

SENTENCING JUVENILE OFFENDERS TO LIFE WITHOUT THE POSSIBILITY OF PAROLE IN MASSACHUSETTS

SHOULD JUVENILES BE TREATED THE SAME AS ADULTS ?

**By
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When it comes to the issue of the severity of punishment handed out to juvenile offenders, Massachusetts has a long and torrid history of treating some juvenile offenders more harshly than adults.

A HISTORICAL PERSPECTIVE

The problems inherent in dealing with the treatment of juvenile offenders in an antiquated criminal justice system are as old as the system's themselves. The very roots of American juvenile justice policy can be traced to 17th and 18th century England where it was not an uncommon sight to see ten and twelve year-old pickpockets being hanged right alongside adult murders. Whippings, branding, and sanctions of imprisonment were dispersed as swiftly and as savagely to children as they were to adult offenders. Rare was the court that made a distinction. In a society where life was cheap, the life of a child was negligible at best.

Puritan doctrine held firm in Massachusetts during the days of colonialism. Up until American independence, old English law flourished and held precedent in the Colonies. The harshness that was prevalent in old England, was certainly evidenced in Massachusetts. The point of demarcation for criminal responsibility in regard to children in Massachusetts was their seventh birthday.

In typical puritan fashion, legislation enacted by the General Court of Massachusetts in 1645 mandated that "stubborn" or "rebellious" children could be put to death for simply disobeying the commands of their parents. Some local historians claim that during this period, a death sentence was imposed and carried out on an eight year-old boy who was convicted of setting a barn ablaze. According to those historians, the eight year-old boy was hanged for his offense. The infamous "witch trials," held in the town of Salem during 1642 led to the imprisonment for a period of eighteen months, of six year-old Dorcus Good. At the time, Ms. Good was also considered as a serious candidate for hanging by the criminal justice system. As an added form of punishment, Ms. Good was forced by authorities to witness the public hanging of her mother. In 1672, an enlightened Massachusetts legislature revised old laws and upped the age eligibility requirement for imposition of the death penalty to sixteen. The execution in 1642 of sixteen year-old Thomas Graunger for a non-homicide offense at Plymouth Colony marked the first execution of a juvenile offender in the United States. As quiet as it has been kept, the state of Massachusetts is responsible for the execution of no less than eight juvenile offenders between 1642 and 1942.

MODERN MASSACHUSETTS

Given its past history, it should come as no surprise to anyone that modern Massachusetts juvenile justice policy still lacks in sensibility. Sentencing juvenile offenders as young as fourteen years of age to life in prison, without the possibility of parole (LWOP), is a modern form of the draconian punishment our policy makers sought to abolish in this state centuries ago.

Today, teens in Massachusetts who are as young as fourteen, 15 and 16 who face murder charges, are automatically tried in adult superior court and once convicted, are subjected to the exact same sentence structures as adult offenders. 1. How this dramatic upgrading in the treatment of juvenile offenders came about, makes for some interesting discussion.

COMMON SENSE GOES OUT THE WINDOW POLITICAL EXPEDIENCY NO MATTER THE COST IN YOUNG LIVES

The most significant departure from what was a long standing juvenile justice policy that allowed juvenile offenders to be processed in the state's juvenile court division took place in 1996. On July 29th of that year, former Massachusetts Governor William F. Weld inked his signature to Chapter 200 of the Acts of 1996. Entitled: "An Act to Provide the Prosecution of Violent Juvenile Offenders in the Criminal Courts of the Commonwealth." That law would become widely known as the "Juvenile Justice Reform Act". For all practical purposes, that particular law carried little, if any, "reform" characteristics. In fact, it can safely be said that the 1996 Juvenile Justice Reform Act was one of the most extreme examples of punitive juvenile justice legislation ever enacted in this state.

Several contributing factors drove Massachusetts lawmakers into the "rush to judgment" that cumulated in the 1996 Juvenile Justice Reform Act. First, there were several high profile homicides in and around the Boston area that involved juvenile offenders as alleged perpetrators. Then, there was the looming presence of Republican Governor William F. Weld. Weld had publicly boasted that as Governor of Massachusetts, he would "reintroduce prisoners to the joys of busting rocks". The mentality fostered by such outlandish statements quickly spread to Beacon Hill. There, many shuddered at the very thought of being labeled as "soft on criminal justice related issues." Finally, there was the "red herring" proffered by the likes of some well known researchers, including UCLA's James Q. Wilson, the Brookings Institute's John Dilulio and Northeastern University's James Alan Fox. Each had at one time or another, made statements to the effect that the new millennium would bring with it, a group of juvenile predators heretofore unseen. In fact, it was Dilulio who in 1995 predicted a new "super-predator" teenager who would be responsible for a dramatic rise in serious violent juvenile crime. Those alarmist predictions drove juvenile justice policy nationwide and helped spearhead the regressive legislation enacted in Massachusetts. 2. It would not be until 2001 when Dilulio would acknowledge that his predictions had been wrong.

