

NO. CR-06-0668

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IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

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TROY EDWARD CONNELL,

Appellant,

v.

STATE OF ALABAMA,

Appellee,

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On Appeal From the Circuit Court of Bibb County  
(CC-05-8)

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BRIEF OF:

*AMICI CURIAE*

In Support of Appellant

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Center, Southern Juvenile Defender Center

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## IDENTITY OF THE *AMICI*

**Juvenile Law Center** (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies - for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. JLC works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. JLC also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

The **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the

critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice.

The National Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. It also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The **Southern Juvenile Defender Center** (SJDC) works to ensure excellence in juvenile defense and secure justice for children in delinquency and criminal proceedings in the southeastern United States. SJDC provides training and resources to juvenile defenders, and advocates for systemic reforms designed to give children the greatest opportunities to grow and



thrive. Through public education and advocacy, SJDC encourages attorneys and judges to rely upon scientific research concerning adolescent brain development in cases involving youthful defendants. SJDC is based at the **Southern Poverty Law Center** (SPLC) in Montgomery, Alabama. Founded in 1971, SPLC has litigated numerous civil rights cases on behalf of incarcerated children and other vulnerable populations.

#### INTEREST OF THE *AMICI CURIAE*

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC advocates in particular on behalf of children involved in the juvenile justice and child welfare systems and, increasingly, children involved in the adult criminal justice system. JLC works to ensure children are treated fairly by these systems, and that children receive the treatment and services that these systems are supposed to provide, including, at a minimum, adequate and appropriate education, and physical and mental

health care. In addition to litigation and appellate advocacy, JLC has participated as amicus curiae in state and federal courts throughout the country, as well as the United States Supreme Court, in cases in which important rights and interests of children are at stake. Of particular relevance, JLC was lead counsel for over 50 advocacy groups nationwide who participated as amici in Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), in which the Supreme Court ruled that it was unconstitutional to impose an adult punishment, there the death penalty, upon children.

## STATEMENT OF THE CASE

*Amici* adopt the statement of the case presented by the Appellant.

## STATEMENT OF ISSUE FOR AMICI

Does a sentence of life without parole violate the United States and Alabama constitutions as applied to a juvenile defendant?

## STATEMENT OF FACTS

*Amici* adopt the statement of facts presented by the Appellant.

## STANDARD OF REVIEW

The issues addressed by *amici* involve the constitutionality of a statute as applied to Connell. Because this is a question of law, this case is subject to de novo review. State v. C.M., 746 So. 2d 410, 414 (Ala. Crim. App. 1999).

## SUMMARY OF THE ARGUMENT

The United States Supreme Court in Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) determined that it is unconstitutional to sentence a juvenile as one would an adult. Juveniles do not have the

same judgment, understanding, maturation and abilities as adults. For these reasons the Supreme Court in Simmons struck down a juvenile's death sentence. For precisely the same reasons, a juvenile's sentence of life imprisonment without the possibility of parole must similarly be struck down as violative of the federal constitution's bar against cruel and unusual punishment.

In addition, a juvenile sentence of life imprisonment without the possibility of parole violates the Alabama Constitution's prohibition against cruel or unusual punishment. Finally, Alabama sentencing law for capital offenses prohibits the court from considering any mitigating factors for youth, including age, as it does for adults. This bar on considering any mitigating or individualizing factors as well as a disregard of age is at odds with Simmons as well as the due process guarantees of the United States and Alabama Constitutions.

## ARGUMENT

### **I. A MANDATORY SENTENCE OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR A SEVENTEEN YEAR OLD BOY IS UNCONSTITUTIONAL UNDER BOTH THE UNITED STATES AND ALABAMA CONSTITUTIONS.**

A sentence of life without parole for a child aged seventeen violates both the United States and Alabama constitutions. At the outset it should be emphasized that as *amici* we are not arguing that life without parole sentences are unconstitutional for adults. We are not arguing that Alabama cannot sentence Troy Connell or other juveniles convicted of particular crimes to a reasonable term of years in prison. We are not asking that Connell be released on parole. Instead, *amici* are merely arguing that pursuant to Roper v. Simmons, 543 U.S. 551 (2005) *juveniles cannot constitutionally be sentenced to life imprisonment without the possibility of parole*; constitutionally there must be the *possibility* of release.

#### **A. A Mandatory Sentence Of Life Without Parole For a Seventeen Year Old Child Violates The Eighth Amendment To The United States Constitution As It Constitutes "Cruel And Unusual Punishment."**

The United States Constitution's prohibition on "cruel and unusual punishment," U.S. Const. amend. VIII, applies

to the states through the due process clause. U.S. Const. amend. XIV. Pursuant to Simmons, a mandatory sentence of life imprisonment without the possibility of parole for a seventeen year old child constitutes a "cruel and unusual sentence." The Supreme Court determined that the "evolving standards of decency that mark the progress of a maturing society" demonstrate that it is disproportionate to execute a defendant for a murder committed while the defendant was under the age of eighteen. Simmons, 543 U.S. at 561, 125 S. Ct. at 1190 (quoting Trop v. Dulles, 356 U.S. 86, 100-101, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958) (plurality opinion)). Arriving at the appropriate "standards of decency" requires consideration of "objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question," id. at 564, 125 S. Ct. at 1192), as well as state practice. See id. at 563-68, 125 S. Ct. at 1191-94. However, the Court must "determine, in the exercise of [its] own independent judgment," whether such a penalty is disproportionate. Id. at 564, 125 S. Ct. at 1192.

Consistent with Simmons, objective indicia of a consensus against LWOP for juveniles can be seen through an analysis of state, federal, and international law. Because the scientific data reviewed in Simmons supports the claim that juveniles are categorically different than adults and that they are not fully culpable for their actions, LWOP cannot survive constitutional scrutiny. LWOP also fails in a constitutional analysis because the purposes of punishment are not served by imposing LWOP on juveniles.

Finally, it is important to understand that Simmons is not precedent supporting LWOP for juveniles based on the fact that ultimately a LWOP sentence was substituted for the death penalty in that case. The Simmons Court's judgment affirmed the Missouri Supreme Court's setting aside of the death penalty, and no more. Id. at 578-79, 125 S. Ct. at 1200. The constitutionality, or even the appropriateness of LWOP for Christopher Simmons was not an issue in that case. This is what is at issue in this case. Simmons did, however, conclude that juveniles are categorically different from adults when it comes to the

criminal law, and that sentences for juveniles must take this categorical difference into consideration.

- 1. Federal Law, the Law of the States and International Law Provide Objective Indicia that Juveniles are Categorically Different than Adults and that there is a Consensus Against Mandatory LWOP Sentences for Juveniles.**

- a. State Laws Provide Objective Indicia of a Consensus Against Mandatory LWOP Sentences for Juveniles.**

In reaching its holding in Simmons, the Supreme Court determined that 30 states prohibited the juvenile death penalty "by express prohibition or judicial interpretation." Simmons, 543 U.S. at 563-65, 125 S. Ct. at 1192. The juvenile death penalty was imposed in the remaining 20 states that did not prohibit it, but only infrequently. Id. The Court gave particular weight to recently-passed state laws that prohibit the death penalty for juveniles, out of recognition that the popularity of current anti-crime initiatives, which include harsh sentences for juveniles, makes it difficult for politicians to support any measures that would make the law more humane or lenient, even to juvenile offenders. Id. at 565-67, 125



S. Ct. at 1193. From the Supreme Court's analysis, it is clear that courts should not count up the number of states robotically or in a vacuum; courts should look at trends, contexts, and practice.

