

The City University of New York

CUNY SCHOOL OF LAW



## Submission Regarding Children in the Criminal Justice System to the United Nations Committee against Torture for the List of Issues for the 6th Periodic Review of the United States

June 2016

### Introduction

1. This report is submitted on behalf of by Human Rights and Gender Justice Clinic at the City University of New York Law School, American Civil Liberties Union, ACLU Michigan/Juvenile Life Without Parole Initiative, Campaign for Youth Justice, Correctional Association of New York, Human Rights Advocates, the Project on Addressing Prison Rape, and Youth First.
2. We submit this report to bring to the Committee's attention serious human rights violations involving children in conflict with the law in the United States in advance of the adoption of the List of Issues Prior to Reporting at the 59th session of the Committee Against Torture ("the Committee") to be held from 7 November to 7 December 2016.
3. Following review of the U.S.'s third to fifth periodic reports in 2014, the Committee's Concluding Observations expressed concern about "the notable gaps in the protection of juveniles in the State party's criminal justice system. In particular, the Committee express[ed] once again its concern at the conditions of detention for juveniles, including their placement in adult jails and prisons and solitary confinement." ¶ 23. It recommended that the government (1) ensure that juvenile detainees and prisoners under 18 are held separately from adults; (2) prohibit the use of solitary confinement for juveniles; (3) employ alternatives to incarceration and (4) ensure full implementation of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).
4. The Committee also expressed concern about challenges in implementing the National Standards to Prevent, Detect and Respond to Prison Rape under the Prison Rape Elimination Act (PREA). ¶ 21. Among other requirements, these standards require that individuals under 18 be housed separately from adults in prisons, jails and lock ups.<sup>1</sup> The Committee recommended that the U.S. "ensure that PREA standards or similar standards are adopted and implemented by all states."

5. The Committee also recommended that the U.S. abolish the sentence of life imprisonment without the possibility of release on parole for offenses committed by children under 18, irrespective of the crime committed, and to enable individuals currently serving such sentences for crimes committed as children under 18 to have their cases reviewed by a court for possible resentencing and restoration of parole eligibility. ¶ 24.

### **Exclusion and Transfer of Children from the Juvenile to Adult Criminal Justice System**

6. In violation of international law, all 50 U.S. states allow or require that children in conflict with the law be tried as adults in certain circumstances. Approximately 200,000 children are tried as adults each year and the majority of these children are transferred or excluded from juvenile proceedings without any hearing or individualized consideration of their circumstances, individual maturity or culpability.
7. Several states have established an upper age of juvenile court jurisdiction below age 17. In 2016, Louisiana and South Carolina changed their laws to allow 17 year olds to be tried in juvenile courts. However seven states still exclude all 17-year-olds from juvenile court jurisdiction, automatically trying them as adults regardless of the offense or prior history.<sup>2</sup> Two of the seven, New York and North Carolina, also exclude 16-year-olds from juvenile jurisdiction.<sup>3</sup>
8. State laws also allow or require that children be tried as adults in certain circumstances. Statutory exclusion laws automatically require that children of a certain age, accused of specified crimes be tried as adults. Prosecutorial discretion provisions allow prosecutors to decide whether to try a child who falls in specified age and offense categories as an adult without any judicial oversight.

### **Children in Adult Jails and Prisons**

9. Despite the Committee's recommendations, because of state exclusion and transfer laws, the United States continues to routinely incarcerate persons below 18 years of age in adult jails and prisons at high rates. On any given day in the U.S., more than 5,000 children are detained in adult jails and prisons.<sup>4</sup>
10. No federal law prohibits states from trying children as adults and imposing adult criminal penalties on them. Once in the adult criminal justice system, states can hold children in adult facilities pre-trial and post-conviction. However, federal standards implemented under the Prison Rape Elimination Act (PREA) require that children tried in the adult criminal justice system be housed separately from adults. However, only federal facilities are legally bound by the standards. The vast majority of children in adult facilities are in state custody. The only mechanism for state and local enforcement of the standards is through the imposition of federal funding penalties. States may lose five percent of certain federal grants for their failure to comply with the standards.<sup>5</sup>

