
The Law Center surveyed 47 individuals who are serving life without parole sentences for crimes that occurred when they were under age 18. The questionnaire addressed the history of their cases, their personal and childhood backgrounds, and their experiences in prison. Forty-four individuals responded to the questionnaire and all but two were interviewed by an interview team that included at least one attorney. The Law Center also reviewed court decisions, news articles, individual case files, and court transcripts for this report and in order to assess potential litigation.

Any non-public information used in this report, based on interviews and responses to the questionnaires, is used with the individual's signed authorization. Pseudonyms are used to identify all prisoners. Although many prisoners authorized the use of their names, we have used pseudonyms because of our concern that personal information could put them at risk of harm in prison.

Information concerning those who were under age 17 at the time of offense was reviewed separately before it was considered along with the cases of 17 year-olds. Of the 21 individuals numerically identified by DOC as serving life without parole for a crime that occurred when they were under age 17, we identified 20 and interviewed all but one prisoner who is held in a facility out-of-state. Of the 36 individuals identified as 17 years old at the time of the crime, we identified and interviewed 23.

The majority of youth were sentenced to life without parole for crimes that occurred in Suffolk County.

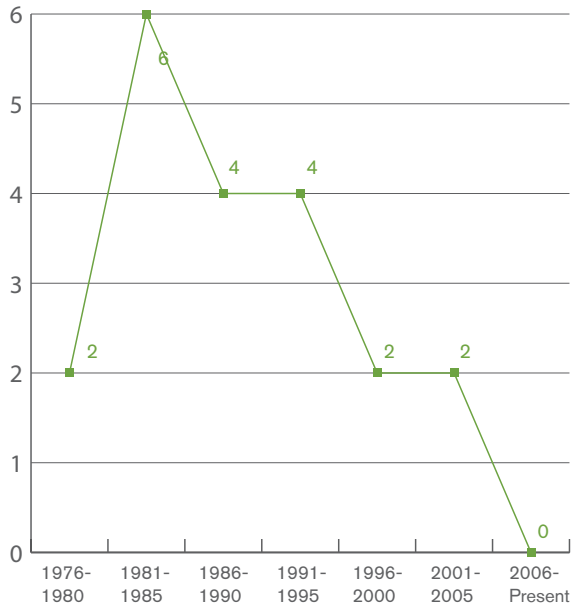
YOUTH SENTENCED TO LIFE WITHOUT PAROLE IN MASSACHUSETTS BY COUNTY OF OFFENSE



SECTION III

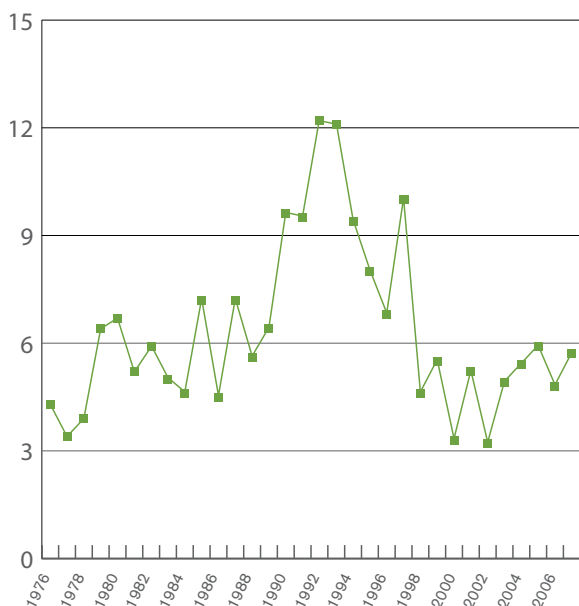
Over time, the number of youth under age 17 sentenced to life without parole has decreased. The figure below charts such sentences in five year intervals by year of offense.

MASSACHUSETTS YOUTH UNDER AGE 17 SENTENCED TO LIFE WITHOUT PAROLE, 1976-PRESENT BY YEAR OF OFFENSE



As illustrated in the next figure, juvenile homicide rates in Massachusetts have also declined overall, after peaking in 1992. Homicide rates for Massachusetts youth under age 18 have not exceeded half the peak numbers since 1997. Since 1998, the homicide rate in this age group has been lower than it was 30 years ago.⁴⁸

MASSACHUSETTS HOMICIDE OFFENDING RATES FOR YOUTH UNDER AGE 18, 1976-2007



The following section details the recurring themes and findings that emerged from our case reviews and interviews. In their interviews with us, the individuals serving life without parole for youth crimes shed light on the impact of the sentence, the young lives that led them to prison, and the adults they have become.

Many youth sentenced to life without parole in Massachusetts are first-time offenders.

Forty-one percent of those who are serving life without parole for a crime that occurred when they were under age 18 received the sentence for their first offense. These individuals had no prior juvenile delinquency or adult criminal record.⁴⁹ Yet there was no opportunity for the judge to consider the importance of a youth's prior conduct before imposing a sentence.

Before the change in the law in 1996, a juvenile could only be transferred to adult court after a transfer hearing that explicitly considered a youth's prior record, if any, among other factors. A child's behavioral history was an important indicator of how s/he might respond to future treatment and punishment. For youth who are sentenced in juvenile court, this factor remains central to the court's determination of the sentence that will best protect public safety and promote future rehabilitation.

It would be wrong to consider lack of prior criminal history in isolation. A child's behavioral past must necessarily be viewed in light of the offense committed. But the current sentencing structure in adult court entirely ignores a child's behavioral track record.

Youth were sentenced to life without parole for widely disparate levels of participation in the crime.

The current sentencing structure also prohibits courts from considering a youth's level of participation in the crime. Twenty percent of the individuals we identified are serving life without parole for a "felony murder" conviction. This means they were convicted of a murder that occurred during the commission or attempted commission of certain non-homicide felonies, such as armed robbery.⁵⁰ Under the felony murder law, there is no requirement to prove that a person intended to commit murder or participated in a killing, only that s/he intended to commit the underlying non-homicide felony and that a death resulted.

The “joint venture” legal theory in Massachusetts case law plays a particularly troubling role in felony murder cases. If a youth is shown to be in a joint venture with others committing a felony, the prosecution is not required to prove that s/he intended to commit the felony. The joint venture theory holds the youth responsible for the conduct of a co-defendant or other actor if it is shown that the youth was at the scene, knew the other person intended to commit the felony, and was by agreement willing and available to help the other person commit the felony.

There is no question that every crime we reviewed had permanent and grievous consequences that continue to traumatize many families and communities. A youth’s level of participation in a crime does not alter the harm that it causes. But the state’s harshest punishment—the life without parole sentence—treats every juvenile like the principal perpetrator of the crime. Most troubling, the sentence treats every youth exactly like an adult.

Adult co-defendants frequently played influential roles.

Common to many of the cases we examined was the presence of co-defendants, particularly older, adult co-defendants. Among those who were under age 17 at the time of offense—and therefore still considered juveniles under Massachusetts law—forty percent had one or more adult co-defendants. Actions taken with adult co-defendants accounted for 80% of all cases where juveniles acted with others.

Juveniles sentenced to life without parole frequently acted with others. In 80% percent of such co-defendant cases, they acted with adults.

Sixteen year-old Mark H.’s older co-defendant at first played the role of a confidante: after inflicting a non-fatal wound on the victim, Mark found an older friend and told him what had happened. His friend told him he needed to return to the scene and “finish the job.” Mark followed the older co-defendant back to the scene, where the co-defendant handed Mark a kitchen knife and told him to “do it.”⁵²

DILLON P.



Dillon P., 16 in this photo, is serving juvenile life without parole for a crime committed when he was 17. © 2009 Private.

Dillon P. was 17 years old when he met up with two acquaintances—a 15 year-old and an 18 year-old—and got into a fight with two university students on the street. He admits he threw the first punch, knocking one of the students to the ground. But then the 15 year-old juvenile stabbed the student in the heart, killing him as he lay on the ground. The 18 year-old stole the other student’s wallet and the victim’s wallet was also taken. In most states, both Dillon and his younger co-defendant would have been

considered juveniles. Dillon explained to us and in his testimony in adult court that he did not know the other youth was carrying a knife; nor did he know the others were looking for someone to rob.