Although 45 states permit LWOP sentences for juveniles, to evaluate whether such a sentence may be constitutionally imposed on a juvenile requires use of a framework similar to that set out in Simmons. A close look at how these states impose LWOP sentences on juveniles, in law and in practice, reveals that these sentences in all but a few states are imposed on juveniles only *infrequently*.<sup>1</sup> In addition, most states require that a defendant be at least a minimum age before a LWOP sentence may be imposed, suggesting a national consensus that LWOP is a very serious punishment that is inappropriate for at least some youth. This minimum age may be applied either directly to LWOP

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<sup>1</sup> According to a report prepared by Amnesty International and Human Rights Watch, while New Jersey, Utah and Vermont have laws permitting juvenile LWOP sentences, at the end of 2003 they had no one serving a juvenile LWOP sentence. Furthermore, of the remaining jurisdictions that allow LWOP for juveniles, 13 had less than 10 youth serving sentences of life imprisonment without the possibility of parole. Amnesty International and Human Rights Watch, The Rest of Their Lives: Life Without Parole for Child Offenders in the United States 34-35 (October 2005).

sentences (two states),<sup>2</sup> by barring LWOP sentences for all juveniles (three states, and the District of Columbia),<sup>3</sup> or, like Alabama, by applying age limits against waiving juveniles into adult court for serious crimes, including for murder (26 states).<sup>4</sup> The two states that do not impose LWOP at all (Alaska and New Mexico)<sup>5</sup> should be included with these states, as it reflects a consensus of the state that no one, not even an adult, should be sentenced to LWOP.

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<sup>2</sup> California and Indiana. See Cal. Penal Code § 190.5(b) (Deering 2006) (no LWOP below age 16); Ind. Code Ann. § 35-50-2-3(b) (LexisNexis 2002) (no LWOP below age 16).

<sup>3</sup> District of Columbia, Kansas, New York, and Oregon. See D.C. Code. § 22-2104 (a) (2007) (no person who was less than 18 years of age at the time of committing a murder can be sentenced to LWOP); Kan. Stat. Ann. §§ 21-4622, 21-4635 (2007) (no sentence of life without parole for capital murder where defendant is less than 18 years old); N.Y. Penal Law § 70.00(5) (McKinney 2007) (LWOP available only for first-degree murder), N.Y. Penal Law 70.05 (McKinney 2007) (proscribing indeterminate sentencing for youthful offenders), N.Y. Penal Law 125.27(1)(b) (McKinney 2007) (required element of first-degree murder is that the defendant is over 18 years old); Or. Rev. Stat. §161.620 (2005), State v. Davilla, 157 Or. App. 639, 972 P.2d 902 (Or. Ct. App. 1998) (interpreting §161.620 to bar juvenile LWOP).

<sup>4</sup> See Appendix A for a complete list of states that apply age limits against waiving juveniles into adult court.

<sup>5</sup> See Alaska Stat. § 12.55.125(a), (h), & (j) (LexisNexis 2007) (providing mandatory 99 year sentences for enumerated crimes, discretionary 99 year sentence in others, but permitting prisoner serving such sentence to apply once for modification or reduction of sentence after serving half of the sentence); N.M. Stat. Ann. § 31-21-10 (2007) (maximum sentence in state has parole eligibility after 30 years).

See Simmons, 543 U.S. at 564, 125 S. Ct. at 1192 (including non-death penalty states with non-juvenile death penalty states total). Therefore, 33 states and the District of Columbia refuse to impose LWOP sentences on juveniles below a certain age.

On the other hand, 17 states have no age limit on LWOP sentences; that is, these states permit a child of any age who commits certain enumerated crimes to be transferred to adult court and, if convicted, these states permit LWOP sentences to be imposed on a child of any age.<sup>6</sup> The fact that so many state legislatures have established *any* age limit in states that apply LWOP sentences to juveniles is critical in the wake of Simmons. As the Supreme Court reasoned in Simmons, there is no constitutional distinction between a child 16-18 years old and those below age 16. Following this logic, the Simmons Court reversed Stanford v. Kentucky, 492 U.S. 361, 109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989), which had permitted the death penalty for

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<sup>6</sup> See Appendix B for a complete list of states that impose LWOP sentences on children of any age.

juveniles age 16 and above. In Stanford the Court concluded that juveniles below age 16 had certain characteristics that made them less culpable for their crimes. In Simmons the Court stated, "We conclude the same reasoning applies to all juvenile offenders under 18." Id. at 571, 125 S.Ct. at 1196.

The Court drew a bright line for reduced juvenile culpability at 18, based on widely accepted research which showed that juveniles have an undeveloped sense of responsibility and lack of maturity that makes them less culpable than adults, and therefore unclassifiable as "among the worst offenders." Id. at 569-570, 125 S.Ct. at 1194-95. As will be shown in more detail below, Simmons rejected the notion that the line can be drawn reasonably anywhere below age 18. Drawing it earlier is to apply a distinction without a constitutionally meaningful difference. Such age distinctions, established by many state legislatures in their juvenile LWOP sentences before the Supreme Court's decision in Simmons, are not grounded in the scientific studies that the Supreme Court relied on in Simmons. Even so, the consensus of 33 states and the

District of Columbia that there should be a minimum age limit in order to impose a LWOP sentence demonstrates that LWOP sentences are inappropriate for juveniles below a particular age.

The actual practice in the states even more sharply reveals this national consensus against juvenile LWOP. The 22 states that permit a sentencing court to use its discretion in whether to sentence a convicted juvenile to LWOP for the most heinous crimes, such as murder,<sup>7</sup> have sentenced markedly fewer juveniles to this sentence than have states where LWOP is a mandatory sentence<sup>8</sup> for conviction for certain crimes, as in Alabama.<sup>9</sup> According to

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<sup>7</sup> See Appendix C for a complete list of states where LWOP sentences are discretionary for juveniles, i.e., not a mandatory minimum for the highest degree of murder in the following states (note exceptions in some states for repeat offenders).

<sup>8</sup> See Appendix D for a complete list of states where LWOP sentences are mandatory for juveniles upon conviction as adults for enumerated crimes, including murder.

<sup>9</sup> In Alabama, a court must prosecute youth age 16 and older as adults for the most serious crimes, including murder. Ala. Code § 12-15-34.1 (2007) (mandatory prosecution as adult for age 16 and older for enumerated crimes). While a court has discretion to waive juvenile offenders between the ages of 14 and 16 into adult jurisdiction, once such an individual is convicted as an adult of a capital offense, the imposition of LWOP is mandatory. Ala. Code § 12-15-34 (2007) (prosecutorial discretion to transfer any child 14 years or older to adult criminal court);

data collected by Human Rights Watch and Amnesty International, as of 2004, there are 2,225 people serving LWOP sentences for crimes they committed as juveniles.<sup>10</sup> Amnesty International and Human Rights Watch, The Rest of Their Lives: Life Without Parole for Child Offenders in the United States 35 (Table 5) Appendix D: State Population Data Table (October 2005) (hereinafter HRW Report). More than half of that number, 1228, come from just *four* states - Florida, Louisiana, Michigan, and Pennsylvania, all of which make LWOP sentences a mandatory minimum for particular crimes.<sup>11</sup> In stark contrast, there are only 439 people serving LWOP sentences for crimes they committed as

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Ala. Code § 13A-5-39 (2007) (capital offenses are punishable by sentence of death or life imprisonment), Ala. Code § 13A-5-40(2007) (defining elements of a capital offense, including: "(17) Murder committed by or through the use of a deadly weapon while the victim is in a vehicle. (18) Murder committed by or through the use of a deadly weapon fired or otherwise used within or from a vehicle."), Ala. Code §§ 13A-5-46, 13A-5-48(2007) (explaining that aggravating and mitigating factors only affect whether the sentence is death or life imprisonment without parole; imposition of either the death penalty or LWOP is mandatory for a defendant convicted of a capital offense).

<sup>10</sup> This number does not include individuals from Idaho, Kentucky, Maine, Texas or West Virginia - all states which provide for juvenile LWOP, but did not respond to the HRW survey.

<sup>11</sup> The breakdown is as follows: Pennsylvania, 332; Louisiana, 317; Michigan, 306; Florida, 273. HRW Report at 35 (Table 5)

juveniles in the 19 states that make LWOP for juveniles a discretionary sentence for which data are available -- 21 percent of people serving juvenile LWOP sentences overall.<sup>12</sup> This pattern appears in Alabama where of the 1382 individuals serving LWOP, only 15 are juveniles. Alabama Department of Corrections, FY 2006 Annual Statistics Report available at <http://www.doc.alabama.gov/docs/AnnualRpts/2006StatisticalReport.pdf> (last visited Aug. 1, 2007); HRW Report at 35. This amounts to 1%. The clear pattern of state practice, therefore, is that even when the sentence is an option, most states rarely sentence juveniles to LWOP.

