No Second Chance:

Nebraska Children Sentenced to Die in Prison

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INTRODUCTION

Nebraska is one of the minority of states currently allowing children as young as 13 to be sentenced to die in prison. Life without parole is literally that—a sentence to die behind bars, without ever having a parole board review their case and decide whether they’ve paid their debt to society.

Children who commit crimes need intervention and correction, including incarceration where appropriate, but life without parole is not humane for juvenile offenders.

Children under the age of 18 cannot legally use alcohol, serve on juries, or be drafted, because they are presumed to not have the capacity to handle adult responsibilities. Minors sentenced to life without parole committed their crimes when the state does not consider them legally responsible enough to live away from their parents, drive, make decisions about their schooling or their own medical care, vote, or sign a contract. These differences between children and adults are recognized through our laws and should be reflected in criminal penalties.

“\textbf{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.}”

—US Supreme Court Justice John Paul Stevens (1)

Ignoring the reality of the youthful status of child offenders and the possibility of rehabilitation results in an unforgiving sentence that violates basic fairness and human rights principles. Even children who commit violent crimes deserve a second chance and a second look after serving a term of years.

**It is time for Nebraska to abolish juvenile life without parole and give children a second chance.**
Incarcerating Children: An Increasing Trend in the US

Only 19 states are like Nebraska and allow the very young (13-14 years old) to be put in prison forever. And the sentences within those states are increasing in the number of times they’re being handed down: children are being sentenced to die in prison at a rate at least three times higher today than 15 years ago nationwide. That trend can be seen in Nebraska, where only 10 children were sentenced to life without parole between 1970 and 1990. In the last eighteen years (from 1990 to present), our state has sentenced 15 children to life without parole.

These increases are due to re-characterizing children as adults, rather than an increase in violent crime by children. Despite the fact that crime rates in 1999 were similar to those in the mid-1980s, the overall rate of incarceration of juveniles in 1999 was 70% higher than in 1985.

Our awareness of the need to treat children differently has matured over the last few decades. In 1988, the US Supreme Court ruled that it was unconstitutional to execute anyone under the age of 15. In 2005, that ruling was expanded to entirely forbid executions of offenders who were under 18 when they committed their crimes. Our Legislature should continue this trend and join those states that have eliminated juvenile life without parole, which include: Alaska, Colorado, Kansas, Kentucky, Maine, New Mexico, New York, West Virginia, and the District of Columbia.

The International Picture

At the same time as the US has seen an upswing in treating juvenile offenders very harshly, the rest of the world has moved decisively to protect the rights of children, even those who commit violent offenses. The United Nation’s applicable rules hold that detention of children should only occur as a last resort and for the shortest length of time possible and focus on treating children in a manner proportionate to their age and crime, the focus firmly on their reintegration into society.

The United States’ use of unforgiving sentences to punish children, rather than promoting their reintegration into society, is unparalleled internationally. Juvenile life without parole is explicitly banned in Austria, Ireland, Japan, Switzerland, Sweden and the United Kingdom.
Darren McCracken: Nebraska’s Youngest Lifer

Darren McCracken was only 13 years old when he committed an unspeakable crime: he shot his mother while she lay asleep on the couch.

But that’s not all there is to the story. According to the psychologist who evaluated Darren for his trial, Darren was in a condition very similar to post-traumatic stress disorder, caused by systemic sexual, physical and emotional abuse at the hands of his own family. According to court documents, Darren’s older brother had been abusing him for years. Darren’s parents were heavy drinkers and simply did not step in to protect Darren from his older brother’s predatory behavior. Late one night in 1993, the 13 year old Darren couldn’t endure the abuse any longer and decided to run away from home.

Mental health experts who evaluated Darren immediately after the crime said that Darren began to worry how his disappearance would affect his mom. With a twist of logic that one psychologist ascribed to his near-psychotic state, Darren decided it would be easier on his mother to just shoot her rather than to run away and leave her unhappy.