Despite his testimony, Dillon was convicted of first degree felony murder based on the theory that he was a joint venturer in an armed robbery of the victim. He received the mandatory life without parole sentence. The juvenile who stabbed and killed the victim was tried in juvenile court and sentenced to 20 years for first degree murder. He was released in 2002 after serving 10 years. The adult who stole one of the wallets pleaded guilty to manslaughter and testified against his co-defendants in exchange for a 12-20 year sentence. He was released after serving 10 years.

In prison for 17 years, Dillon has served nearly as much time as his co-defendants combined. At age 34, he told us that it is easier for him to understand now that there are sometimes unexpected and grave consequences to a person’s actions. “When I was 17, I wasn’t thinking like that so much.”⁵¹ But, he says, he still struggles to understand why he is being punished more than his co-defendants.

Dillon plans to seek a reduction of his sentence by applying to the Governor for commutation. The trial court judge, now retired, agrees that Dillon’s sentence should be commuted if he has been rehabilitated.⁵³ Both the victim’s mother and brother support Dillon’s release. Sharing his feelings about Dillon’s sentence, the victim’s brother wrote to us that “as a victim, your normal feeling is that everyone involved in the crime should get life sentences. But as the initial shock and overreacting feelings disappear, you start to think that might not be fair after all.”⁵⁴ A youth “in prison for life does not have the possibility to pay back to society as a released prisoner who has an education and a job would have.”⁵⁵



In all but one co-defendant case, our research revealed adult co-defendants who received less severe penalties than the juvenile involved.

Nationally, a comparison of life without parole sentences imposed on children and adults shows that youth often receive more punitive sentences than their adult counterparts. In the United States, in 11 of the 17 years between 1985 and 2001, youth convicted of murder were more likely to enter prison sentenced to life without parole than were adults convicted of the same crime.⁵⁶

In several Massachusetts cases, adult co-defendants received lesser sentences as the result of plea bargaining. Richard K. was one of nine individuals charged with the death of a man who had threatened Richard with a gun earlier in the night. The prosecutor offered Richard a 19-20 year sentence if he would plead to manslaughter and testify against an older adult co-defendant who, like Richard, was a principal actor. Richard rejected the offer. Even today, only one decade into his life sentence for felony murder, Richard told us that he does not regret his decision because he would have faced so much danger and retaliation in prison if he had testified against the older co-defendant.⁵⁷ The older co-defendant made a different decision—he testified against Richard and pleaded guilty to manslaughter.

Many youth were sentenced to life without parole in the midst of childhoods marked by the violence of others and the profound neglect of their parents.

Most notable in the responses to questionnaires and interviews were the recurring themes of violence and prolonged neglect that characterized so many of the lives we examined. More than half of those who were under age 17 at the time of their crimes reported significant histories of physical abuse from parents or other caretakers including foster parents.

The neglect of Victor L. escalated into outright abandonment in the months before his crime. For six weeks, Victor's mother left her 16 year-old son and 17 year-old daughter at home alone. When the police took Victor into custody, they could not find any adult family member to notify and no one attended Victor's initial court proceedings.⁵⁸

Violence at home was often exacerbated by the total absence and volatility that accompanies a parent's drug addiction. Thirty-

ROBERT N.



Robert N. had just turned 16 in this photo with his sister. He is serving juvenile life without parole for a crime committed at age 15. He is now 44. © 2009 Private.

According to Robert N.'s sister, "if the police weren't called to the house it was a great day." Robert's alcoholic, abusive father left the family of seven when Robert was four years old. His mother descended into years of alcoholism, depression and violence toward her family. There was frequently no food in the home and although the oldest daughter did what she could to care for the family, they lived in a state of chaos and addiction.

Robert's mother turned to the Catholic Church for support, enrolling Robert in altar boy classes with their local pastor, Father John Geoghan. At first, Father Geoghan appeared to be a much-needed mentor. But in fact, he soon started sexually abusing ten-year-old Robert. The abuse continued for almost two years.

When he was twelve years old, Robert began to associate with a gang and to experiment with drugs and alcohol. Frequent drug use made Robert "one of the guys." The Department of Youth Services concluded that his heavy alcohol intake and drug abuse was "a poor substitute to increase his self esteem and ego strength."

Between his 13th and 15th birthdays, Robert was charged six times with breaking and entering. He was placed in foster care for a period of time and then committed to DYS. It was soon after returning from DYS that he met his 23 year-old co-defendant, Kimberly, and began spending most of his time at her house because "there was a party there every night."⁵⁹ The partygoers ranged in age from 14 to 40. Kimberly introduced Robert to two of her friends – Joseph who was 20 years old and another adult. The three of them brought Robert into their plans for robberies, including a plan to rob an elderly woman who lived alone upstairs from Kimberly. They planned for Robert to knock her unconscious and for Kimberly and Robert to take her belongings. Robert says he never thought the robbery would turn into a murder. When Robert struck Kimberly's neighbor but failed to render her unconscious, Kimberly summoned Joseph, who struck her repeatedly. In his statement to the police, Joseph said that Robert was then responsible for the rest of the beating.

Two days later, Robert called the police and told them where he and Joseph could be found. In DYS custody, Robert was evaluated to determine whether he should be transferred to adult court. His DYS caseworker at the time concluded that Robert could respond to intensive treatment in a secure juvenile facility for 24 months. Nevertheless, the opportunity for treatment was lost when he was transferred to the adult system and, like Joseph, tried and sentenced to life without parole. Kimberly served six months for her role in the murder. Robert has been in prison for 29 years.

five percent of the individuals we spoke with described a home environment where heroin, crack cocaine or marijuana were almost always present, being used, bought or sold.

At the time of his crime, Mark H. was trying to come to terms with his alcoholic and drug addicted mother, who gave him up to years of physical abuse by a foster mother described as weighing more than 300 pounds. All of Mark's biological siblings also describe incidents of Mark being sexually abused, although he does not remember the abuse. Just two weeks before the crime, Mark had turned 16 years old and was repeating the ninth grade. When he tried to run away from a foster care placement, he was returned again to his biological mother's custody. In the days before the crime, Mark describes his outlook on life: "I felt worthless, like I had no future. I was passively suicidal and very lost. I had fantasies about wanting to die in a fiery car crash or something like that."

Both of Chris L.'s parents were in and out of prison for drug offenses throughout his childhood. He told us about the last time he saw his father. "I ran into him on the platform in South Station." Chris' father wanted money for drugs. "I gave him everything I had – \$1.50. Then I had to hop the train."⁶⁰

When he was six years old, Gregory L. hid under the bed and watched his father beat his mother repeatedly with a frying pan. On a separate occasion, his father shot his mother. Gregory's parents divorced before he was born, but his father drifted in and out of their lives for the next ten years, bringing violence with him. For young Gregory, his father's threats were as menacing as his actions—like when he threatened to blow up Gregory's house. Gregory's mother used alcohol and drugs to fight a losing battle against depression. When she was pregnant with Gregory, she tried to kill herself and was hospitalized for her mental illness. Alcohol had an early

appeal for Gregory as well. "It helped me escape my problems."⁶¹ He started drinking when he was 12 years old. By his freshmen year of high school, he was drinking whiskey before going to school in the morning. His mother made no moves to stop him and gave him the cash he needed to avoid being sober.

Violence outside the home also figured prominently in the childhoods of many youth who were sentenced to life without parole.