Last, the fact that 43 states allow LWOP for children, in some shape or form, does not negate the above analysis, which shows that, when given a chance, sentencing courts do not impose LWOP on juveniles, except in the rarest of

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and Appendix D: State Population Data Table.

<sup>12</sup> HRW Report at 35 (Table 5) and Appendix D: State Population Table. The breakdown by state is as follows: Arizona, 30; California, 180; Georgia, 8; Illinois, 103; Indiana, 2; Maryland, 13; Mississippi, 17; Montana, 1; Nevada, 16; North Dakota, 1; Ohio, 1; Oklahoma, 49; Rhode Island, 2; South Carolina, 26; Tennessee, 4; Utah, 0; Vermont, 0; Wisconsin, 16; Wyoming, 6. The report does not provide data for 3 of the 22 states with discretionary LWOP sentences: Idaho, Kentucky, and West Virginia, which were not included in this total.

cases. Again, more than half of all juvenile LWOP sentences in the U.S. are a result of practices in just four states. The state law landscape shows that there is a national consensus<sup>13</sup> against the type of mandatory LWOP statute at issue here, a statute which mandates the imposition of a sentence of life without the possibility of parole for certain juvenile offenders, even if it is their first offense.

**b. International Law, the Law of Other Nations, and The Practice of Those Nations Provide Overwhelming Evidence of a World-Wide Consensus Against LWOP Sentences for Juveniles.**

In determining the standards of decency, American courts should consider international law. Simmons, 543 U.S. at 575, 125 S.Ct at 1198 ("at least from the time of the Court's decision in Trop [v. Dulles], 356 U.S. 86, 102-

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<sup>13</sup> 26 states and the District of Columbia oppose such mandated LWOP for juveniles, including the 5 states and the District of Columbia that do not allow the sentence of LWOP for juveniles at all and the 21 states that make such a sentence discretionary unless the juvenile has prior convictions for enumerated serious crimes. Cf. Ala. Code §§ 12-15-34.1 (mandating juveniles age 16 and over be tried as adults for serious crimes, including a capital offense), 13A-5-39 (mandating death or LWOP as the only possible punishments for capital offenses).



103, 78 S. Ct. 590, 599 (1958)], the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment's prohibition of 'cruel and unusual punishments'"). In Simmons, the Court emphasized "the stark reality" that the United States was the only country in the world that executed juveniles as a criminal punishment. Id. The Court found persuasive the United Nations Convention on the Rights of the Child (CRC), Article 37, which expressly forbids the juvenile death penalty. Id. at 576, 125 S.Ct. at 1199.

This same CRC article expressly forbids LWOP sentences for juveniles:

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, 1577 U.N.T.S. 3 (emphasis supplied).<sup>14</sup>

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<sup>14</sup> As with the juvenile death penalty, the "stark reality" is that only the United States and Somalia have not ratified the

Another international law instrument, the Covenant for Civil and Political Rights, expressly states that rehabilitation is the goal of criminal justice systems. United Nations International Covenant for Civil and Political Rights, Art. 10(3), Dec. 16, 1966, 999 U.N.T.S. at 175 (signed and ratified by the United States with a reservation that "Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults").

In Simmons the Supreme Court considered the degree to which the United States is almost alone in allowing the execution of juveniles. See Simmons, 543 U.S. at 577, 125 S. Ct. at 1199. This is also true internationally for

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CRC. That Somalia has not signed onto this convention, however, is not necessarily evidence that official Somali policy supports juvenile LWOP sentences. According to the United Nations International Children's Emergency Fund (UNICEF), Somalia has not signed because it lacks a government. UNICEF, Frequently Asked Questions, available at [http://www.unicef.org/crc/index\\_30229.html](http://www.unicef.org/crc/index_30229.html) (last visited June 4, 2006) The European Union is currently urging the United States to ratify the CRC, stating that the Convention "prohibits sentencing minors both to death and also to *imprisonment for life without the possibility of release.*" Memorandum from European Union on the Death Penalty, available at <http://www.eurunion.org/legislat/Deathpenalty/Demarche.htm> (emphasis supplied) (last visited June 4, 2006.)

juvenile LWOP sentences. According to the HRW Report, in 2005 there were no more than 12 people serving LWOP sentences in all of the countries outside the United States combined. HRW Report at 106 (noting that four of the offenders are in South Africa, one in Tanzania, and that between five and seven are in Israeli prisons). That the United States is out of step with the rest of the world on this issue could not be clearer.<sup>15</sup>

**2. Because Scientific and Developmental Research Show that Juveniles are Less Culpable than Adults who Commit the Same Crimes, LWOP Violates the Eighth Amendment.**

Most significantly in Simmons, the Supreme Court concluded that scientific and sociological studies demonstrated that juveniles possess less maturity and less sense of responsibility than adults, and therefore it was

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<sup>15</sup> In addition, while not necessarily considered as part of this Court's consideration, recent attention in the American mainstream media and the work of human rights experts show a growing awareness of the cruelty of LWOP sentences for juveniles. See, e.g., HRW Report; Adam Liptak, To More Inmates, Life Term Means Dying Behind Bars, N.Y. Times, Oct. 2, 2005 at A36; Adam Liptak, Locked Away Forever After Crimes as Teenagers, N.Y. Times, Oct. 3, 2005, at A1; Adam Liptak, Years of Regret Follow a Hasty Guilty Plea Made at 16, N.Y. Times, Oct. 3, 2005 at A16; Adam Liptak, Serving Life, With No Chance of Redemption, N.Y. Times, October 5, 2005 at A1.

cruel and unusual to consider them as morally culpable as an adult would be for a similar crime. 543 U.S. at 569-71, 125 S.Ct. at 1195-96. The Court explained that children under 18 have diminished culpability and should be treated differently than adults, highlighting the following findings with respect to youth: 1. they lack maturity and have an underdeveloped sense of responsibility, 2. they are more vulnerable and susceptible to outside influences, such as peers, and 3. their character is not yet fixed and they have not yet developed the capacity to control their environment. Id. at 569-70, 125 S. Ct. at 1195.

The Simmons Court concluded that children younger than age 18 who commit crimes are more amenable to rehabilitation than older defendants and as a result should not be treated the same way at sentencing. Id. at 570, 125 S. Ct. at 1195-96. Like the death penalty, LWOP is also based on the presumption that the individual is irredeemable. Yet, the Supreme Court concluded that a determination about the long term "depravity" of *anybody* below the age of eighteen cannot be made with any reasonable certainty, even by psychiatrists and

psychologists. Id. at 573-74, 125 S. Ct. at 1197.<sup>16</sup>

Therefore, a law that is based largely on the notion that a child **cannot** be rehabilitated is not only cruel and unusual and violative of due process, but is unreasonable. U.S. Const. amend. VIII, U.S. Const. amend. XIV.

**3. Because LWOP Sentences for Juveniles Do Not Serve the Purposes of Punishment they are Cruel and Unusual as applied to Juveniles.**

Juvenile LWOP sentences cannot be justified as fulfilling the purposes of punishment: deterrence, retribution, incapacitation and rehabilitation.<sup>17</sup> As the

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<sup>16</sup> There have been studies concluding that the likelihood of an offender's committing further crimes after release from prison decreases with age. Erica Beecher-Monas and Edgar Garcia-Rill, Danger at the Edge of Chaos: Predicting Violent Behavior in a Post-Daubert World, 24 Cardozo L. Rev. 1845, 1899 (2003) ("The decrease in violence and criminal activity with age is a well-established principle of criminology. Base rates of violence are far lower after the age of sixty (when most life prisoners would be eligible for parole) than in the twenties."). That is, the juvenile offender, especially with rehabilitation, is less likely to commit crimes later on. The Supreme Court recognized this dynamic in Simmons: "Indeed, the relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." 543 U.S. at 570, 125 S. Ct. at 1195 (quoting Johnson v. Texas, 509 U.S. 350, 368, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993)).