JUVENILE LIFE WITHOUT PAROLE SENTENCING AND CRIMINAL RESPONSIBILITY

At the present time, there are fifty-eight prisoners serving life without parole (LWOP) sentences in Massachusetts for crimes committed prior to their eighteenth birthday. According to the Massachusetts Department of Correction thirty-six of those offenders were 17 years-old and twenty-two were under 17. A much closer look 3. reveals that fifteen of those juvenile offenders were 16 years-old and six were 15 years-old at the time of their crime.

Aside from the moral implications associated with this barbaric form of punishment there is the bigger question of criminal responsibility. Recent scientific developments point to the fact that a teenager's brain does not fully develop until at least twenty years of age.

1. - MGL Ch. 119 § 74

2. - See: The Scapegoat Generation - America's War on Adolescents - Mike A. Males, Common Courage Press - 1996.

3. - See: Until They Die A Natural Death - Youth Sentenced to Life Without Parole in Massachusetts, Children's Law Center, Lynn, MA - 2009

Most of the current scientific research, including a significant number of longitudinal studies by neuroscientists using the latest forms of magnetic resonance imaging (MRI) technology, clearly shows that some juveniles younger than 18 years of age are incapable of controlling emotions. Research also shows that specific areas of the human brain may not fully develop until a person is in his or her mid-twenties. This logical reasoning has been applied to an ever growing number of cases that have made their way to the United States Supreme Court.

For well over twenty plus years, Supreme Court Justices have recognized the distinction between adult and juvenile offenders. In the case of *Thompson V. Oklahoma*, 487 U.S. 815 (1988) the court held that the imposition of the death penalty on juvenile offenders, who had committed crimes while under the age of 16 was unconstitutional. Seventeen years later, the Supreme Court took another look at the issue of juvenile responsibility in a case that invalidated imposition of the death penalty for juvenile offenders under the age of 18. In *Roper V. Simmons*, 543 U.S. 551 (2005) the court stated: **"The susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult."** On May 17, 2010, the Supreme Court once again revisited the issue of juvenile responsibility in the case of *Graham V. Florida*, 560 U.S. ____ (2010). The principal issue in the *Graham* case was the imposition of Life Without Parole (LWOP) sentences for juvenile offenders. In their landmark decision delivered by Justice Kennedy, Justices Stevens, Ginsburg, and Sotomayor noted **"Society changes. Knowledge accumulates. We learn, sometimes from our mistakes. Punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time."**

The *Graham* case carried with it a much greater significance than most realized. That decision did more than effectively invalidate Life Without Parole sentences for 129 youthful offenders who had never killed anyone *Graham* also served to generate very significant public debate and interest in the severity of punishment handed out to juvenile offenders. That interest has not waned.

THE
TIME IS AT HAND FOR MASSACHUSETTS LAW MAKERS
TO
INVALIDATE LIFE WITHOUT THE POSSIBILITY OF PAROLE SENTENCING
OF
JUVENILE OFFENDERS

Given widespread support, and the existence of significant scientific evidence proving beyond any shadow of a doubt that juveniles are not the same as adults, it is time for Massachusetts law makers to rethink juvenile justice policy in Massachusetts. Allowing juvenile life without the possibility of parole (JLWOP) sentencing in this state constitutes a gross injustice. Massachusetts should seek to reestablish its place in the forefront of progressive juvenile justice policy and stand with states like Alaska, Colorado, Montana, Kansas, Kentucky and Texas that already prohibit life without the possibility of parole sentences for juvenile offenders (JLWOP).

In the interest of judicial fairness, legislation should be enacted allowing for the periodic review in all 58 cases of juvenile offenders serving life without the possibility of parole in Massachusetts. Those reviews by the State Parole Board should commence after the offender has served a total of 15 years of incarceration. A Fifteen year review is commensurate with the same time requirements imposed on an adult offender who stands convicted of second degree homicide in Massachusetts. Until such time as either enlightened law makers or the courts change existing juvenile justice policy in this state, all we can do is feel shamed by the fact that Massachusetts, in lieu of moving forward, seems to have regressed several hundred years.

The author is a Massachusetts prisoner serving an adult LWOP sentence. He has also been the coordinator of the award winning "Project Youth" youth outreach program at MCI-Norfolk for the past 19 years.