Steven G. first described the good fortune of growing up in a quiet, stable home environment after his family was able to leave the refugee camp in Thailand where he was born. His family lived in a middle-class neighborhood and Steven liked playing sports—basketball at school and flag football with the fire department league. But when he was in junior high, both his parents lost their jobs and the family eventually had to move to a housing project. All of their lives changed in their new surroundings. Violence erupted regularly out of the racial and ethnic tensions that existed between Laotians and Puerto Ricans in the neighborhood. Steven's older brother spent a long time in the hospital after he was shot in a gang-related drive-by shooting. When he was 13 years old, Steven and his friends joined a gang to protect themselves. In high school, he stopped playing sports because the game schedule would alert rival gang members to his whereabouts and he feared for his safety.⁶²

Street violence dominated Joseph R.'s life from an early age, mainly because he and his mother moved around a lot, relying on others for housing or living in the streets. His uncle was killed when he was a young boy and during middle school, Joseph was the victim of a stabbing that almost killed him.⁶³

Norman B. spent 2 weeks in the hospital after he was caught in the cross-fire of a drive-by shooting meant for older kids. Norman was 11 years old at the time.⁶⁴

"15 YEARS WAS MY WHOLE LIFE"

Incredibly, almost half of the individuals we spoke with had been offered plea bargains but declined to take them. The reasons varied. **CHARLES T.** was offered a second degree life sentence, with parole eligibility after 15 years. Fifteen years represented his whole life and he was unable to envision what it would mean to spend that much time in prison. He was also scared that a plea would result in immediate transfer to an adult facility. After his arrest, Charles was held in an adult jail in New York City. He explained that based on his experiences there, he wanted to avoid going back to an adult unit.⁶⁵

FRANK A. was offered 18-20 years if he would plead guilty to manslaughter and testify against his co-defendants. Frank was willing to do it, but his attorney advised him they "could do better" so Frank declined the offer.⁶⁶

RICHARD K.



Richard K., 16 in this photo, is serving juvenile life without parole for a crime committed when he was 17. He is now 31. © 2009 Private.

Growing up in Philadelphia living with his mother, Richard was often teased by other children about the way his mother acted when she was high on crack. He depended on his aunt and his grandmother for meals, but only sometimes stayed with them. When he started getting in trouble in middle school, he was sent to live with his father in New Bedford. He looked up to his father and felt special because his father could afford to buy him new clothes and new sneakers, something his mother could never do. Yet like his

mother, Richard's father did nothing to hide the alcohol he drank every morning or the drugs he used each day. It was not long before Richard figured out that his father's money came from selling drugs. When he was 15 years old, Richard dropped out of school without finishing the ninth grade and started selling drugs instead. His father knew what Richard was doing but said and did nothing. Richard had to be careful not to compete for his father's customers.⁶⁷

Daily life for Richard became dangerous and complicated. At age 16, he spent three months in the hospital with a collapsed lung after he was stabbed during a fight. His father went to prison for more than a year for drug distribution.⁶⁸

He was 17 years old and among the youngest in a group of 15 or 20 teenagers and adults who crashed a party to retaliate for threats made against him. During the fight that erupted outside the party, an older co-defendant began beating the man who had threatened Richard and Richard stabbed the man. Other armed co-defendants attacked two victims who were badly injured but survived. Richard is the only one of his eight co-defendants who is still in prison.

After presiding over Richard's trial and the trials of four co-defendants, the judge found that Richard's first degree murder conviction was not consonant with justice. The facts of the case, in combination with Richard's age, prompted the judge to conclude that Richard's was one of the rare verdicts that should be reduced to second degree, which carries a sentence of 15 years to life. The Massachusetts Supreme Judicial Court disagreed and reinstated the earlier verdict on appeal.



Growing Up in Prison

The individuals we spoke with entered prison when they were—like other teens—in the midst of formative growth and development, both physically and emotionally. In adult facilities, children are acutely vulnerable because of their size, their lack of experience in the system, and their lack of a peer support group. Their weakness is evident and sets young people apart, making them targets for physical and sexual assault.

As compared to youth in juvenile detention facilities, youth in adult facilities are eight times more likely to commit suicide, five times more likely to be sexually assaulted, and nearly twice as likely to be attacked by other prisoners or by staff.⁶⁹

Robert N. was just 15 years old at the time of his crime—he was 5'2" and weighed 110 pounds. When he was admitted to DOC, the staff observed in a Classification Report that he “had yet to experience the ‘growing pains’ of childhood and adolescence; he [had] yet to shave or to build up his muscles,” and he had been seen “playing army” on his bunk bed.



Charles T., 15 in this photo, is serving juvenile life without parole for a crime committed when he was 16. © 2009 Private.

CHARLES T. was arrested at age 16 and spent two weeks in an adult unit of a New York City jail before he was returned to Massachusetts. In the adult unit, 50-60 beds were lined up in rows in one large room. Almost all the other prisoners were in their thirties or older. Although he was assigned a bed randomly, Charles quickly learned that different areas of the room were controlled by different gangs. He said that he was lucky because an older man looked out for him during this time.

“I tried to stay to myself.”⁷⁰ But the quick violence was everywhere. He saw a man on the block get stabbed for refusing to give another prisoner his street clothes. These memories and others made Charles particularly frightened of being transferred to DOC after he turned 17. He was relieved when the judge in his case granted his lawyer’s request to let Charles stay in DYS during his trial.

Children who are sentenced to life without parole for a childhood crime grow up in prison. In Massachusetts, most will be admitted to the adult prisons in DOC at age 17 or 18. The classification system mandates that they spend their first two years in a maximum security facility.⁷¹ After that, good behavior may earn them additional privileges and, eventually, transfer to a medium security facility. While medium security facilities offer more programs than maximum security facilities, space in the programs is often limited and prisoners must put their names on a wait list.

Many prisoners reported to us that it can take months or years to get into an educational or skill development program because prisoners serving life without parole are the lowest priority on the waitlist. Peter T. told us that he has been on the wait list to take a computer class for almost four years because the class has only one spot for prisoners serving life without parole.⁷² Rules and practices appear to vary from one Massachusetts facility to another, or even among the programs offered. But according to the institutional order of priorities, prisoners serving life without parole will never live freely again, so DOC believes it does no harm to the youth nor to the public by drastically curtailing their opportunities to learn and develop skills.

Unlike adults, however, youth sentenced to life without parole enter prison at an age when access to counseling, schooling and skill development programs can have a decisive impact on their development and futures.

Of the youth who entered the system as juveniles—when they were under age 17—85% have passed their General Educational Development exam. Of those who entered the system when they were 17 years old, 62% have passed their GED exam. For this group—those who were 17 years old at the time of the offense—participating in GED classes may have been more challenging if it had been a while since they were last in school. Only 31% of the 17 year-olds were in school at the time of their arrest and the average individual in this group dropped out of school after ninth grade.

For William N., prison is the last of many institutional placements. His mother was just 14 when she had William and she gave him up for adoption when he was five years old. Fourteen foster care placements and nine residential homes followed. Only at age 12 did William begin attending school regularly. He was placed directly into seventh grade. When he started high school two years later, he could barely read the newspaper. In prison, he took pre-GED classes and ultimately passed his GED exam. Although he is not able to take the college-level courses that are available to some prisoners, he borrows the textbooks from other people whenever he can. He tries to tell himself that “life does not stop because I have a toe tag on.”⁷³ This philosophy motivates him to keep going to Catholic church services, meeting with counselors, and working a maintenance job in the prison.

Almost everyone we spoke with experienced a difficult period of adjustment to the prison surroundings, and to the reality that they would spend the rest of their lives there. Before Curtis D.

It took Robert N. almost nine years to really grasp his situation. During those years, he had a lot of disciplinary infractions and experimented with the drugs that are available in prison. Then he realized “my association had to change.”⁷⁷ He began spending time with new people, he learned to read, write and speak Spanish, and he became a Jehovah’s witness. He has not had a disciplinary infraction in over 15 years.