<sup>17</sup> The four purposes for punishment typically set forth in criminal law casebooks are: deterrence, retribution,

Court reasoned in Atkins, unless the imposition of a punishment “measurably contributes to one or both of these goals, it is nothing more than the purposeless and needless imposition of pain and suffering, and hence an unconstitutional punishment.” Atkins v. Virginia, 536 U.S. 304, 319, 122 S. Ct. 2242, 2251 (2002) (quoting Enmund v. Florida, 458 U.S. 782, 798, 102 S. Ct. 3368, 3377 (1982)).

**a. LWOP Sentences Are An Ineffective  
Deterrent For Juveniles.**

Because juveniles generally lack the mental ability to weigh the possible consequences of their actions, LWOP, like the death penalty, cannot serve as a deterrent. Simmons 543 U.S. at 571, 125 S. Ct. at 1196 (discussing psychological studies). Logic dictates that if the harsher penalty, death, is not an effective deterrent for young people who typically fail to weigh consequences, life without parole will not have any greater deterrent value. See also Naovarath v. State, 779 P.2d 944, 948, 105 Nev. 525, 531, (Nev. 1989) (holding that LWOP for 13 year old defendant was

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incapacitation, and rehabilitation. See, e.g., Paul Robinson, Criminal Law: Case Studies and Controversies 82-90 (2005).

unconstitutional and doubting that it can serve as a deterrent for other teenagers).

**b. LWOP Sentences Exact  
Disproportionate Retribution  
From Juveniles.**

As the Supreme Court in Simmons stated about the death penalty: "Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." Simmons, 543 U.S. at 571, 125 S. Ct. at 1196. This reasoning applies with equal force to juvenile LWOP sentences. Retribution is a valid purpose for punishment; however, because "[t]he differences between juvenile and adult offenders are too marked and well understood," it is necessary to limit punishments of juveniles like Simmons, to avoid the "unacceptable likelihood [that] exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth." Id. at 572-73.

**c. LWOP Sentences Exceed What Is  
Necessary To Incapacitate a  
Juvenile.**

Although LWOP sentences incapacitate offenders, such incapacitation is unreasonable and disproportionate where the offender no longer poses a danger to the community. See United States v. Jackson, 835 F.2d 1195, 1200 (7th Cir. 1987) (Posner, J., concurring) ("A civilized society locks up [criminals] until age makes them harmless but it does not keep them in prison until they die."). Since, according to the Simmons Court, a psychiatrist or psychologist cannot predict at sentencing whether a child convicted of murder is beyond rehabilitation, see Simmons, 543 U.S. at 573, 125 S. Ct. at 1197, a child should have the opportunity to demonstrate rehabilitation and qualify for release after a reasonable term of years. See Laurence Steinberg & Robert G. Schwartz, Developmental Psychology Goes to Court, in Youth on Trial: A Developmental Prospective on Juvenile Justice 23 (Thomas Grisso & Robert G. Schwartz, eds., 2000) ("the malleability of adolescence suggests that a youthful offender is capable of altering his life course and developing a moral character as an adult"). It is a parole board that has the expertise to evaluate the youth's ability to redeem himself and function



in society. Naovarath, 779 P.2d at 948. They provide a crucial check that ensures that the purposes of punishment are satisfied.

**d. LWOP Sentences Frustrate  
Rehabilitation of Juvenile  
Offenders.**

Like the juvenile death penalty, LWOP frustrates rehabilitation:

[A] mandatory sentence of life imprisonment without the possibility of parole does share one important characteristic of a death sentence: The offender will never regain his freedom. Because such a sentence does not even purport to serve a rehabilitative function, the sentence must rest on a rational determination that the punished 'criminal conduct is so atrocious that society's interest in deterrence and retribution wholly outweighs any considerations of reform or rehabilitation of the perpetrator.'

Harmelin v. Mich., 501 U.S. 957, 1028, 111 S. Ct. 2680, 2719 (1991) (Stevens, J., dissenting) (quoting Furman v. Georgia, 408 U.S. 238, 307, 92 S. Ct. 2726, 2761, 33 L. Ed. 2d 346, 388 (1972) (Stewart, J., concurring)).

Juveniles sentenced to LWOP lack incentive to try to improve their character or skills for eventual release. Instead, the incentives, if any, are for the young offender - often placed into the same prisons as adult offenders - to adapt to prison life, which can include inflicting

violence as a means of domination and increased standing in the prison "pecking order." See HRW Report at 57 (discussing youth offenders in general, and citing Institute on Crime, Justice and Corrections and the National Council on Crime and Delinquency, Juveniles in Adult Prisons and Jails: A National Assessment 63 (U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Assistance, Oct. 2000)).<sup>18</sup> Juveniles have the potential to change and rehabilitate over time, yet LWOP ignores and extinguishes this potential.

**B. A Sentence of Life Without Parole for a 17 Year-Old Child Violates Article I, Section 13 Of The Alabama Constitution Which Prohibits "Cruel OR Unusual Punishment."**

In addition to violating the United States Constitution, a juvenile LWOP sentence also violates the Alabama Constitution. There is no case law to directly guide this Court as no Alabama Court has addressed this specific issue following Simmons. Article I, Section 15 of the Alabama Constitution provides: "excessive fines shall

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<sup>18</sup> Available at <http://www.ncjrs.org/pdffiles1/bja/182503-1.pdf> (last visited Dec. 16, 2005).

not be imposed, nor cruel or unusual punishment inflicted.” Ala. Const. art. I, § 15. A plain reading suggests that this provision of the Alabama Constitution provides greater protection than its federal counterpart: the Alabama Constitution prohibits "cruel or unusual punishment" while the United States Constitution bars punishments that are both "cruel" **and** "unusual." U.S. Const. amend. VIII. The Minnesota courts have articulated the distinction:

This difference is not trivial. The United States Supreme Court has upheld punishments that, although they may be cruel, are not unusual. See Harmelin v. Michigan, 501 U.S. 957, 994, 111 S. Ct. 2680, 2701, 115 L.Ed.2d 836 (1991) (concluding that even though severe mandatory penalties may be cruel, they are not unusual).

State v. Mitchell, 577 N.W.2d 481, 488 (Minn. 1998).

Alabama courts have made clear that the rules of statutory construction require that a statute be read to give **all** words meaning. See Custer v. Homeside Lending, Inc., 858 So. 2d 233, 145 (Ala. 2003) (quoting Alabama State Bd. of Health v. Chambers County, 335 So. 2d 653, 654-55 (Ala. 1976) ( "[a] statute must be considered as a whole and every word in it made effective if possible"); J.W. Hartlein Constr. Co. v. Seacrest Assocs., 749 So. 2d 459,

462 (Ala. Civ. App. 1999) ("A basic principle of statutory construction is that it will be presumed that every word, sentence, or provision of a statute has meaning and effect."). Thus, under the state's constitution, a punishment would be unconstitutional if it was either cruel or unusual. The discussion provided above, however, shows that LWOP is both cruel and unusual as a punishment for juveniles. "If putting this child away until his death is not cruel, it is certainly unusual. To adjudicate a thirteen-year-old to be forever irredeemable and to subject a child of this age to hopeless, lifelong punishment and segregation is not a usual or acceptable response to childhood criminality, even when the criminality amounts to murder." Naovarath, 779 P.2d at 948.

In addition, following Alabama case law, a traditional disproportionality analysis would also lead us to the same conclusion. "Alabama courts have recognized the importance of proportionality in sentencing." Wilson v. State, 830 So. 2d 765, 777 (Ala. Crim. App. 2001). In fact, "[p]roportionality of sentence is certainly a vital constitutional guarantee." Anderson v. State, 455 So.2d

957, 958 (Ala. Crim. App. 1984). The threshold determination is whether LWOP "is grossly disproportionate" to the crime, which includes a consideration of the gravity of the offense and the harshness of the punishment.