11. Some states have reformed their laws, policies and practices to comply with the standards by allowing children tried as adults to remain in juvenile facilities pre-trial or post-conviction or by creating separate facilities for youth within the adult system.<sup>6</sup> However, some states have indicated that they will not comply with the separation requirement, and the majority of states have issued “assurances” that they are working on coming into compliance but there is no deadline for actual compliance.<sup>7</sup> There are continuing attempts in Congress to change and potentially weaken the financial penalties imposed on states that fail to comply with PREA as well as to extend the time for accepting assurances.<sup>8</sup>

### **Questions:**

**Please provide information about what the government is doing to ensure that persons below 18 years of age are not detained in adult jails and prisons.**

**Please submit data on state compliance with the Prison Rape Elimination Act’s requirement that persons below 18 years of age be housed separately from adults in jails and prisons. What impact has enforcement of separation requirements had on incarcerated children’s ability to access facilities, services, programming? Have the requirements resulted in increased isolation or solitary confinement of children?**

**Please describe the government’s efforts to ensure state compliance with PREA. Have any states lost federal funding for failure to comply? How long will states be able to assert they are working towards compliance before losing federal funds?**

**Please describe other efforts to separate juveniles from adults in jails and prisons, including information on attempts to extend the protections of the Juvenile Justice Delinquency Prevention Act to all persons below 18 years of age.**

### **Abuse of Children in Adult Facilities**

12. Incarcerating children and young adults in adult jails and prisons increases their vulnerability to numerous violations of the Convention Against Torture, including acts of physical assault, sexual violence, solitary confinement, and lack of access to appropriate medical and psychological care as well as educational and rehabilitative services. Children in adult facilities are more likely to commit suicide than youth in juvenile facilities.<sup>9</sup>
13. Children in adult facilities are twice as likely to be physically harmed by staff as their counterparts in juvenile facilities.<sup>10</sup> The U.S. has recognized that juveniles in adult jails and prisons are at high risk of sexual violence,<sup>11</sup> and statistics on sexual violence likely under-report sexual victimization of persons below 18 years of age.<sup>12</sup>
14. Recent suicides of young men who were detained and incarcerated as children, illustrate the devastating impact of incarceration in adult jails and prisons. In November 2014, Benjamin Van Zandt, a 21 year old with a history of mental illness hanged himself in a New York state prison. Van Zandt was imprisoned at age 17 for

arson. While in prison he suffered sexual assaults, physical beatings and harassment by older inmates. Van Zandt spent long stretches of time in solitary confinement where there were lapses in his anti-psychotic medication. Before his death, he was placed in solitary confinement in a Special Housing Unit (SHU) for fighting with another inmate, he was found dead in the SHU two days later.<sup>13</sup>

15. Kalief Browder was arrested at age 16 and sent to Rikers Island jail for allegedly stealing a backpack. He spent three years at Rikers awaiting trial where he was repeatedly beaten by correctional officials and inmates and spent nearly 2 years in solitary confinement. Browder tried to commit suicide at Rikers several times. Browder refused plea deals that would have gotten him released earlier asserting that he was not guilty. Prosecutors eventually dropped the charges against him. After his release, on June 6, 2015, Browder still plagued by his experience in jail, committed suicide.<sup>14</sup>

### Questions:

**What efforts has the Department of Justice undertaken to investigate widespread allegations of abusive conditions of confinement, physical abuse and sexual violence against (1) children in adult jails and prisons and (2) children in juvenile detention facilities?**

**What efforts has the government undertaken to ensure that all detained and incarcerated youth (whether under the jurisdiction of the adult or juvenile justice system) are in facilities that provide adequate and developmentally appropriate facilities, staffing, mental and physical health services, and programming?**