We spoke with a few individuals who gained access to coveted jobs or programs and described taking refuge in the daily participation. Richard K. told us that he is fortunate because he was able to enroll in a popular program to get a barber shop certificate. In contrast to most other programs, the instructor of the barber school always reserves two spots for people serving life without parole. Richard explained that this is a special opportunity for him and that many people in his position would like to be in barber school, but cannot get in. He spends as much time as possible at the barber shop, cutting hair and joining in the conversations.⁷⁸

“You just grow up very fast,” said Calvin P. who is now 27 years old. Calvin had no prior juvenile record, so he had no idea how prison would be. “I came in as a child. You want to be blind to it, but then you see people get beat, getting raped and killing themselves.”⁷⁴

arrived at Walpole, he thought he was tough and would be able to handle it. Then he witnessed a murder soon after he got there and said “I was so afraid that my body shook all over.” He has since been transferred to a medium security facility where stabbings and other violence are less frequent. Talking about how he comes to terms with his sentence, he told us, “I don’t want to be the typical prisoner who finds God,” but believing in a higher power has helped when Curtis does not feel strong enough.⁷⁵

At age 20, James R. is still the youngest person on his cell block. He earned access to a job and a few classes relatively quickly because of a clean disciplinary record in his first year in DOC. Although this may outwardly be a sign that he is adjusting better than most young people, he told us “one of the things I wish for the most is to be able to be myself. I can’t be myself here.” But he can already see changes in himself. “I think more in general. I read and write more, I try to learn something new every day, to exceed people’s expectations of me.”⁷⁶



Sam L., 16 in this photo, is serving juvenile life without parole for a crime committed when he was 16. He is now 37. © 2009 Private.

These accounts reflect the complexity of growing up in prison. One parent of a youth sentenced to life without parole in Massachusetts reflected on watching this from the confines of a visiting room. “There have been some years that I thought [SAM L.] needed more time to think about what did take place. He has served 22 years behind bars in some conditions that I don’t know if I would be able to stay alive and handle myself in the manner that he has.

I have watched Sam grow into a man for these last 22 years and often think about what a good son he has become. The troubled boy I once knew has grown into someone that I am proud to say is my son.”⁷⁹

MARK H.



Mark H., 15 in this photo, is serving juvenile life without parole for a crime committed when he was 16. He is now 38. © 2009 Private.

Just days before his sixteenth birthday, Mark was removed from a foster care placement and sent back to his biological mother's custody against his wishes. The foster parents were an elderly couple and Mark's care had fallen mostly to the two older foster brothers, who bought Mark alcohol and introduced him to their older friends. The placement was not much, but it was better than anything else Mark had known.

When he was three years old, Mark and his siblings were put in foster care because their mother was too alcohol and drug-addicted to care for her children. For the next five years, Mark bore the brunt of frequent beatings—with a wiffle ball bat, spatulas, clothes hangers, and with something his 300 pound foster mother called her "beating stick." At the time, a caseworker from the Department of Social Services (DSS) reported complaints about abuse from the children, neighbors and teachers. The DSS reports also indicated that Mark was regularly singled out for beatings because he was prone to bedwetting and had a persistent stutter.

Mark's mother eventually resumed contact with her children and convinced DSS to return them to her care when she discovered the abuse. But she was no better able to care for her children and by the time he was 14, Mark and his two older siblings had run away from their turbulent home. Back in DSS custody, Mark was placed with the elderly couple. They did not beat him, nor did they take notice that Mark was drinking heavily, using drugs, and had found companionship with a group of much older teenagers.

Despite this history, Mark had no juvenile record. Rather than acting out, he responded to his environment by withdrawing and escaping with alcohol and drugs. Less than three weeks after being returned to his mother's custody, Mark stabbed a homeless

man who confronted him in an alley way at night. When he ran from the scene to find his older friends at a nearby hangout, his friend Bill urged Mark to return to the scene and "finish the job." The older teenager took Mark back to the alley way, where he gave Mark a kitchen knife. "Here's the knife," Bill told Mark. "Do it."

At his transfer hearing, three mental health experts testified that Mark was amenable to rehabilitation within the juvenile system. However, the judge feared that the juvenile system would soon lose jurisdiction over Mark when he turned eighteen. The judge found that any rehabilitation would require a longer period—four or five years—of intensive treatment. The court felt compelled to reject the plainly inadequate period of incarceration in the juvenile system. Mark was transferred to adult court and sentenced to life without parole. The adult sentence ended his chances to prove that he was rehabilitated five years—or even 20 years—later. Although he stressed that neither his age nor his upbringing excuse the senseless and brutal crime on a defenseless victim, Mark reflected soberly that by any objective standard, he is not the same person he was at age 16.

Today, Mark is 36 years old. He passed his GED exam and enrolled in the Boston University Prison Education Program, graduating with a Bachelor of Liberal Studies Degree in Interdisciplinary Studies—Magna Cum Laude. He has gone as far as he can go with his education in prison. The same is true of prison trade programs. Mark received his state certification as a welder and upholsterer. He was selected into the highly prized Massachusetts Correctional Industries Upholstery Program. He took pride in telling us about his responsibilities as the Head Upholsterer and sharing with us the Boston Globe article that described Mark's upholstering skills as displaying talent and better quality than that produced by some professionals. He also participates in the prison's Buddy Program, assisting elderly and disabled inmates. There is no ulterior motive, Mark says, for the way he lives his life in prison. "I feel lucky to do the programs, because they let me meet people—like teachers and guards—who see who I am."⁸⁰

“When you throw a kid away without giving him a chance ever again, you don’t know what kind of person you threw away—you don’t know what good you are throwing away.” – Curtis D.⁸¹



Sentencing Practices Around the Country and Around the Globe

Only the United States continues to impose life without parole sentences on youth offenders. Careful research by human rights advocates has revealed that, in the rest of world, there are no known cases of youth incarcerated without hope of release.⁸²

The global consensus is to impose sentences on youth that reflect the fundamental differences between children and adults by preserving every youth's right to rehabilitation. International law requires such an approach. The Convention on the Rights of the Child (CRC), adopted by the United Nations in 1990 and ratified by every country in the world except the United States and Somalia, expressly prohibits the sentencing of youth to life without parole.⁸³ The CRC's prohibition prompted many signatory countries to eliminate the practice.⁸⁴

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

– United Nations Convention on the Rights of the Child, art. 37, Nov. 20, 1989, 28 I.L.M. 1448, 1469-70 (entered into force Sept. 2, 1990). Ratified by every country in the world except the United States and Somalia.

The United States did ratify the International Covenant on Civil and Political Rights (ICCPR), which mandates that sentencing laws for juveniles must “take account of their age and the desirability of promoting their rehabilitation.”⁸⁵ Governments must also ensure that “every child” has “the right to such measures of protection as are required by his status as a minor[.]”⁸⁶

The current practice of sentencing youth in the United States to life without parole violates the ICCPR and the basic global values codified by the treaty. Even considering the United States' reservation to the treaty allowing it to treat juveniles as adults “in exceptional circumstances,” the ICCPR's United Nations oversight committee, the Committee on Human Rights, concluded

in 2006 that the sentencing of youth in the United States to serve life terms without parole violates the ICCPR. According to the Committee, the sentence is not reserved only for exceptional circumstances and itself violates a youth's right “to such measures of protection as are required by his status as a minor[.]”⁸⁷

Only the United States voted against a resolution by the United Nations General Assembly in 2006 calling on states to abolish the death penalty and life without parole for individuals under age 18 at the time of the crime.⁸⁸ Most recently, the Committee on the Elimination of Racial Discrimination (CERD), charged with enforcement of the International Convention on the Elimination of All Forms of Racial Discrimination, examined the acute racial disparities in the sentencing of youth to life without parole in the United States. In March 2008, CERD concluded that “the persistence of such . . . sentencing is incompatible with article 5(a) of the Convention[.]” and recommended that the U.S. “discontinue the use of life sentences without parole against [youth offenders], and review the situation of persons already serving such sentences.”⁸⁹

According to research conducted by Human Rights Watch, the federal government and 44 states permit this anomalous sentencing practice, though only 39 states have individuals serving the sentence. In 2008, there were 2,484 people serving life without parole sentences in prisons around the country for crimes that occurred when they were under age 18.⁹⁰ Massachusetts is one of 13 states where the sentence is possible for children at least 14 and older.⁹¹