Wilson, 830 So. 2d at 775 (citing Solem v. Helm, 463 U.S. 277, 290-91 (1983)). The United States Supreme Court noted in Solem that no single factor determines when a sentence is grossly disproportionate, and it offered a non-exhaustive list of factors to be considered when a court is assessing the severity of a crime. Solem, 463 U.S. at 291-92. These factors include consideration of the circumstances of the crime, the harm caused to the victim or to society, the culpability of the offender, and the offender's motive in committing the crime. Wilson v. State, 830 So. 2d 765, 778 (Ala. Crim. App. 2001) (citing Solem, 463 U.S. at 290-94). Second, the punishment imposed on other offenders in the same jurisdiction must be considered, Id. at 780. Finally, the punishment that the individual would have received in other jurisdiction must be evaluated. Id.

There is no doubt that the offense committed in this case was grave. However, because of the reduced culpability of juveniles due to their development as well as the relative infrequency of LWOP in Alabama and the United States, this analysis would conclude that LWOP is a disproportionate punishment for a juvenile.

At least two other states have interpreted their constitutions as barring life imprisonment without parole sentences for juveniles. Workman v. Commonwealth, 429 S.W.2d 374, 377 (Ky. 1968) (holding that LWOP sentence for a juvenile violates United States and Kentucky Constitutions, stating: "It seems inconsistent that one be denied the fruits of the tree of law, yet subjected to all its thorns."); Naovarath v. State, 105 Nev. 525, 779 P.2d 944 (Nev. 1989) (holding that LWOP sentence for a juvenile violates both the Nevada and United States constitutions).

An examination of the text of the Alabama's Constitution's prohibition against "cruel or unusual punishment" demonstrates that, grammatically, it is broader than the United States Constitution's prohibition against "cruel and unusual" punishment.

**C. A Mandatory LWOP Sentence for Juveniles Violates the Prohibition on Cruel and/or Unusual Punishment and the Guarantee of Due Process in the U.S. and Alabama Constitutions Because it Prohibits the Consideration of Youth as well as any Mitigating Factors in Sentencing.**

A mandatory LWOP sentence violates the prohibition on cruel and unusual punishment, U.S. Const. amend. VIII, as well as the Due Process Clause of the United States Constitution, U.S. Const. amend. XIV. In addition, it violates the prohibition on cruel or unusual punishment, Ala. Const. art. I, § 15, and the due process clause of the Alabama Constitution, Ala. Const. art. I, § 6. This failure to allow consideration of any mitigating or other relevant factors makes the punishment of mandatory LWOP cruel and unusual when imposed on a juvenile. In addition, it also violates the due process guarantees of both Constitutions in that it removes any procedure by which the juvenile could voice any factors that have an effect on his culpability. This results in a denial of the fundamental fairness that the due process requires.

In Alabama law, a capital offense can be punished by either LWOP or the death penalty. Ala. Code § 13A-5-39

(LexisNexis 2007). **Because Simmons eliminated the juvenile death penalty, LWOP is mandatory for juveniles who are convicted of capital offenses.** Alabama law requires that a youth who commits a capital offense at age 16 or older must be tried as adult. Ala. Code § 12-15-34.1 (LexisNexis 2007). The mandatory nature of the imposition of a life sentence without the possibility of parole for capital murder precludes judges from even considering a juvenile's age, immaturity, reduced mental capacity, reduced role in the offense, likelihood of rehabilitation or any other invalidating factors related to his young age - the precise characteristics that the United States Supreme Court relied upon in striking down the imposition of the death penalty for juveniles in Simmons.

The United States Supreme Court has struck down as unconstitutional statutes imposing a mandatory death sentence for particular offenses or against particular categories of defendants *because* the statutes did not provide for individualized-sentencing procedures that allow for consideration of particularized mitigating factors. See e.g., Sumner v. Shuman, 483 U.S. 66, 85, 107 S. Ct.



2716, 2727 (1987) (striking statute mandating death penalty for inmate convicted of murder while serving life sentence without possibility of parole); Harry Roberts v. Louisiana, 431 U.S. 633, 638, 97 S.Ct. 1993, 1996 (1977) (striking statute mandating death penalty for defendants convicted of first degree murder of a police officer); Stanislaus Roberts v. Louisiana, 428 U.S. 325, 336, 96 S. Ct. 3001, 3007 (1976) (striking statute mandating death penalty for first degree murder); Woodson v. North Carolina, 428 U.S. 280, 305, 96 S. Ct. 2978, 2991 (1976) (striking statute mandating death penalty for first degree murder, including felony murder). This denial of an individualized sentencing procedure violates the Eighth Amendment's prohibition on cruel and unusual punishment as well the Fourteenth Amendment's due process guarantees, requiring fundamental fairness, U.S. Const. amend. XIV. See, e.g., Sumner, 483 U.S. 66, Lockett v. Ohio, 438 U.S. 586, 98 S. Ct. 2954 (1987).

These cases rejecting the mandatory imposition of the death penalty are based on the constitutional requirement in capital cases that "the sentencing authority have

information sufficient to enable it to consider the character and individual circumstances of a defendant prior to the imposition of a death sentence." See Sumner, 483 U.S. at 72 (quoting Gregg v. Georgia, 428 U.S. 153, 189 n.38, 96 S. Ct. 2909, 2933 n.38). Although these cases highlight that death is qualitatively different from imprisonment, they do so within the context of adult sentencing. In Simmons the United States Supreme Court made clear that juveniles are in a different class and category than adults when it comes to sentencing. Simmons stands for the proposition that it is unconstitutional to impose adult sentences, such as the death penalty, on juveniles. A mandatory sentence of life imprisonment without the possibility of parole is certainly an adult sentence. Like the death penalty, mandatory life imprisonment without any possibility of parole disregards the special characteristics of juveniles and their capability for reform.

LWOP is the most severe and final punishment for juveniles and it must be limited to those who commit the most heinous crimes and those for whom extreme culpability

is established. Simmons, 543 U.S. at 568. Due to the severe and final nature of LWOP for juveniles, the ability to consider mitigating factors is equally essential to ensuring proportionality and constitutionality. Thus in any capital case a defendant has wide latitude to raise as a mitigating factor "any aspect of [his or her] character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." Lockett, 438 U.S. at 604, 98 S. Ct. at 2965, 57 L. Ed. 2d at 990 (1978) (plurality opinion); Eddings v. Oklahoma, 455 U.S. 104, 110-112, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982). This should apply for an LWOP sentence for a juvenile.

Adults convicted of capital offenses in Alabama have the opportunity to present mitigating and other relevant factors to the sentencing court. They are entitled to a sentencing hearing. Ala. Code § 13A-5-45(c) (LexisNexis 2007). At the hearing aggravating and mitigating circumstances will be reviewed, Ala. Code § 13A-5-45(c) (LexisNexis 2007), and must be "marshalled [sic] and considered in an organized fashion for the purpose of

determining whether the proper sentence in view of all the relevant circumstances in an individual case is life imprisonment without parole or death.” Ala. Code § 13A-5-48 (LexisNexis 2007). Mitigating circumstances include such things as duress, being under the influence of another, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired, and age. Ala. Code § 13A-5-51 (LexisNexis 2007).

The sentencing process for juveniles convicted of capital offenses in Alabama provides no place for consideration of mitigation or other factors, such as age.

Simmons has made clear that youth in itself is a mitigating factor that must be considered. Without a mechanism to incorporate the consideration of age and other mitigating factors, mandatory LWOP as applied to Connell is unconstitutional in that it violates the Eighth and Fourteenth Amendments of the United States Constitution.

## CONCLUSION

The holding of Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) requires a ruling that a sentence of life imprisonment without the possibility of parole for a juvenile violates the prohibition on cruel and unusual punishment contained in the United States Constitution and the Alabama Constitution's prohibition on cruel or unusual punishment. In addition, a mandatory sentence of life imprisonment without parole cannot be applied to a juvenile without violating his rights to due process under the Constitutions of the United States and Alabama. For these reasons, Troy Connell's sentence of life without parole should be set aside.