### Children in Solitary Confinement

16. A disproportionate number of children end up in solitary confinement in adult jails and prisons because of alleged misconduct or for their protection.<sup>15</sup> Solitary confinement is also imposed in juvenile detention facilities. Although the U.S. Constitution creates certain due process protections prior to placing inmates in solitary confinement for punitive purposes, there is no requirement that age be considered in the due process analysis.
17. Neither states nor the federal government publish systematic data that show the number of children held in adult jails and prisons who are subjected to solitary confinement. It is thus impossible to determine the precise number of people under age 18 subjected to solitary confinement. But research suggests that *protective* and *punitive* solitary confinement likely account for a significant proportion of cases. Research by Human Rights Watch and the ACLU recently found that some jails hold 100% of adolescents in solitary confinement for the entire period of their pre-trial detention – to protect them from adults.<sup>16</sup> Research by Human Rights Watch and the ACLU also recently found that in some jails and prisons, a significant percentage of adolescents are subjected to punitive solitary confinement. This practice is likely to account for much of the solitary confinement of children in prisons in counties that

charge large numbers of children as adults. Many officials reported to Human Rights Watch and the ACLU that they subject children and adults to the same disciplinary rules and that they subject children to solitary confinement as a punitive sanction.<sup>17</sup>

18. In July 2015, President Obama directed Attorney General Loretta Lynch to review the use of solitary confinement in American prisons.<sup>18</sup> The results of that review included a recommendation that children never be placed in restrictive housing, which includes solitary confinement and other forms of segregation, and that, with respect to “young adults” (persons aged between 18 and 24), “[c]orrectional officials should strive to limit the use of restrictive housing whenever possible[.]”<sup>19</sup> Soon thereafter, President Obama announced that, through executive action, the federal government would end the use of solitary confinement for detained juveniles.<sup>20</sup> However, the President does not have the authority to prohibit solitary confinement of youth in state detention facilities and the majority of incarcerated children are in state custody.
19. Some states have introduced measures to end the use of solitary confinement for children detained in adult and juvenile facilities. For example, North Carolina prison officials recently pledged to end the use solitary confinement for youth incarcerated in adult prisons.<sup>21</sup> This follows the critical announcement made in 2015 by New York City’s Rikers Island complex which eliminated isolation for 17- and 18-year-olds and committed to extend the same protection to all youths 21 and under in 2016.<sup>22</sup> Similarly, Colorado recently passed a law severely restricting the use of solitary in juvenile detention facilities.<sup>23</sup>

#### **Questions:**

**Please provide information about the number of children who are subjected to solitary confinement in (1) adult jails and prisons and (2) in juvenile facilities.**

**Please describe what measures the federal government is taking to end solitary confinement of children at the federal, state and local level.**

#### **Life Without Possibility of Release on Parole Sentences**

20. In the last five years, the U.S. Supreme Court has prohibited the mandatory imposition of life-without-parole sentences for persons who commit homicide crimes when they are below 18 years of age. Although life-without-parole sentences can be imposed if children commit homicide crimes, the Court has required an individualized determination that considers differences between children and adults as a mitigating factor before the sentence can be imposed. However, despite this requirement, state courts have continued to impose the sentence.<sup>24</sup> In 2016, two states, Utah and South Dakota, categorically banned the imposition of life-without-parole sentences for children.<sup>25</sup> Nineteen states now prohibit such sentences.<sup>26</sup>
21. The Supreme Court has recently ruled that the prohibition on mandatory juvenile life-life-without-parole (JLWOP) sentences is retroactive.<sup>27</sup> However, as of January

2016, an estimated 2000 thousand individuals continued to serve life without parole sentences for crimes committed as children.<sup>28</sup> There have been substantial delays in scheduling re-sentencing hearings in Michigan, Pennsylvania and Louisiana, the three states with the largest population of individuals serving JLWOP sentences as well as challenges in obtaining legal representation. When re-sentencings have occurred, many courts have re-imposed life without parole sentences.<sup>29</sup>

22. For instance in the state of Michigan, only twenty-six individuals sentenced to life-without-parole for crimes they committed as children have been re-sentenced – 362 individuals still await re-sentencing. Over half of the individuals resentenced received a life-without-parole sentence again, including those who committed crimes as 14-year-olds and children convicted of felony murder or aiding and abetting homicide offenses. Those not sentenced to life without the possibility of parole have received the harshest alternative sentences – a minimum of forty years (before becoming parole eligible) and a maximum of sixty years; virtual life sentences.
23. Some states have found that de facto life without release on parole sentences -- sentences for a term-of-years exceeding a normal life span -- are impermissible,<sup>30</sup> but other states continue to allow these sentences to be imposed for crimes committed by children.<sup>31</sup>

