



John Howard Association of Illinois

300 West Adams Street, Suite 423 Chicago, IL 60606
Tel. 312-782-1901 Fax. 312-782-1902 www.john-howard.org

“We are here to fix a problem”

Written Statement to Juvenile Justice Reform Committee*
Illinois House of Representatives
from
Malcolm C. Young
Executive Director, John Howard Association of Illinois

Ladies and Gentlemen of the Illinois House of Representatives, thank you for the opportunity to appear before you on behalf of the John Howard Association of Illinois in support of H. B. 1695.

First, we are grateful to Representative Molaro for introducing H. R. 1695. His goal is to fix a problem in the criminal justice system. It is a problem that touches people emotionally for the most understandable of reasons. We should understand exactly what the problem is.

The Problem

Illinois has about 103 prisoners who were sentenced to life without any chance of parole for a crime in which they were involved before they were 18 years old.¹ About 44% of them were as young as 14, 15 and 16 when they committed their crimes.

The crimes for which these prisoners were sentenced were first degree murders, and most involved two or more victims. These prisoners were involved in terrible events that destroyed life, tore up families, left widows, orphans and bereaved friends and family.

The problem is that these prisoners are very different from each other – that they cover the broadest imaginable spectrum of maturity, mental development, ability to reason, and

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¹ This number reflects known inmates as of approximately 2005. The number increases, of course, each year, but data on recent prisoners is not available from the Illinois Department of Corrections.

responsibility for their acts and involvement in murder, and that they were nevertheless all sentenced to the same life long sentence, most with no consideration given to where they fall along the spectrum.

We know that 56% of them were 17 and the rest as young as 14 in chronological years. We also know that some were more or less emotionally and developmentally mature than their years, that some were smarter and some were borderline retarded, and that some were mentally ill.

These prisoners were also very different in the way they were involved in murder. Some were on the periphery, not even accused of knowing that murder was to happen, playing near-unwitting roles for a short time, following older boys or men, following along with no intent to do harm, following recklessly and idiotically and tragically. Others were deeply involved, made plans, carried weapons, and directly took another life, literally 'pulling the trigger.'

Their criminal acts cover the spectrum of childish behavior, youthful stupidity, and unimaginable perfidy.

Nevertheless, they were all sentenced the same – to life with no hope of release under parole.

In the years that have passed since these prisoners were sentenced, the lives of these prisoners progressed differently as well. Some have gained education, write, express themselves honestly and thoughtfully, are calm, focused, model prisoners with few if any violations of prison rules. Some remain disturbed, are angry, are violent, non-communicative, anti-social, do not conform to prison rules, resistant and not to be trusted.

As people who value children and human rights, we believe that these differences should be considered when we punish children, and that we should not lock them up for life as

we do in this country for adults --- not, at any rate, without review to see what happens to the child as he or she grows into an adult.

We are not alone in our beliefs about children. The law recognizes that differences should be considered at the sentencing of children. Based on evolving standards and new knowledge about the minds of children, the Illinois Supreme Court has upheld the principle that a sentence to life with no possibility of parole for an very brief act, a child's short stint as a lookout in something that turned into a double murder, is "unconstitutionally disproportionate" under our state's Constitution. The case is Illinois v. Leon Miller, 202 Ill. 2nd 328 (2002).

In 2005, also based on evolving standards as reflected in states such as Illinois and on what is now known about the minds of children, the United States Supreme Court has followed what Illinois has always done: refuse to permit the execution of criminals for crimes committed when they were under the age of 18. The case is Roper v. Simmons 543 U.S. 551 (2005).

In Illinois, then, a person who commits the worst possible crime and is under the age of 18 could never have been and can never be executed regardless of maturity, experience or culpability. But a child of 14 involved in a terrible murder, and a child of 15 or 16 or 17 who is convicted on the basis of minimal involvement in an unplanned murder in which others were the principal actors must without exception be sentenced to life with no hope of parole without any inquiry into his or her maturity, development, mental health or relative culpability. They will be sentenced exactly like older, developed, capable, intentional and highly culpable offenders --- those who appear as adults in most respects.

There is another aspect to this problem. Even though the 103 prisoners serving life without any chance of release on parole for acts committed before the age of 18 are at both ends of the spectrum in maturity, culpability, intent and rehabilitation, the families, friends and people who knew victims slain by some of the offenders in this group have suffered incalculable losses in terrible ways. It is not at all the fault of the families,

friends, and people who care about victims that offenders in the sentenced group are so disparate. If the person under the age of 18 who took the life of someone they loved was more mature, was directly and terribly responsible, engaged in planning for a crime, was reasonably emotionally and mentally competent, then there is no reason they should be expected to have sympathy for the offender on the other end of the spectrum. It is reasonable, too, that anyone who suffered the death by murder in which more than one offender was involved need not differentiate between a mature adult who took lives and a child who was involved on the periphery. The pain and loss are the same, and people need to address pain and loss as best they possibly can, and the rest of us have to understand that reality.