Respectfully submitted,

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## Appendix A

### **States that apply an age limit against waiver of juveniles into adult court.**

**Alabama** (age 14) Ala.Code § 12-15-34 (2007) (prosecutorial discretion to transfer any child 14 years or older to adult criminal court) Ala. Code § 12-15-34.1 (2007) (mandatory prosecution as adult for age 16 and older for enumerated crimes).

**Arizona** (age 14) Ariz. Rev. Stat. Ann. § 13-501(A)(1) (2001 & Supp. 2005) (Juvenile age 15 16 and 17 "must" be prosecuted as an adult for first degree murder) and Ariz. Rev. Stat. Ann. § 13-501(B)(1) (2001 & Supp. 2005) (Juvenile at least age 14 "may" be prosecuted as an adult for class one felonies).

**Arkansas** (age 14) Ark. Code Ann. § 9-27-318 (2002 & Supp. 2005) (if the juvenile is at least 14 years of age and commits a felony he or she can be transferred to adult court and tried as an adult).

**Colorado** (age 12) Colo. Rev. Stat. § 19-2-518(1)(a)(I)(A)-(B) (2004) (discretionary transfer to adult court for juveniles age 12 and above for class one or two felonies).

**Connecticut** (age 14) Conn. Gen. Stat. Ann. § 46b-127 (West 2004 & Supp. 2005) (mandatory transfer to adult court for children age 14 and above for enumerated felonies).

**Illinois** (age 13) 705 Ill. Comp. Stat. Ann. 405/5-805(3) (West 1999 & Supp. 2005) (When a child is 13-14 the transfer to adult court is discretionary).

**Iowa** (age 14) Iowa Code Ann. § 232.45 (6)(a) (West 2000 & Supp. 2006) (juvenile court may waive jurisdiction over a child as young as 14).

**Kentucky** (age 16) Ky. Rev. Stat. Ann. §§ 635.020 640.010 (LexisNexis 1999 & Supp. 2006) (mandatory hearing to consider transfer to adult court for enumerated offenses age limit of 14) Ky. Rev. Stat. §640.040 (LexisNexis 2006) (Juveniles age 16-17 can receive adult penalty for capital offenses. other juvenile offenders can receive maximum sentence of life imprisonment with the possibility of parole in 25 years) see also Ky. Rev. Stat. Ann. § 532.025

(LexisNexis 1999 & Supp. 2006) (setting forth age of defendant as mitigating factor to be considered in sentencing defendant to LWOP).

**Louisiana** (age 15) La. Child. Code Ann. art. 305 (West 2004) (any juvenile 15 years old or older charged with first-degree murder second-degree murder aggravated rape or aggravated kidnapping must be tried as an adult).

Massachusetts (age 14) Mass. Gen. Laws Ann. ch. 119 § 72(b) (West 2003 & Supp. 2005) (treating as an adult any juvenile 14 or older charged with murder in the first or second degree).

**Minnesota** (age 14) Minn. Stat. Ann. § 260B.125 (2003 & Supp. 2006) (discretionary waiver age limit 14).

**Mississippi** (age 13) Miss. Code Ann. § 43-21-151(a) (West 1999) and Miss. Code Ann. § 43-21-157(8) (West 1999 & Supp. 2005) (mandatory adult court jurisdiction age limited to 13 for any felony punishable by life imprisonment or death no reverse transfer).

**Missouri** (age 12) Mo. Ann. Stat. § 211.021 (2007) (Individuals age 17 and older legally adults for criminal purposes) Mo. Ann. Stat. § 211.071 (2007) (discretionary transfer for juveniles age 12 and older).

**Montana** (age 12) Mont. Code Ann. § 41-5-206 (2005) (discretionary transfer if the child is 12 years of age or older for enumerated offenses; when the minor is 16 years of age more types of offenses are added to the list; if a child is of the age of 17 and commits an offense listed above the county attorney "shall" file with the district court).

**New Jersey** (age 14) N.J. Stat. Ann. 2a:4A-26 (West 1987 & Supp. 2005) (discretionary waiver age 14 or over).

**North Carolina** (age 13) N.C. Gen. Stat. § 7B-2200 (2007) (discretionary transfer for juveniles age 13 and older at the time they commit offenses that would be felonies); N.C. Gen. Stat. § 14-17 (2007) (providing for mandatory LWOP sentence for anyone 17 or under who committed a murder in the first degree).

**North Dakota** (age 14) N.D. Cent. Code § 12.1-04-01 (1997) (juveniles under 7 are not capable of committing a crime and a juvenile cannot be tried as adult if less than 14

years old).

**Ohio** (age 14) Ohio Rev. Code Ann. § 2152.10(B) (LexisNexis 2002 & Supp. 2005) (discretionary transfer age limit of 14 for felonies mandatory if previously adjudicated delinquent).

**Oklahoma** (age 13) Okla. Stat. Ann. tit 10 § 7306-1.1(B) (West 1998 & Supp. 2006) (mandatory transfer age 13 and above for first degree murder).

**South Dakota** (age 10) S.D. Codified Laws § 26-11-3.1 (2004) (mandatory transfer to adult court of juveniles 16 or older who commit enumerated felonies hearing at option of juvenile charged where they must prove transfer back to juvenile court is in the best interests of the public; discretionary transfer ages 10-16).

**Utah** (age 14) Utah Code Ann. § 78-3a-502(3) (2002) (discretionary age limit of 14 for adult court jurisdiction).

**Vermont** (age 10) Vt. Stat. Ann. tit. 33 § 5506 (1998) (discretionary limit age 10).

**Virginia** (age 14) Va. Code Ann. § 16.1-269.1 (2003 & Supp. 2005) (mandatory transfer age limit 14 upon finding of probable cause for enumerated felonies).

**Washington** (age 15) Wash. Rev. Code Ann. § 13.040.030 (Westlaw 2006) (exclusive adult court jurisdiction over 16 or 17 year old accused of committing serious violent offense) Wash. Rev. Code Ann. § 13.040.110 (Westlaw 2006) (juvenile court required to hold waiver hearing whenever child as young as 15 accused of class A felony or attempt solicitation or conspiracy to commit class A felony).

**Wisconsin** (age 10) Wis. Stat. Ann. § 938.18 (West 2000 & Supp. 2005) (exclusive adult court jurisdiction age limit 10 for first degree murder first degree reckless murder second degree intentional homicide; limit of 14 for other felonies).

**Wyoming** (age 13) Wyo. Stat. Ann. § 14-6-203(f)(3) (2005) (concurrent adult and juvenile court jurisdiction age limit 14 for enumerated felonies) and Wyo. Stat. Ann. § 14-6-237 (2005) (discretionary transfer between adult and juvenile court).



## Appendix B

### **States that impose LWOP sentences on children of any age.**

**Delaware** Del. Code Ann. tit. 10 §§ 1010 1011 (1999 & Supp. 2004) ("child shall be proceeded against as an adult" when accused of enumerated felonies; child can request transfer hearing and court may transfer back at its discretion) Del. Code Ann. tit. 11 § 4209 (2001 & Supp. 2004) (mandatory LWOP for "any person" convicted of first degree murder).

**Florida** Fla. Stat. §§ 985.225(1)(a) 985.227 (2005) (prosecutor may directly file for capital crime and child is under jurisdiction of juvenile court "unless and until an indictment" is delivered by the grand jury; when indicted child "must be tried and handled in every respect as an adult ... on the offense punishable by death or by life imprisonment") Fla. Stat. § 985.225(3) (2005) ("if the child is found to have committed the offense punishable by death or life imprisonment the child shall be sentenced as an adult").

**Georgia** Ga. Code. Ann. § 15-11-28 (2007) (concurrent juvenile and adult court jurisdiction over child of any age accused of crime where punishment in criminal court would be death LWOP or life imprisonment; mandatory adult court jurisdiction for such crimes if committed by child over 13 years old) Ga. Code. Ann. § 17-10-6.1(a)(2) and 17-10-7(b)(1 & 2) (authorizing mandatory LWOP for recidivist serious violent felons).