Many of the current juvenile sentencing laws were passed in the 1990s as part of larger state initiatives increasing the severity of punishments for youth and establishing statutory procedures for trying youth in adult courts. Between 1992 and 1994, 24 states either created or expanded statutes that automatically waived juveniles into adult courts.⁹²

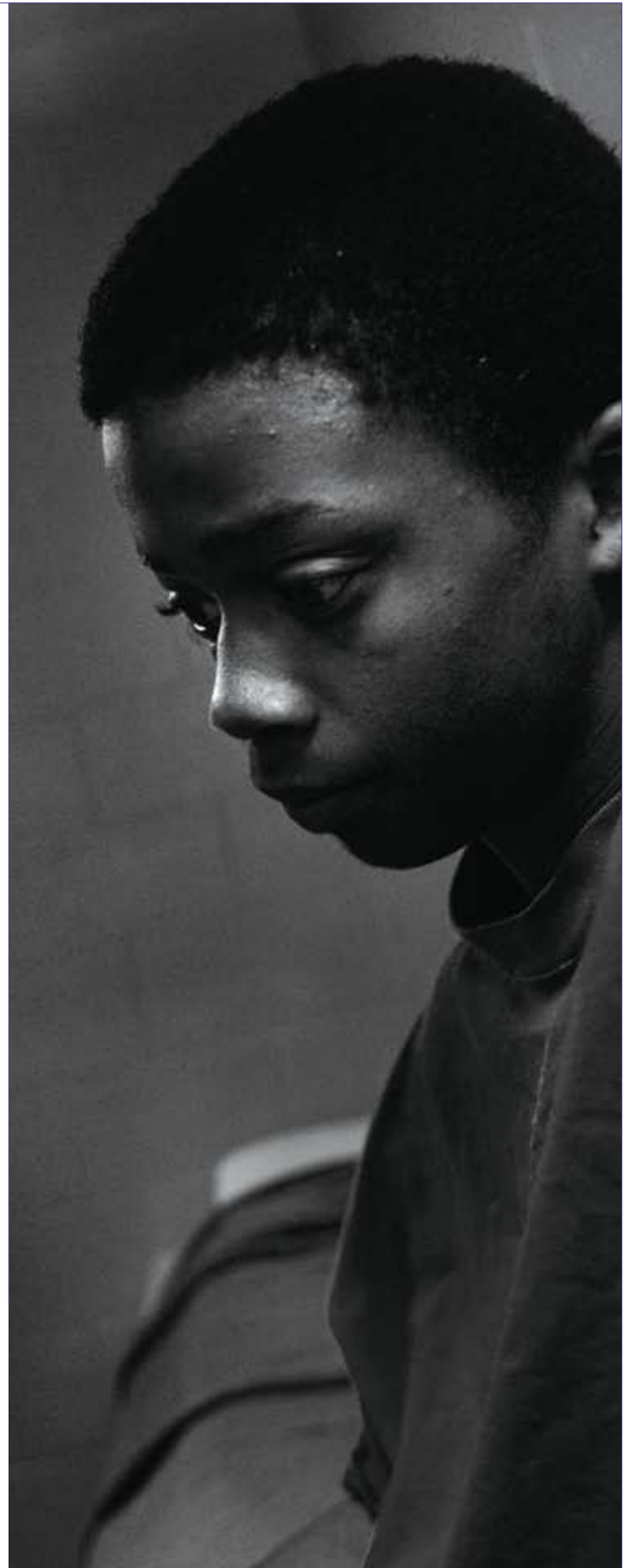
However, a closer look at national sentencing practices reveals that six states and the District of Columbia prohibit the imposition of life without parole sentences on youth and an additional five states have no individuals known to be serving the sentence for a youth crime.⁹³ Among the 39 states that to-

day actively sentence youth to serve life without the possibility of parole, more than 60% of such cases are the result of sentencing practices in just five states: California, Florida, Louisiana, Michigan and Pennsylvania.⁹⁴ As there are no youth sentenced to life without parole in New York or New Jersey, Massachusetts is second only to Pennsylvania in the number of people serving the sentence in the Northeastern States. Besides Massachusetts, only one other state—Connecticut—automatically prosecutes children as young as 14 in adult court, provides no reverse transfer mechanism, and imposes a mandatory life without parole sentence.

More than a decade after the crack-cocaine epidemic and the reaction to faulty predictions about young “super-predators,” sentencing laws—particularly mandatory sentences—around the country are under scrutiny to determine if they are rooted in sound policy. Declining youth crime rates and widespread awareness of the anatomical differences between adolescent and adult brains are prompting a return to the goal of rehabilitation as an essential tool for ensuring public safety. Sentences for youth who commit murder must reflect the suffering and harm their crimes have caused. Imposing a lengthy sentence and providing a meaningful opportunity for periodic review of such cases would bring Massachusetts and the United States into line with other nations that hold youth accountable and protect their human right to rehabilitation.⁹⁵

IN 2008, THE AMERICAN BAR ASSOCIATION PASSED A RESOLUTION URGING STATES TO ADOPT LAWS CONSISTENT WITH THE FOLLOWING PRINCIPLES:

- Sentences for youthful offenders should generally be less punitive than sentences for those age 18 and older who have committed comparable offenses;
- Sentences for youthful offenders should recognize key mitigating considerations particularly relevant to their youthful status, including those found by the United States Supreme Court in *Roper v. Simmons*, 543 U.S. 551, 567-570 (2005), as well as the seriousness of the offense and the delinquent and criminal history of the offender; and
- Youthful offenders should generally be eligible for parole or other early release consideration at a reasonable point during their sentence; and, if denied, should be reconsidered for parole or early release periodically thereafter.⁹⁶



The Cost of Locking Up Massachusetts Youth for Life

It costs Massachusetts taxpayers more than \$2.5 million dollars to incarcerate a juvenile for the rest of his or her life. Typically, youth who receive adult sentences are transferred to the Department of Correction (DOC) at age 17. The table below illustrates the costs of incarcerating a youth who is required by DOC's classification rules to spend at least two years in a maximum security prison⁹⁷ and then, assuming a perfect disciplinary record, will spend the rest of his or her life in a less costly medium security prison. In reality, the cost will exceed \$2.5 million dollars as the annual costs of caring for an elderly prisoner in his 60s, 70s or even 80s spike significantly.⁹⁸

COST OF INCARCERATING A JUVENILE FOR LIFE⁹⁹

	COST PER YEAR	NUMBER OF YEARS	SUB-TOTAL
MAXIMUM SECURITY PRISON	\$54,290.63 ¹⁰⁰	2	\$108,581.26
MEDIUM SECURITY PRISON	\$41,706.29 ¹⁰¹	58 ¹⁰²	\$2,418,964.82
TOTAL			\$2,527,546.08

Incarcerating until their deaths all of the 57 individuals who are currently serving life without parole for offenses that occurred when they were under age 18 will cost the Commonwealth approximately \$131 million dollars. Incarcerating until their deaths just those who were under age 17 at the time of the offense will cost the Commonwealth a total of approximately \$48 million dollars.

	CURRENTLY SERVING LIFE WITHOUT PAROLE (UNDER 17 AT OFFENSE) ¹⁰³	CURRENTLY SERVING LIFE WITHOUT PAROLE (UNDER 18 AT OFFENSE) ¹⁰⁴
AVERAGE COST TO DATE	\$16,640,809.71	\$40,413,395.01
AVERAGE FUTURE COST	\$31,529,955.24	\$90,335,824.14
TOTAL	\$48,170,764.95	\$130,749,219.15

This is money well spent if it protects neighborhoods and families from violence and destruction. If, however, a juvenile has been rehabilitated after a lengthy sentence, the need to incapacitate him to protect public safety ends. Continuing to incarcerate all youth regardless of their individual ability to grow and change comes at great financial cost to the Commonwealth. To put the cost in context, consider that each year of continued incarceration in a medium security facility costs just \$4,000 less than the starting salary for a Boston Police Officer.¹⁰⁵

At a time of extended economic crisis for the state budget, millions of dollars can be saved by establishing a sentence for juveniles that holds youth accountable but also restores their human right to rehabilitation.