Darren has never denied his crime; he accepts responsibility for his acts. He’s now spent exactly one-half of his life behind bars. Without a change in the law, the actions committed by the 13 year old Darren will result in the now 28-year old Darren never meriting a second chance.

Above: Darren at age 13 at a family picnic.

Right: Darren on his 14th birthday, which was also his sentencing date.
Jeremy Herman:  
Convicted Only of Kidnapping

Jeremy Herman was 17 years old when his 20 year old friend Christopher Masters decided to help him try to scare 15 year old Jeremy Drake. The dispute happened in 1992 over some stolen speakers. Jeremy Herman and Masters convinced Jeremy Drake to get into their car, then drove around with him for several hours while they discussed whether they should kill him.

Jeremy Herman thought that was all that was going to happen—but when they pulled over at a park and the two Jeremys began scuffling, Masters got out his shotgun. Masters took the victim a ways off, ordered him onto his knees, and then shot and killed him.

Jeremy was charged and convicted for kidnapping. And only kidnapping. The adult Masters was convicted of the murder. Though Jeremy was there during the crime, no one questions the fact that Jeremy didn’t have anything to do with the murder itself. Yet he’s sentenced to life without parole.

Even Nebraska Attorney General Jon Bruning has expressed doubts about keeping Jeremy Herman behind bars for life. Jeremy asked the Pardons Board to commute his life sentence into a term of years. The Board refused, but Bruning noted, “In my three years on this board, we have not commuted a single [life without parole] sentence. And as I looked at this, I thought this might be the single one.”

Even Mona Schlautman, the mother of Jeremy’s victim, understands the nature of juvenile offenders and has joined her voice to those asking for a second chance. “He needed to go to prison and suffer an appropriate punishment. He also deserves to have his case reviewed and have the opportunity for parole,” she wrote to senators recently. “I believe if any of us had a child do something horrible we would want to see appropriate punishment and correction, and would certainly want to see him or her receive forgiveness and a chance at making a better life.”

Above and left:  Jeremy Herman just a few months prior to his crime.
Racial Disparity: The Over-Incarceration and Heightened Sentencing of Minorities

Nationwide, minorities are convicted and sentenced much more harshly than whites. This is true in the juvenile life without parole context, too. After a national survey of youth just 13 and 14 years old who were sentenced to die behind bars, the Equal Justice Initiative discovered that over half of the children who will have no second chance were children of color, while only 30% of the youth were white.\(^\text{11}\)

This same pattern can be seen in Nebraska’s incarceration of children. As demonstrated on the graph (see next page), minorities are grossly over-represented in our total prison population, comprising over 40% of those behind bars in state prisons. But those numbers are even worse for the number of minority children sentenced to life without the possibility of parole: over half of the children who will die behind bars in Nebraska are people of color.

The criminal justice system is comprised of human beings, subject to known or unrecognized racial bias. As long as that sort of bias exists in the prosecutors who bring charges and in the judges who issue sentences, children will continue to face the possibility of receiving a harsher sentence in part because of the color of their skin, not just because of their acts.

Conclusion

The law generally treats children differently from adults. It is time for our system of punishment and rehabilitation to take this same approach to children who commit violent crimes: they must be sentenced appropriately and yet still given a second chance to rehabilitate themselves.

ACLU Nebraska urges a change in the law to abolish sentencing youth to life without parole.
Distribution of prison inmates in Nebraska by race

<table>
<thead>
<tr>
<th>State Population</th>
<th>Prison Population</th>
<th>Juvenile Life Sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.7% White</td>
<td>44.5% Non-white</td>
<td>53.3% Non-white</td>
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<tr>
<td>87.3% White</td>
<td>55.5% Non-white</td>
<td>46.7% Non-white</td>
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Sources
ENDNOTES


Additional sources:


Nebraska Criminal Justice Review, “*Thirty of the very young sentenced to life in Nebraska prisons since 1971,*” September 2007.

ACKNOWLEDGEMENTS

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