**Hawaii** Haw. Rev. Stat. Ann. § 571-22 (LexisNexis 2005 & Supp. 2005) (discretionary transfer to adult court of juveniles no age limit who commit murder) Haw. Rev. Stat. Ann. § 706-656 (LexisNexis 2003 & Supp. 2005) (mandatory LWOP for enumerated felonies).

**Idaho** Idaho Code Ann. § 18-4004 (LexisNexis 2007) (mandatory LWOP ("fixed life sentence") if death penalty is not sought or jury finds it unjust and jury concludes beyond a reasonable doubt that at least one aggravating factor exists; otherwise life sentence with no parole for at least 10 years); Idaho Code Ann. §§ 20-508 20-509 (2007) (mandatory transfer for juveniles age 14-18 accused

of enumerated crimes discretionary transfer for children below age 14 accused of enumerated crimes).

**Maine** Me. Rev. Stat. Ann. tit. 15 § 3101 (2007) (discretionary hearing to determine whether to transfer juvenile of any age to adult court for trial for murder or enumerated felonies) Me. Rev. Stat. Ann. tit. 17-A § 1251 (2007) (allowing life sentences) see State v. St. Pierre 584 A.2d 618 621 (Me. 1990) (LWOP sentences are discretionary under § 1251).

**Maryland** Md. Code Ann. Cts. & Jud. Proc. § 3-8A-06 (West 2002 & Supp. 2005) (discretionary transfer to adult court for any age for murder) Md. Code Ann. Crim. Law § 2-202 (West 2002 & Supp. 2005) (discretionary LWOP or life if defendant is below 18).

**Michigan** Mich. Comp. Laws Ann. § 712A.2d (2007) (prosecutor can file a motion for juvenile of any age "to be tried in the same manner as an adult") Mich. Comp. Laws Ann. § 712A.4 (2007) (discretionary waiver age 14 and above for crimes equivalent to felonies).

**Nebraska** Neb. Rev. Stat. § 29-2204(3) (2007) (mandatory life sentences when "required by law" otherwise individuals under 18 at the time they committed a crime may receive discretionary adult or juvenile sentence); Nev. Rev. Stat. Ann. § 62B.330 (West 2007) (mandatory murder exception to juvenile court jurisdiction for any age no reverse transfer).

**Nevada** Nev. Rev. Stat. Ann. § 200.030 (West 2007) (discretionary LWOP sentence for murder).

**New Hampshire** N.H. Rev. Stat. Ann. § 169-B:24 (LexisNexis 2007) (presumption that conditions for transfer of juveniles of any age is met where juvenile accused of enumerated crimes; transfer is at court's discretion) N.H. Rev. Stat. Ann. § 630:1-a (LexisNexis 2007) (mandatory LWOP for anyone convicted of first degree murder).

**Pennsylvania** 42 Pa.C.S.A. §§ 6302 6355 (West 2000 & Supp. 2005) (murder must be tried in adult court yet court can transfer case to juvenile court at its discretion); 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 parole until minimum term of sentence served i.e. life means

LWOP).

**Rhode Island** R.I. Gen. Laws § 14-1-7 (2002) (no age limit for transfer of juvenile for enumerated crimes; discretionary because hearing required) R.I. Gen. Laws § 12-19.2-4 (2002) (LWOP sentence discretionary not minimum).

**South Carolina** S.C. Code Ann. § 20-7-7605(6) (1985 & Supp. 2005) (discretionary transfer no age limit for murder or "criminal sexual conduct") see also State v. Corey 339 S.C. 107 529 S.E.2d (S.C. 2000) (construing the lack of mention of age in 7605(6) as requiring no age limit) S.C. Code Ann. § 17-25-45 (2003 & Supp. 2005) (except in cases that impose the death penalty when convicted of a serious offense as defined in statute a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has prior convictions for enumerated crimes).

**Tennessee** Tenn. Code Ann. § 37-1-134 (2005) (mandatory transfer for enumerated crimes no age limit) Tenn. Code Ann. § 39-13-202 (2003 & Supp. 2005) (sentence for first degree murder discretionary as to death imprisonment for life without possibility of parole).

**Texas** Tex. Penal Code §8.07 (Vernon 2005 & Supp. 2007) (capital felony is exception to the age limit of 15 for being tried as an adult) Tex. Penal Code § 12.31 (sentence of life imprisonment without parole is mandatory when state does not seek the death penalty in capital felony cases).

**West Virginia** W. Va. Code § 49-5-10 (LexisNexis 2007) (discretionary transfer of child below age 14 accused of committing murder or other enumerated felony) W. Va. Code § 61-2-2 (LexisNexis 2007) (mandatory LWOP for first degree murder).

## Appendix C

### **States where LWOP sentences are discretionary for juveniles.**

**Arizona** Ariz. Rev. Stat. Ann. § 13-703.01(A) (Westlaw 2006) (LWOP ("natural life") or life sentence for specified time for defendants convicted of first degree murder).

**California** Cal. Penal Code § 190.5(b) (West 1999) (LWOP or at the discretion of the court 25 years to life for first degree murder committed by juveniles at (least age) 16 and 17 at the time of the commission of the crime).

**Georgia (unless prior convictions for enumerated crimes)**  
Ga. Code Ann. §17-10-30.1 (Imprisonment for life without parole for first time violent offender requires finding of aggravating circumstances and weighing of any mitigating circumstances) but see Ga. Code Ann. § 17-10-6.1(a)(2) and 17-10-7(b)(1 & 2) (authorizing mandatory LWOP for recidivist serious violent felons).

**Idaho** Idaho Code Ann. § 20-509(3)-(4) (Michie 2004) (juvenile tried as an adult can be sentenced pursuant to adult sentencing measures pursuant to juvenile sentencing options or a court can commit the juvenile to the custody of the department of juvenile corrections and suspend the sentence or withhold judgment).

**Illinois** 730 Ill. Comp. Stat. 5/5-8-1 (West Supp. 2005) (details mandatory minimum sentences for felonies; for first degree murder if death cannot be imposed and one aggravating factor is proven the mandatory sentence is LWOP if no aggravating circumstances the sentence is 20-60 years).

**Indiana** Ind. Code Ann. § 35-50-2-3 (West Supp. 2005) (LWOP sentences are discretionary for 16 and 17 year olds and impermissible for defendants below age 16).

**Kentucky** Ky. Rev. Stat. Ann. § 532.025 (Michie Supp. 2002) Ky. Rev. Stat. Ann. § 532.030 (Michie 1999) (LWOP discretionary for capital offense; age a mitigating factor in sentencing).

**Maryland** Md. Code Ann. Crim. Law §§ 2-202 2-304 (Michie 2002) (discretionary LWOP or life for first degree murder

if defendant below 18).

**Mississippi** Miss. Code Ann. § 97-3-21 (2005) (discretionary LWOP life for capital murder).

**Montana (unless prior convictions for enumerated crimes)**

Mont. Code Ann. § 46-18-219 (2005) (a sentence of life without parole must be given if the defendant has been *previously convicted* of one of the following: deliberate homicide aggravated kidnapping sexual intercourse without consent sexual abuse of children or ritual abuse of a minor) Mont. Code Ann. § 45-5-102 (2005) (LWOP life term of years discretionary sentence for deliberate homicide).

**Nevada** Nev. Rev. Stat. Ann. § 200.030 (LexisNexis 2001 & Supp. 2003) (discretionary LWOP sentence for murder).

**North Dakota** N.D. Cent. Code § 12.1-32-01 (Michie 1997) (LWOP not mandatory but is maximum for Class AA felonies).

**Ohio (unless sexual motivation for the crime)** Ohio. Rev.

Code Ann. § 2929.03C(2)(a)(i) -D(2)(b) -D(3)(b) (LexisNexis 2005) (LWOP mandatory only where there was a sexual motivation for the aggravated murder) Ohio. Rev. Code Ann. § 2971.03 (LexisNexis 2005) (mandatory LWOP for sexually violent offender with predator specification).

**Oklahoma** Okla. Stat. tit. 21 § 701.9 (West Supp. 2006) (LWOP or life sentence discretionary for juvenile convicted of first degree murder).