Conclusion and Recommendations

Since the enactment of the current law imposing mandatory life without parole sentences on children in Massachusetts, several important developments compel a re-examination of that practice. Juvenile homicide rates have declined markedly, belying alarmist predictions in the 1990s that such rates would continue to climb. The United States Supreme Court struck down the use of the death penalty for all youth under age 18. Advances in neuroscience have found striking anatomical differences between adolescent and adult brains that confirm children's greater capacity to change. Sentences for youth must reflect the harm they have caused while also reflecting the acknowledged differences between children and adults. To protect public safety, it is not necessary to decide that a child is irredeemable based on acts that occurred when he or she was as young as 14 years old. It is not necessary to spend millions of taxpayer dollars on 50-60 years of lifetime incarceration. After a lengthy sentence, youth should be given a chance to appear before the Parole Board and prove that they have been rehabilitated.

To that end, we making the following recommendations:

TO MASSACHUSETTS LEGISLATORS:

- Enact legislation establishing a meaningful opportunity for periodic review of life sentences for juveniles. Sentences for juveniles convicted of first degree murder should mirror the life sentences imposed on adults for second degree murder, such that they become eligible for parole after 15 years and at periodic intervals thereafter.
- Provide for retroactive application of the new legislation.
- Ensure that current victim notification and victim services provisions governing parole eligibility of adults are strictly applied to review of life sentences for juveniles.
- Eliminate mandatory sentencing for all juveniles in adult court so that they receive individualized sentencing, consistent with juvenile court practices.
- Retain all convicted juveniles in DYS custody until their 21st birthdays so that they have access to rehabilitation, education and job training programs. When youth are transferred from DYS to DOC, credit their successful participation in such programs when determining their appropriate classification.

TO THE GOVERNOR OF MASSACHUSETTS:

- Support the enactment of legislation establishing a meaningful opportunity for periodic review of life sentences for juveniles.
- Amend the Executive Clemency Guidelines to establish criteria for the commutation of juvenile life sentences in light of a petitioner's age at offense, level of participation in the crime and capacity for rehabilitation.

TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS:

- When reviewing a juvenile's life sentence on direct appeal under MGL Ch. 278 § 33E, consider the juvenile's age and related factors.

TO MASSACHUSETTS PRACTITIONERS:

- Establish a specialized area of practice for defending youth who face life without parole sentences.

Endnotes

1. According to data received from the Massachusetts Department of Correction in April 2009. Email from Paul Heroux, Director, Research and Planning Division, Department of Correction (Apr. 6, 2009) (“Department of Correction Data, Apr. 2009”) (on file).
2. MGL Ch. 119 § 74 (“The juvenile court shall not have jurisdiction over a person who had at the time of the offense attained the age of fourteen but not yet attained the age of seventeen who is charged with committing murder in the first or second degree.”). All seventeen year-olds are considered adults under the Massachusetts criminal laws.
3. See MGL Ch. 119 § 52 (conferring delinquency jurisdiction on the Juvenile Court Department for children between the ages of 7 and 17). This report addresses life without parole sentences imposed on youth for crimes that occurred when they were under age 18—the age of majority in 39 states and under international law. See also Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, *National Report Series: Juveniles in Court* 5 (June 2003), available at <http://ojjdp.ncjrs.org/Publications/PubResults.asp?sei=86&ti=2&si=7&kw=&strItem=&strSingleItem=&p=topic&PreviousPage=SearchResults>. In 2008, Connecticut and Illinois raised the age of juvenile court jurisdiction to include any youth under age 18.
4. MGL Ch. 265 § 2 (establishing mandatory imposition of life sentence without eligibility for parole for persons convicted of first degree murder).
5. On appeal, the Supreme Judicial Court has authority under MGL Ch. 278 § 33E to order a new trial or to reduce a first degree murder verdict to a lesser degree of guilt if it finds that the verdict is against the weight of the evidence or such relief is in the interests of justice. Modification of a jury’s verdict in this manner is exceedingly rare.
6. Amnesty Int’l & Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Youth Offenders in the United States in 2008* 2 (2008) (hereinafter “*The Rest of Their Lives (2008)*”) (updating report first published in 2005, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*).
7. Michelle Leighton & Constance de la Vega, *Sentencing Our Children to Die in Prison: Global Law and Practice* (2007), available at <http://www.usfca.edu/law/home/CenterforLawandGlobalJustice/Juvenile%20LWOP.html> (noting, in February 2008, confirmation from Israel that children given life sentences in that country are entitled to parole review, making the United States the only country in the world known to issue the sentence or to have children serving the sentence).
8. See Leighton & de la Vega, *supra* note 7, at Summary of State Law. As noted by Leighton and de la Vega, it is possible in many states for children as young as 14—or even younger—to receive life without parole. *Id.* at At a Glance. In Pennsylvania, for example, a child of any age charged with murder is automatically tried in adult court unless the child can show that transfer to the juvenile court serves the public interest. See 42 Pa. C.S.A. § 6322 (West 2000 & Supp. 2005) (murder charges against child excluded from juvenile court, but criminal court can return case to juvenile court based on child’s showing by preponderance of the evidence that transfer serves the public interest), 42 Pa. C.S.A. § 6302 (West 2000 & Supp. 2005) (“child” is anyone under age 18). If the child remains in adult court, life without parole is mandatory upon conviction. 18 Pa. C.S.A. § 1102 (West 1998 & Supp. 2005) (mandatory minimum punishment for murder is life imprisonment), 61 Pa. C.S.A. § 331.21 (West 1999 & Supp. 2005) (no possibility of parole).
9. It is rare to couple absolute statutory exclusion from juvenile court or mandatory transfer with a mandatory life without parole sentence in adult court for youth as young as 14. Like Massachusetts, Connecticut imposes a mandatory life without parole sentence for capital murder and has mandatory transfer to adult court for children 14 and older charged with murder. See Leighton & de la Vega, *supra* note 7, at Summary of State Law (citing Conn. Gen. Stat. §§ 53a-35a (West 2001) (mandatory sentence of life without parole or death for capital murder), Conn. Gen. Stat. Ann. § 46b-127 (West 2004 & Supp. 2005) (mandatory transfer to adult court for children age 14 and older for enumerated felonies including murder)). There is no discretion to try these cases in juvenile court and no reverse transfer mechanism.
10. *Id.* (citing LSA-R.S. 14:30, 14.30.1 (Westlaw 2006) (mandatory life without parole for first and second degree murder), La. Child. Code Ann. art. 305 (West 2004) (juveniles 15 or older charged with murder and certain other felonies must be tried as adults); Wash. Rev. Code Ann. § 10.95.030 (West 2005) (mandatory death or life without parole for aggravated first degree murder), Wash. Rev. Code Ann. § 13.04.030 (Westlaw 2006) (exclusive adult court jurisdiction over juveniles 16 or older charged with violent offenses, including murder)).
11. There is no one serving the sentence in Maine or Vermont. Numbers in the other New England states are low: Connecticut: 9; New Hampshire: 3; Rhode Island: 2. See *The Rest of Their Lives (2008)* 3, Fig. 1.
12. *Id.* The Northeastern states include Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey and Pennsylvania. Pennsylvania has sentenced 444 youth to serve life without parole.
13. MGL Ch. 119 § 61 (1988 ed.) (amended 1990).
14. MGL Ch. 119 § 61 (Supp. 1991).
15. MGL Ch. 119 § 58 (extending jurisdiction of the Department of Youth Services beyond age 18, to age 21).
16. MGL Ch. 120 § 17 (1984 ed.), later amended by St. 1990, ch. 267 § 7.
17. MGL Ch. 119 § 61 (1992); 1991 Mass. Act Ch. 488 § 2.
18. MGL Ch. 119 § 72 (1992).
19. John DiIulio, Jr., *The Coming of the Super-Predators*, *Weekly Standard*, Nov. 27, 1995, at 23.

