

U.S. Among Harshest for Sentencing Children

San Francisco Chronicle

January 20, 2008

By Daniel Macallair

To many in the United States, the country of Somalia conjures up images of a primitive Third World country. So it may come as a surprise to learn that Somalia and the United States share an unfortunate commonality - they are the only countries in the world that refuse to sign the U.N. Convention on the Rights of the Child because of its ban on sentencing children to die in prison.

Under the U.N. covenant, sentencing children, even those who commit serious crimes, to permanent imprisonment is considered inhumane and inconsistent with civilized society and thus rejected by the rest of the world.

According to Amnesty International and Human Rights Watch, there are now about a dozen people outside the United States and Somalia who were sentenced to permanent imprisonment as children: South Africa has four, Tanzania has one, and Israel has seven. In contrast, the United States has 2,270 children serving such a sentence, including 227 in California.

The United States is out of step with the rest of the world in the treatment of children because of recent changes in American political and legal culture. Although the legal capacity to sentence children to permanent imprisonment existed before 1980, it was rarely invoked. This changed with the rise of the conservative movement in American politics and its adherents' strident belief in the deterrent effect of harsh sentencing policies. The rhetorical emphasis of conservative philosophy on punishment and vengeance has created a political culture where politicians compete over who is more ruthless in sentencing offenders. The public policies resulting from this new political culture have led to the harshest sentencing practices in U.S. history.

Nowhere are these harsh policies more evident than in the treatment of children. Before 1990, few children were sentenced to die in prison. When recently asked to explain the United States' noncompliance with international law on the sentencing of children to permanent imprisonment, the Bush administration claimed that the sentences were reserved for only the most hardened young offenders who "had committed gravely serious crimes." Despite the Bush administration's claims, the evidence suggests otherwise.

According to the Human Rights Watch study, 26 percent of the children in the United States condemned to permanent imprisonment were sentenced under the felony murder law. The felony murder law mandates that even when someone is only marginally involved in a homicide, they are held to the same level of responsibility as the primary perpetrator, even if they had no intention to harm anyone and possessed no weapon.

European countries and many states have abandoned the felony murder law as unjust, but it continues to be practiced in California.

Justice in the United States is a function of individual state laws and discretionary charging practices by prosecutors. As it is now, 42 states allow children to be sentenced to prison without the possibility of ever being released. Of these 42 states, six - California, Pennsylvania, Michigan, Louisiana, Florida and Missouri - account for more than 1,500 of the 2,270 total. Many of these children committed their crimes when they were 14 or younger, but the laws make no exception and show no mercy. Judges have no discretion, and they must impose the mandatory sentence of life in prison without hope of release.

In California, the decision to sentence children to die in prison is often a function of the political culture of the county in which the crime is prosecuted. Consider the case of Sara Kruzan. Sara was born in Riverside County, where she was raised by an abusive, drug-addicted mother. At the age of 11, Sara was befriended by a 33-year-old man who promised to take care of her. After winning her trust, he proceeded to molest her and coax her into prostitution. When she was 16, she killed him. After she was arrested, the district attorney in Riverside County opted to ignore the extenuating circumstances and sought to have her tried in adult court for first-degree murder. An evaluation by the California Youth Authority concluded she was amenable to treatment in the juvenile justice system, but a local judge - at the urging of the prosecutor - transferred her to adult court, where she was ultimately convicted of first-degree murder. Kruzan is now 28 and a model inmate, but she will spend the rest of her life in prison for the crime she committed at age 16.

Like Kruzan, the children who commit serious crimes at a young age are often the broken and battered survivors of horrendous childhoods, who, if not for their crimes, would elicit pity and compassion. Had Kruzan's case occurred in another county, the legal outcome may have been much different. Because Riverside County takes a more rigid and unsympathetic approach to sentencing than most other California counties, her sentence was harsher than it may have been in another jurisdiction.

State Democratic Sens. Leland Yee of San Francisco and Gloria Romero of Los Angeles have offered a bill abolishing the practice of mandatory lifetime sentencing for children. The bill amends current law to allow consideration for release after the child serves a minimum of 25 years. Although the bill is a reasonable reform that has been adopted in other states, it faces a difficult hurdle as the usual array of conservative interest groups have lined up against it.

In considering this very modest and reasonable reform, the governor and the Legislature should consider the words of Cesare Beccaria, 18th century Italian philosopher and author of the treatise "On Crimes and Punishments" (1764), who wrote that "laws seeking to regulate human actions should not embrace savage measures."

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The Center on Juvenile and Criminal Justice is a nonprofit, nonpartisan organization that offers policy analysis, program development, and technical assistance in the criminal justice field. For more information, please visit www.cjcj.org.