**Rhode Island** R.I. Gen. Laws § 12-19.2-4 (LexisNexis 2002) (LWOP sentence discretionary).

**South Carolina (unless prior convictions for enumerated crimes)**

S.C. Code Ann. § 17-25-45 (2005) (except in cases that impose the death penalty when convicted of a serious offense as defined in statute a person must be sentenced to a term of imprisonment for life without the possibility of parole only if person has *prior convictions* for enumerated crimes; otherwise there is discretion between LWOP and life with possibility of parole).

**Tennessee** Tenn. Code Ann. §§ 39-13-202 204 (2003) (sentence for first degree murder discretionary as to death imprisonment for life without possibility of parole).

**Utah** Utah Code Ann. §76-3-206 (LexisNexis 2003) (LWOP discretionary).

**Vermont** Vt. Stat. Ann. tit. 13 § 2303 (2003) (life imprisonment discretionary for first degree murder) (section 2303 was held unconstitutional on other grounds - however the Vermont House retained discretionary LWOP see H. B. 874 2005 Leg. Adjourned Sess. 2005-2006 (Vt. 2006)) see also State v. White 172 Vt. 493 787 A.2d 1187 (Vt. 2001) (court has discretion to impose LWOP).

**West Virginia** W. Va. Code § 49-5-13(e) (Michie Supp. 2005) (notwithstanding any other part of code court may sentence a child tried and convicted as adult as a juvenile) W. Va. Code § 61-2-2 (Michie Supp. 2005) (mandatory LWOP for first degree murder).

**Wisconsin** Wis. Stat. Ann. § 973.014 (West 1998) (LWOP discretionary not minimum for first degree murder).

**Wyoming** Wyo. Stat. Ann. § 6-2-101 (LexisNexis 2005) (LWOP or life for first degree murder).

## Appendix D

**States where LWOP sentences are mandatory for juveniles upon conviction as adults for enumerated crimes including murder.**

**Alabama (for capital offenses or with prior convictions for enumerated serious crimes)** Ala. Code § 13A-5-39 (2007) (capital offenses are punishable by sentence of death or life imprisonment) Ala. Code §13A-5-40 (2007) (defining elements of a capital offense) Ala. Code §§ 13A-5-46 13A-5-48 (2007) (explaining that aggravating and mitigating factors only affect whether the sentence is death or life imprisonment without parole; imposition of either the death penalty or LWOP is mandatory for a defendant convicted of a capital offense) Ala. Code §§ 13A-5-6 13A-5-9 (West 2005) (LWOP available for various serious habitual offenders).

**Arkansas** Ark. Code Ann. § 5-4-104 (2006) (mandatory LWOP or death for capital murder or treason).

**Colorado** Colo. Rev. Stat. § 18-1.3-1201(1)(a)-(b) (LexisNexis 2006) (LWOP mandatory for juveniles for class one felonies).

**Connecticut** Conn. Gen. Stat. § 53a-35a (West 2001) (mandatory sentence of LWOP or death for capital murder).

**Delaware** Del. Code Ann. tit. 11 § 4209 (2005) (mandatory LWOP for "any person" convicted of first degree murder).

**Florida** Fla. Stat. §§ 775.082 985.225 (2005) (mandatory LWOP for juvenile convicted of murder).

**Georgia (only if prior convictions for enumerated serious crimes)** Ga. Code. Ann. § 17-10-6.1(a)(2) and 17-10-7(b)(1 & 2) (mandatory LWOP for certain recidivist offenders).

**Hawaii** Haw. Rev. Stat. §§ 706-656 706-657 (LexisNexis 2003) (mandatory LWOP for first degree murder first degree attempted murder and especially "heinous" second degree murder but "[a]s part of such sentence the court shall order the director of public safety and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment").

**Iowa** Iowa Code § 902.1 (West 2003) (LWOP sentences are mandatory upon conviction for "Class A Felony") Iowa Code § 902.2 (West 2003) (LWOP prisoner allowed to apply for commutation at least every 10 years and director of Iowa department of corrections may make a request for commutation to governor at any time).

**Louisiana** La. Child. Code Ann. art. 305 (West 2004) (any juvenile 15 years old or older charged with first-degree murder second-degree murder aggravated rape or aggravated kidnapping must be tried as an adult) La. Crim. Code. Ann. art. 14:30 (mandatory LWOP for first degree murder) La. Crim. Code. Ann. art. 14:30.1 (mandatory LWOP for second degree murder).

**Massachusetts** Mass. Gen. Laws Ann. ch. 265 § 2 (West 2000) (LWOP is mandatory upon murder conviction of juvenile).

**Michigan** Mich. Comp. Laws Ann § 750.316 (West 2004) (mandatory LWOP for first degree murder) and People v. Snider 239 Mich.App. 393 608 N.W.2d 502 (Mich. Ct. App. 1999) (life sentence means LWOP).

**Minnesota** Minn. Stat. § 609.106 (West Supp. 2005) (mandatory LWOP for enumerated "heinous" crimes including first degree murder).

**Missouri** Mo. Rev. Stat. § 565.020 (2005) (mandatory LWOP for first degree murder for juveniles).

**Montana (only if prior convictions for enumerated serious crimes)** Mont. Code Ann. § 46-18-219 (2005) (a sentence of life without parole must be given if the defendant has been *previously convicted* of one of the following: deliberate homicide aggravated kidnapping sexual intercourse without consent sexual abuse of children or ritual abuse of a minor) Mont. Code Ann. § 45-5-102 (2005) (LWOP life term of years discretionary sentence for deliberate homicide).

**Nebraska** Neb. Rev. Stat. § 29-2204(3) (2007) (mandatory life sentences when "required by law" otherwise individuals under 18 at the time they committed a crime may receive discretionary adult or juvenile sentence).

**New Hampshire** N.H. Rev. Stat. § 630:1-a (LexisNexis 1996) (mandatory LWOP for any juvenile convicted of murder).

**New Jersey** N.J. Stat. Ann. § 2C:11-3 (West 2005) (b) & (g) (specifically limiting LWOP for juveniles to mandatory LWOP



for murder of police officer killing a child under age 14 or murder in the course of a sexual assault or criminal sexual contact).

**North Carolina** N.C. Gen. Stat. § 14-17 (2003) (providing for mandatory LWOP sentence for anyone 17 or under who committed a murder in the first degree).

**Ohio (only if sexual motivation in crime)** Ohio. Rev. Code Ann. § 2929.03C(2)(a)(I) -D(2)((b) -D(3)(b) (LexisNexis 2005) (LWOP mandatory only where there was a sexual motivation for the aggravated murder) Ohio. Rev. Code Ann. § 2971.03 (LexisNexis 2005) (mandatory LWOP for sexually violent offender with predator specification).

**Pennsylvania** 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 parole until minimum term of sentence served i.e. life means LWOP).

**South Carolina (only if prior convictions for enumerated serious crimes)** S.C. Code Ann. § 17-25-45 (2005) (except in cases that impose the death penalty when convicted of a serious offense as defined in statute a person must be sentenced to a term of imprisonment for life without the possibility of parole *only if that person has prior convictions* for enumerated crimes).

**South Dakota** S.D. Codified Laws § 22-6-1 (West 2004) (life imprisonment is mandatory minimum for juvenile convicted of class A felony) S.D. Codified Laws § 24-15-4 (West 2004) (life imprisonment means LWOP).

**Texas** Tex. Penal Code §8.07 (Vernon 2005 & Supp. 2007) (capital felony is exception to the age limit of 15 for being tried as an adult) Tex. Penal Code § 12.31 (sentence of life imprisonment without parole is mandatory when state does not seek the death penalty in capital felony cases).

**Virginia** Va. Code Ann. § 18.2-10 (2005) Lenz v. Warden of Sussex I State Prison 267 Va. 318 593 S.E.2d 292 (Va. 2004) (life imprisonment means LWOP).

**Washington** Wash. Rev. Code Ann. § 10.95.030 (West 2005) (mandatory death or LWOP for aggravated murder in first degree).