#### **Questions:**

**What efforts are being undertaken to prevent further implementation of juvenile life without parole sentences?**

**What efforts are being undertaken to ensure that individuals serving life-without-parole sentences are resentenced in a fair and timely manner?**

#### **Violations in the Juvenile Justice System**

24. On any given day there are 54,000 children incarcerated in youth prisons or other out-of-home placements in the juvenile justice system<sup>32</sup> More than half of U.S. states allow children to be detained for nonviolent status offenses such as skipping school, running away from home or possessing alcohol.<sup>33</sup> Youth prisons (also known as training schools, juvenile correctional facilities, youth development centers) are the signature feature of state juvenile justice systems. The largest chunk of state juvenile justice spending is on youth prisons, an approach that came into existence 100+ years ago. Many youth prisons are replete with violence and abuse. According to the Bureau of Justice Statistics, a division of the United States Department of Justice, ten percent of children in youth prisons report sexual assault, while over 50 percent fear physical attack.<sup>34</sup>

#### **Questions:**

**How many children are incarcerated in juvenile detention facilities each year? How many are detained for status offenses?**

**What efforts has the government undertaken to promote alternatives to incarceration and full implementation of the Beijing Rules and Riyadh Guidelines?**

### **Racial Disparities**

25. Children who end up in the juvenile and adult criminal justice systems are disproportionately minorities. Disparities begin when a decision is made to arrest a child: African-American children make up 30% of those arrested while they only represent 17% of the population. African-American children comprise 62% of children prosecuted in the adult criminal system. Nearly three-quarters of children who receive adult prison sentences are youth of color, and African-American youth are nine times more likely than white youth to receive an adult prison sentence.<sup>35</sup> Racial disparities also are evident in the imposition of JLWOP sentences. Since 1992, black children arrested for murder are twice as likely to end up sentenced to life without parole as white children arrested for murder.<sup>36</sup>

### **Questions**

**What efforts has the government undertaken to address racial disparities at all stages of children's contact with the juvenile and criminal justice systems?**

Respectfully submitted,

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<sup>1</sup> 28 C.F.R. § 115.14(a) (2012).

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<sup>2</sup> GRIFFIN ET AL., *supra* note 2, at 21. Since the report was written, Illinois, Louisiana, Massachusetts, New Hampshire, South Carolina, and Connecticut raised their age of juvenile court jurisdiction to 17. The states that currently automatically try 17-year-olds as adults are: Georgia, Michigan, Missouri, Texas and Wisconsin.

<sup>3</sup> *Id.*

<sup>4</sup> The combined single day count for children in adult jails and prisons in 2012 was over 6,800. This figure combines counts of children in adult prisons on December 31, 2012 and children in adult jails on June 30, 2012. *See, e.g.*, TODD D. MINTON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, JAIL INMATES AT MIDYEAR 2012 – STATISTICAL TABLES 5 (2013), <http://www.bjs.gov/content/pub/pdf/jim12st.pdf>; E. ANN CARSON & DANIELA GOLINELLI, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2012: TRENDS IN ADMISSIONS AND RELEASES, 1991-2012 26 (2014), <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>. In 2014, there were at least 5,400 total inmates age 17 or younger in U.S. prisons or jails (4,200 inmates age 17 or younger held in jails either before or after they were adjudicated, 1,000 inmates age 17 or younger serving time in a state or federal correctional facility after being sentenced in criminal court as if they were adults, and 200 inmates age 17 or younger in the custody of Indian country jails). DANIELLE KAEBLE, LAUREN GLAZE, ANASTASIOS TSOUTIS & TODD MINTON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2014 12-13 (2016).