20. Task Force on Juvenile Justice, Boston Bar Association, *The Massachusetts Juvenile Justice System of the 1990s: Re-Thinking a National Model*, 21 New Eng. J. on Crim. & Civ. Confinement 339 (1995).
21. The Task Force concluded that an important rationale for mandatory minimum sentences and ease of transfer to adult court was the need for retribution, separate and apart from society's responsibility and ability to rehabilitate youth. Chief Legal Counsel to then-Governor William F. Weld, Robert J. Cordy, told the Task Force: "Just because they [juvenile offenders] may become law-abiding, productive citizens is not enough. There needs to be a balancing of justice [i.e. a community sense of satisfaction] with public safety." *Id.* at n33.
22. See Email from James Alan Fox, Lipman Family Professor of Criminal Justice, Northeastern University (Oct. 8, 2008, June 19, 2009) (on file) (enclosing data from the Federal Bureau of Investigation's Supplementary Homicide Reports concerning juvenile homicide rates in Massachusetts from 1976-2007). See discussion *infra* p. 18 and note 48.
23. There is some evidence that this imbalance between the punishments available in juvenile court and adult court resulted in a greater number of transfers. After enactment in 1991 of the mandatory minimum sentences in juvenile court, the number of transfer hearings rose, but proportionally less than half as many juveniles were transferred to adult court—11% in 1991 as compared to 4% in 1992. *Id.* at 11-12.
24. See Shelley Murphy, *Commutation plea carries a political risk for Patrick*, The Boston Globe, Feb. 27, 2008, available at http://www.boston.com/news/local/articles/2008/02/27/commutation_plea_carries_a_political_risk_for_patrick/ (accessed Aug. 12, 2009).
25. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).
26. Children's Law Center interview with David D. in Boston, Massachusetts (May 12, 2009).
27. Children's Law Center interview with Michael C. in Lynn, Massachusetts (Apr. 9, 2009). Unless otherwise noted, all of the statements from Michael in this section were obtained during the interview.
28. Letter from Michael C. to Children's Law Center (May 2009).
29. Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1011-12 (2003).
30. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, in 18 The Future of Children: Juvenile Justice 15, 20 (Fall 2008). For example, adolescent performance on a task called Delay Discounting demonstrated that adolescents are more inclined to value immediate consequences and discount future consequences. When asked to choose between receiving a large monetary reward at some future time or a smaller reward sooner, adolescents were more likely to take less money sooner, regardless of the amounts of money offered or the time periods involved. Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 47-48 (2008) (hereinafter "Scott, Rethinking Juvenile Justice").
31. L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neuroscience & Biobehav. Revs. 417, 420 (2000).
32. Nat'l Inst. of Mental Health, U.S. Dep't of Health and Human Services, Publication No. 04-4929, *Teenage Brain: A Work in Progress* (2004). Available at <http://www.nimh.nih.gov/health/publications/teenage-brain-a-work-in-progress-fact-sheet/index.shtml>.
33. Nitin Gogtay et. al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 Proc. Nat'l Acad. Sci. 8174, 8177 (2004).
34. *Id.*
35. Staci A. Gruber & Deborah A. Yurgelun-Todd, *The Mind of a Child: The Relationship Between Brain Development, Cognitive Functioning, and Accountability Under the Law: Neurobiology and the Law: A Role in Juvenile Justice?*, 3 Ohio St. J. Crim. L. 321, 328-30 (2006).
36. Sarah Dunston & B.J. Casey, *What Have We Learned About Cognitive Development From Neuroimaging?*, 44 Neuropsychologia 2149, 2152-54 (2006). See also Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741, 756-59 (2000).
37. See Nancy Shute, *How to Deploy the Amazing Power of the Teen Brain*, U.S. News and World Report, Nov. 26, 2008, available at <http://health.usnews.com/articles/health/brain-and-behavior/2008/11/26/how-to-deploy-the-amazing-power-of-the-teen-brain.html> (accessed Feb. 20, 2009); David Bjerklie, *How the Teen Brain Works*, Time Magazine, Sept. 8, 2006, available at http://time.blogs.com/daily_rx/2006/09/attack_of_the_t.html (accessed Feb. 20, 2009); *Frontline: Inside the Teenage Brain* (PBS Television broadcast Jan. 31, 2002), available at <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/> (accessed Feb. 20, 2009).
38. To 16 year-olds, we extend the adult privilege of the right to drive an automobile, but the recent lessons of brain science confirm every parent's anxiety about a child getting behind the wheel. Car insurance companies like Nationwide Auto Insurance and Allstate Insurance Company have begun educating their customers about adolescent risk-taking and the differences between adult and adolescent brains. See, e.g., www.allstate.com/content/refresh-attachments/Brain-Ad.pdf.
39. Scott, *Rethinking Juvenile Justice*, *supra* note 30, at 53.
40. *Simmons*, 543 U.S. at 570.
41. MGL Ch. 119 § 53.
42. *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988). The Court continued:
The basis for this conclusion is too obvious to require extended explanation. Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. 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. *Id.*

43. See MGL Ch. 119 § 52 (conferring delinquency jurisdiction on the Juvenile Court Department for children between the ages of 7 and 17).
44. The figures here are based on data received from the Massachusetts Department of Correction in April 2009. Email from Paul Heroux, Director, Research and Planning Division, Department of Correction (Apr. 6, 2009) (“Department of Correction Data, Apr. 2009”) (on file). The Department of Correction provided aggregated numerical information, but would not provide identifying information concerning the individuals serving juvenile life without parole sentences. The Children’s Law Center independently collected and reviewed public records to identify as many of the 57 individuals as possible. Based on our research, we sent questionnaires to 47 people. We interviewed all but two of the 44 people who responded to our questionnaire. Data collected from the Department of Correction, questionnaire responses and interviews were supplemented by review of individual files, appellate records, and news sources.
45. Department of Correction Data, Apr. 2009.
46. Population data based on 2000 Census Data for Massachusetts as compiled by Kids Count in Table 6, Population Totals by Race and Hispanic Origin in the 2000 Census, available at <http://www.kidscount.org/cgi-bin/aecensus.cgi?action=profileresults&area=25S&areaparent=00N§ion=2&printerfriendly=1>.
47. Research and Planning Division, Massachusetts Department of Correction, *January 1, 2008 Inmate Statistics* 4, Table 2 (May 2008), available at http://www.mass.gov/?pageID=eopsterminal&L=4&L0=Home&L1=Law+Enforcement+%26+Criminal+Justice&L2=Prisons&L3=Research+Data&sid=Eeops&b=terminalcontent&f=doc_research_and_planning_january_1_population_description&csid=Eeops.
48. The Federal Bureau of Investigation’s Supplementary Homicide Reports (SHR) compile data concerning homicide victims and homicide offenders from 1976-2007, including age, sex and race data. The Children’s Law Center obtained SHR data specifically pertaining to Massachusetts youth from Professor James Alan Fox at Northeastern University, who compiles and analyzes the SHRs for the Bureau of Justice Statistics. See Email from James Alan Fox, Lipman Family Professor of Criminal Justice, Northeastern University (Oct. 8, 2008) (on file).
49. By “juvenile record” we mean a prior juvenile delinquency adjudication or a “CWOE,” a juvenile court case that has been continued without a finding.
50. Massachusetts General Laws Ch. 265 § 1 defines murder in the first degree as “murder committed with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a crime punishable with [] imprisonment for life.” The third kind of first degree murder is known as felony murder. Crimes punishable with life imprisonment are those that are “inherently dangerous to human life” but do not result in a homicide. In Massachusetts, these are crimes such as armed robbery, armed assault and rape. If a homicide occurs during the course of such a felony, anyone who is found to have intended to commit the felony is also guilty of first degree murder, regardless of his or her level of participation in the killing.
51. Children’s Law Center interview with Dillon P. in prison in Massachusetts (Dec. 17, 2008).
52. *Commonwealth v. [Mark H.]*, 407 Mass. 434, 436 (1990).
53. Chris Faraone, *The punch that took two lives*, The Boston Phoenix, Aug. 5, 2009, available at <http://thebostonphoenix.com/Boston/News/87700-punch-that-took-two-lives/?rel=inf> (accessed Aug. 6, 2009).
54. Email from Dan-Jarle Köhler Raustein to Children’s Law Center (June 13, 2009).
55. *Id.*
56. Amnesty Int’l & Human Rights Watch, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States* 32-34 (2005) (hereinafter “*The Rest of Their Lives* (2005)”).
57. Children’s Law Center interview with Richard K. in prison in Massachusetts (Oct. 1, 2008).
58. *Commonwealth v. [Victor L.]*, Finding and Order re: Commonwealth’s Motion to Transfer, Dorchester District Court, dated Sept. 30, 1991.
59. Children’s Law Center interview with Robert N. in prison in Massachusetts (Jan. 28, 2008).
60. Children’s Law Center interview with Chris L. in prison in Massachusetts (July 24, 2008).
61. Children’s Law Center interview with Gregory L. in prison in Massachusetts (Nov. 27, 2007).
62. Children’s Law Center interview with Steven G. in prison in Massachusetts (Aug. 5, 2008).
63. Children’s Law Center interview with Joseph R. in prison in Massachusetts (July 24, 2008).
64. Children’s Law Center interview with Norman B. in prison in Massachusetts (July 24, 2008).
65. Children’s Law Center interview with Charles T. in prison in Massachusetts (Jan. 24, 2008).
66. Children’s Law Center interview with Frank A. in prison in Massachusetts (July 15, 2008).
67. Children’s Law Center interview with Richard K. in prison in Massachusetts (Oct. 1, 2008).
68. *Id.*
69. Richard E. Redding, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* 7 (August 2008), available at <http://www.ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=242419>.
70. Children’s Law Center interview with Charles T. in prison in Massachusetts (Jan. 24, 2008).
71. It was common for the individuals we spoke with to be admitted to MCI-Cedar Junction at Walpole at age 17 or 18 and kept there for a significant portion of their first two years. We learned from our interviews that there are currently few programs available at this facility: a television GED course and computerized commercial driving course.
72. Children’s Law Center interview with Peter T. in prison in Massachusetts (July 18, 2008).
73. Children’s Law Center interview with William N. in prison in Massachusetts (Oct. 30, 2008).