<sup>5</sup> As of June 29, 2015, 11 states have certified that they are in compliance with PREA. *See* U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, FY 2015 LIST OF CERTIFICATION AND ASSURANCE SUBMISSIONS (2015), <https://www.bja.gov/Programs/15PREA-AssurancesCertifications.pdf>. Four states have refused to comply. The majority of states have filed assurances that they will work toward compliance, which allows them to avoid losing funding. *See* CARMEN E. DAUGHERTY, CAMPAIGN FOR YOUTH JUSTICE, ZERO TOLERANCE: HOW STATES COMPLY WITH PREA'S YOUTHFUL INMATE STANDARD 3 (2015), [http://www.campaignforyouthjustice.org/images/pdf/Zero\\_Tolerance\\_Report.pdf](http://www.campaignforyouthjustice.org/images/pdf/Zero_Tolerance_Report.pdf). In February 2016 the Department of Justice issued a letter to all state governors asking them to submit updated PREA compliance information by March 31, 2016, but the results of that inquiry have not been made publicly available. *See* Letter from Karol Mason & Bea Hanson, U.S. Dep't of Justice, to U.S. Governors (Feb. 25, 2016), [http://www.prearesourcecenter.org/sites/default/files/content/fy2016\\_prea\\_letter\\_to\\_governors.pdf](http://www.prearesourcecenter.org/sites/default/files/content/fy2016_prea_letter_to_governors.pdf).

<sup>6</sup> PREA Resource Center, Implementing the Youthful Inmate Standard: Emerging Issues and Promising Practices, 8-9, 17, n. 56, 18, [https://www.wcl.american.edu/endsilence/research\\_guidance.cfm](https://www.wcl.american.edu/endsilence/research_guidance.cfm)

<sup>7</sup> <https://www.bja.gov/Programs/15PREA-AssurancesCertifications.pdf>

<sup>8</sup> <https://www.congress.gov/bill/114th-congress/senate-bill/2577/actions>

<sup>9</sup> *See* KAREN M. ABRAM, JEANNE Y. CHOE, JASON J. WASHBURN, LINDA A. TEPLIN, DEVON C. KING, MINA K. DULCAN & ELENA D. BASSETT, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, SUICIDAL THOUGHTS AND BEHAVIORS AMONG DETAINED YOUTH 2 (2014), <http://www.ojjdp.gov/pubs/243891.pdf> (“[I]ncarcerated youth are at particularly greater risk for suicide; the prevalence rates of completed suicide for this group are between two and four times higher than those for youth in the general population[.]”); *see also* JASON J. WASHBURN, LINDA A. TEPLIN, LAURIE S. VOSS, CLARISSA D. SIMON, KAREN M. ABRAM, GARY M. MCCLELLAND & NICHOLE D. OLSON, U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, DETAINED YOUTH PROCESSED IN JUVENILE AND ADULT COURT: PSYCHIATRIC DISORDERS AND MENTAL HEALTH NEEDS 3 (2015) (“Because they are incarcerated longer, transferred youth may be at greater risk for developing psychiatric problems than those held in juvenile detention for shorter periods. In particular, the conditions often associated with extended detention—separation from loved ones, crowding, and solitary confinement—may increase the risk of suicidal behavior among transferred youth[.]”).

<sup>10</sup> Martin Forst et al., *Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*, JUV. & FAM. CT. J., Feb. 1989, at 1, 1 (finding that youth were twice as likely to be physically harmed by staff).

<sup>11</sup> *See* 42 U.S.C. § 15601(4) (2003) (“Young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48 hours of incarceration.”); From 2009-2011 children under 18 were .4 % of substantiated incidents of inmate-on-inmate sexual victimization in prison and .112% of the population in 2011 (1790 of 1,598,780), making them more than three-and-a-half times as likely to be a victim of



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sexual abuse. ALLEN J. BECK, RAMONA R. RANTALA & JESSICA REXRAOT, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION REPORTED BY ADULT CORRECTIONAL AUTHORITIES, 2009-11 8 (2014). Recent BJS reports show youth are at greater risk of sexual victimization than adults in prisons (4.5% youth, 4% adults) and jails (4.7% youth, 3.2% adults). ALLEN J. BECK, MARCUS BERZOFKY, RACHEL CASPAR & CHRISTOPHER KREBS, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011-12 21 (2013). *See also* Jessica Lahey, *The Steep Costs of Keeping Juveniles in Adult Prisons*, ATLANTIC (Jan. 8, 2016), <http://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adult-prisons/423201> (noting that juveniles held in adult prisons are “much more likely to suffer sexual abuse and violence at the hands of other inmates and prison staff” than are juveniles in juvenile detention facilities).

<sup>12</sup> BHARARA, *supra* note 12, at 10 (expressing concern that Rikers may be underreporting sexual assault and encouraging the New York Department of Corrections to examine and comply with PREA).

<sup>13</sup> <http://www.timesunion.com/tuplus-local/article/The-brief-anguished-life-of-a-mentally-ill-inmate-6327006.php>

<sup>14</sup> <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>

<sup>15</sup> *See* HUMAN RIGHTS WATCH & AM. CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES 51-52 (2012), <https://www.aclu.org/files/assets/us1012webwcover.pdf>.

<sup>16</sup> HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES (2012), at 63-65, *available at* <http://www.aclu.org/growinguplockeddown>.

<sup>17</sup> HUMAN RIGHTS WATCH & THE AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, *supra* note 8, at 63-65.

<sup>18</sup> U.S. DEP'T OF JUSTICE, REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 1 (2016), <https://www.justice.gov/dag/file/815551/download>.

<sup>19</sup> *Id.* at 101-02.

<sup>20</sup> Barack Obama, Op-Ed, *Why We Must Rethink Solitary Confinement*, WASH. POST (Jan. 25, 2016), [https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce\\_story.html](https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html); *see* Press Release, The White House, Fact Sheet: Department of Justice Review of Solitary Confinement (Jan. 25, 2016), <https://www.whitehouse.gov/the-press-office/2016/01/25/fact-sheet-department-justice-review-solitary-confinement> (“BOP is ending the practice of placing juveniles in restrictive housing—in line with the standards outlined in the Sentencing Reform and Corrections Act, now pending in the U.S. Senate.”); *see also* Michael D. Shear, *Obama Bans Solitary Confinement of Juveniles in Federal Prisons*, N.Y. TIMES (Jan. 25, 2016), <http://www.nytimes.com/2016/01/26/us/politics/obama-bans-solitary-confinement-of-juveniles-in-federal-prisons.html>.

<sup>21</sup> <http://www.newsobserver.com/news/state/north-carolina/article84111567.html>

<sup>22</sup> Michael Winerip & Michael Schwartz, *Rikers to Ban Isolation for Inmates 21 and Younger*, N.Y. TIMES, Jan. 13, 2015, at A1, *available at* <http://www.nytimes.com/2015/01/14/nyregion/new-york-city-to-end-solitary-confinement-for-inmates-21-and-under-at-rikers.html>.

<sup>23</sup> <http://www.njcn.org/article/colorado-los-angeles-set-serious-restrictions-on-solitary-confinement-of-youth>

<sup>24</sup> *See, e.g.*, Alison Knezevich, *Teen sentenced to life in Dundalk murder amid debate over juvenile sentencing*, BALTIMORE SUN (Mar. 21, 2016, 8:04 PM),

<http://www.baltimoresun.com/news/maryland/crime/bs-md-juvenile-life-sentence-appeal-20160321-story.html> (describing the imposition of a JLWOP sentence in Baltimore, Maryland).

<sup>25</sup> *Utah bans life without parole for children*, CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH (Apr. 1, 2016), <http://fairsentencingofyouth.org/2016/04/01/utah-bans-life-without-parole-sentences-for-children/>; *South Dakota bans life without parole for children*, CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH (Mar. 17, 2016), <http://fairsentencingofyouth.org/2016/03/17/south-dakota-bans-life-without-parole-for-children/>.

<sup>26</sup> *See* THE SENTENCING PROJECT, JUVENILE LIFE WITHOUT PAROLE: AN OVERVIEW 1, 3 (June 9, 2016), <http://www.sentencingproject.org/publications/juvenile-life-without-parole/> (“[W]hile 31 states allow the sentence, just four – Pennsylvania, Michigan, Louisiana and California – account for about half of JLWOP sentences.”)