74. Children's Law Center interview with Calvin P. in prison in Massachusetts (July 9, 2008).
75. Children's Law Center interview with Curtis D. in prison in Massachusetts (July 11, 2008).
76. Children's Law Center interview with James R. in prison in Massachusetts (Jan. 25, 2008).
77. Children's Law Center interview with Robert N. in prison in Massachusetts (Jan. 28, 2008).
78. Children's Law Center interview with Richard K. in prison in Massachusetts (Oct. 1, 2008).
79. Letter from Edward L., father of Sam L., to Children's Law Center (Jan. 2009).
80. Children's Law Center interview with Mark H. in prison in Massachusetts (Dec. 13, 2007).
81. Children's Law Center interview with Curtis D. in prison in Massachusetts (July 11, 2008).
82. Leighton & de la Vega, *supra* note 7 (noting, in February 2008, confirmation from Israel that children given life sentences in that country are entitled to parole review, making the United States the only country in the world known to issue the sentence or to have children serving the sentence).
83. United Nations Convention on the Rights of the Child, art. 37, Nov. 20, 1989, 28 I.L.M. 1448, 1469-70 (stating that "[n]either capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age"). *See also* Leighton & de la Vega, *supra* note 7, at 14 & n100-01 (noting General Comments issued by the Committee on the Rights of the Child in 2007 that clarify further the CRC's prohibition of juvenile life without parole sentences).
84. *See The Rest of Their Lives* (2005) at 104-05 & n311.
85. International Covenant on Civil and Political Rights (ICCPR), art. 14(4), Dec. 19, 1966, 999 U.N.T.S. 171.
86. *Id.* at art. 24(1).
87. Leighton & de la Vega, *supra* note 7, at 15-18.
88. *Id.* at 15-16.
89. *The Rest of Their Lives* (2008) at 9. Article 5(a) of the Convention on the Elimination of All Forms of Racial Discrimination requires parties to the Convention to "eliminate racial discrimination . . . notably in the enjoyment of . . . the right to equal treatment before the tribunals and all other organs administering justice." International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(a), Dec. 21, 1965, 660 U.N.T.S. 195, adopted by the United States on Nov. 20, 1994.
90. *The Rest of Their Lives* (2008) at 3, Fig. 1.
91. Leighton & de la Vega, *supra* note 7, at 5.
92. Scott, Rethinking Juvenile Justice, *supra* note 30, at 96-97.
93. *See* Leighton & de la Vega, *supra* note 7, at 5 (Alaska, Colorado, Kansas, Kentucky, New Mexico, Oregon and the District of Columbia do not allow life without parole sentences for youth; there are no known cases in Maine, New Jersey, New York, Utah or Vermont).
94. *The Rest of Their Lives* (2008) at 3, Fig. 1.
95. A federal bill pending in the House of Representatives would accomplish this objective by requiring the federal system and state governments to establish a meaningful opportunity for periodic review of all juvenile cases after 15 years. *See* Juvenile Justice Accountability and Improvement Act of 2009, H.R. 2289, available at <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.2289.IH>.
96. American Bar Association 2008 Report with Recommendation #105C at 1 (Policy adopted Feb. 2008), available at http://www.abanet.org/leadership/2008/midyear/updated_reports/hundredfivec.doc.
97. *See* Objective Classification System, Massachusetts Department of Correction (Feb. 2006) (providing for non-discretionary classification override that restricts prisoners serving life without parole to maximum security facilities for the first two years of incarceration).
98. Youth serving life without parole will grow old in Massachusetts prisons, contributing to the costly "graying" of the prison population. Elderly prisoners tax medical, mental health and programmatic resources. *See* Christopher Calia, Massachusetts Dep't of Corr. Research and Planning Div., Age of Custody Population 1998-2007 3 (Dec. 2007). The Department of Correction was not able to quantify for the Children's Law Center the added costs of maintaining elderly prisoners. Estimates for housing an aging prisoner have ranged from \$69,000 a year to three times the cost of the typical adult prisoner. *See* Marc Mauer et al., The Sentencing Project, The Meaning of Life: Long Prison Sentences in Context 25 (May 2004), available at http://www.sentencingproject.org/Admin/Documents/publications/inc_meaningoflife.pdf; B.J. Anno, Nat'l Inst. of Corrections, Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates (2004), available online at <http://www.nicic.org/Library/018735>.
99. All costs are in today's dollars.
100. *See* Email from Kyra Silva, Director, Budget Office, Massachusetts Department of Correction (Jan. 13, 2009) (estimating FY09 average cost per offender at a maximum security facility to be \$54,290.63) (on file). Projected amounts are based on today's dollars and not adjusted for inflation.
101. *See* Email from Kyra Silva, Director, Budget Office, Massachusetts Department of Correction (Jan. 13, 2009) (estimating FY09 average cost per offender at a medium security facility to be \$41,706.29) (on file). Projected amounts are based on today's dollars and not adjusted for inflation.
102. This number reflects the remaining life expectancy of a 17 year-old male living in Massachusetts, less two years spent in a maximum security prison. *See* Massachusetts Dep't of Public Health, Massachusetts Deaths 2007 Fig. 1 (2009) ("Massachusetts Deaths 2007"), available online at http://www.mass.gov/Eeohhs2/docs/dph/research_epi/death_report_07.pdf.
103. Based on average current age of 36 years; life expectancy of 36 remaining years. *See* Massachusetts Deaths 2007 at Fig. 1.
104. Based on average age of 34 years; life expectancy of 38 remaining years. *Id.*
105. *See* Entrance Requirements for the Boston Police Department Academy, <http://www.cityofboston.gov/POLICE/exam.asp> (listing among benefits base salary of \$46,000) (accessed on June 4, 2009).

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