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<sup>27</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016), *as revised* (Jan. 27, 2016) (holding that the Supreme Court’s 2012 decision in *Miller v. Alabama*, which found that a mandatory sentence of life without parole for juveniles is unconstitutional under the Eighth Amendment, applied retroactively to presently incarcerated adults who committed their crimes as juveniles, requiring states to either resentence those individuals or enable them to be considered for parole),

[http://www.supremecourt.gov/opinions/15pdf/14-280\\_3204.pdf](http://www.supremecourt.gov/opinions/15pdf/14-280_3204.pdf). See Robert Barnes, *Supreme Court: Life sentences on juveniles open for later reviews*, WASH. POST (Jan. 25, 2016),

[https://www.washingtonpost.com/politics/courts\\_law/supreme-court-juveniles-sentenced-to-life-have-option-for-new-reviews/2016/01/25/06e3dfc2-c378-11e5-8965-0607e0e265ce\\_story.html](https://www.washingtonpost.com/politics/courts_law/supreme-court-juveniles-sentenced-to-life-have-option-for-new-reviews/2016/01/25/06e3dfc2-c378-11e5-8965-0607e0e265ce_story.html).

<sup>28</sup> See Nina Totenberg, *Supreme Court Opens Door To Parole For Juveniles Given Life Sentences*, NPR (Jan. 25, 2016, 4:13 PM), <http://www.npr.org/2016/01/25/464338364/supreme-court-opens-door-to-parole-for-juvenile-lifers> (“Experts say there are some 2,000 life termers in similar circumstances, sentenced without consideration of the ‘immaturity, recklessness and impetuosity’ of youth. Some of these 2,000 are in states that have already made the court’s earlier decision retroactive, though many have not yet had new sentencing hearings.”).

<sup>29</sup> See, e.g., Riley Yates, *Court upholds life sentence for 14-year-old killer*, MORNING CALL (Sept. 4, 2015, 10:17 PM), <http://www.mcall.com/news/breaking/mc-easton-juvenile-murder-life-without-parole-queed-batts-20150904-story.html> (describing the resentencing to life without parole of a Pennsylvania man who committed a homicide at age fourteen); Kaitlyn Schwers, *Convicted murderer re-sentenced in Madison County after reversal*, BELLEVILLE NEWS-DEMOCRAT (May 25, 2016, 12:48 AM), <http://www.bnd.com/news/local/article79732552.html> (describing the resentencing in Illinois of an incarcerated man to two concurrent natural life sentences for a double homicide committed when he was 16 years old).

<sup>30</sup> See e.g. *People v. Franklin*, 63 Cal.4th 261 (2016) (holding that the Supreme Court’s prohibitions on life without parole sentences for juveniles apply to sentences that are the functional equivalent to life without parole sentences).

<sup>31</sup> See generally Kelly Scavone, Note, *How Long Is Too Long?: Conflicting State Responses to De Facto Life Without Parole Sentences After Graham v. Florida and Miller v. Alabama*, 82 FORDHAM L. REV. 3439 (2014), <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5016&context=flr>; see also Alison Knezevich, *Efforts to reconsider life sentences for juveniles gain momentum in Maryland*, BALTIMORE SUN (Apr. 23, 2016, 9:05 PM), <http://www.baltimoresun.com/news/maryland/bs-md-juvenile-sentence-debate-20160423-story.html>.

<sup>32</sup> <http://www.youthfirstinitiative.org/the-facts/>

<sup>33</sup> <http://jjie.org/new-report-finds-incarceration-for-status-offenses-still-widespread/108565/>

<sup>34</sup> <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>

<sup>35</sup> Campaign for Youth Justice, *Critical Condition: African-American Youth in the Justice System*, 19, 26, 28-29 (September 25, 2008), available at

<http://campaignforyouthjustice.org/documents/AfricanAmericanBrief.pdf>.

<sup>36</sup> <http://www.motherjones.com/politics/2016/01/disturbing-data-behind-juvenile-life-without-parole>