Why we have the problem.

No one planned it this way. Quite the opposite.

In Illinois, three laws converged in unexpected ways to give us a system in which we have prisoners who were children in every respect on the edge of a crime doing the same life sentence as prisoners who were mature, capable of planning, understood their actions and acted on their own to take lives.

The Juvenile Court Act of 1987 requires that all 15 and 16 year old children [charged with murder]* be transferred without any hearing into their mental state or abilities and prosecuted as if they were adults. Prior to that, children of this age could only be transferred by a judge who heard evidence about their understanding and maturity and level of involvement in the crime. Only children aged 14 at the time of the crime –about 4% of prisoners serving life without possibility of parole -- are entitled to any hearings on transfer under current law.

In Illinois, the law of “accountability” makes all persons who participate in a “common criminal design” equally responsible. Once a defendant is convicted, courts are barred

* bracketed text erroneously omitted from text filed with the Committee

from considering the offender's degree of participation at any stage. The distant and uninformed child lookout gets the same sentence as the man who pulls the trigger.

And, the multiple murder sentencing statute does not allow a court to consider the age of the offender or the offender's degree of participation in the crime at the time of sentencing.

As a result, as the Illinois Supreme Court describes the situation in one case:

Under the automatic transfer statute, defendant was considered to be an adult for purposes of trial. Under the accountability statute, defendant was considered equal to the actual shooter. Therefore, defendant was tried as if he were the adult shooter in the crime. Under the sentencing statute, defendant was then subject to the most severe punishment. When these three statutes converge, a court never considers the actual facts of the crime, including the defendant's age at the time of the crime or his or her individual level of culpability.²

H. B. 1695: a solution to the problem

H. B. 1695 is a limited bill. It allows only that a prisoner who was sentenced to life without any possibility of release on parole for a murder committed before he or she was 18 be allowed to petition for consideration for leave to ask for parole. The petition can not be filed until the prisoner has served 20 calendar years behind bars. The petition is forwarded to the Prisoner Review Board by staff at the Illinois Department of Corrections with documents from the Department of Corrections.

Only if a committee of the Prisoner Review Board certifies that the particular offender is even eligible to be considered for parole based on a number of factors which are meant to address community safety and victim's concerns is the inmate even given the chance of going before the Illinois Prisoner Review Board.

² Miller v. Illinois, 202 Ill 2nd 328 (2002).

The current parole process in Illinois requires notifications to all parties including specifically victim's families. State prosecutors routinely participate in parole hearings. In recent years, parole has been granted to less than 4% of applicants, with many cases set over for up to three years before reconsideration will be allowed. So it is true that the Prisoner Review Board is not a forum from which many of the 103 prisoners can expect relief. The hope is that at least the most egregiously disproportionate sentences might be mitigated --- obviously even then not until decades after the crime --- and that would address the worst of the cases from a human rights perspective.

H. B. 1695 was drafted with the intent of minimizing the distress that victims and their families experience when the verdict or sentences imposed on someone who took a life close to them are reopened. While some of the offenders in this group serving life with no hope of parole were sentenced under mandatory sentencing laws, and that in at least a few mandatory cases the sentencing judge stated that a less severe sentence would have been appropriate had the law allowed it, others in this group were sentenced with both prosecutors and judges offering promises to victims and families that the offender would never be released from prison. Some of us may feel that these promises were mistaken because we think life sentences for children inappropriate, just as we always believed that the death penalty was inappropriate for children. But our feelings do not change the fact that people suffering great pain feel these promises were made and ought to be binding. So the screening process by a committee of the parole board was proposed with the expectation that, from a Board that grants parole to a small number of applicants, these most painful of cases would not be set for parole hearings and therefore not intrude on those most affected by the crime. Parole hearings would come up only for inmates with the least involvement in crime and the strongest evidence of rehabilitation. In Illinois, cases that come up for parole are sometimes set over by the parole board for up to three years before another hearing is allowed.

With H. B. 1695, we have proposed one way not to intrude unnecessarily in the lives of people acutely and most deeply affected by crimes on the most serious end of the spectrum. Certainly there might be additional modifications which would help

accomplish this result. What we all do want to work for is a solution that will minimally interfere in people's lives and privacy while offering at least a chance for release for young people not mentally mature, not as culpable as others, at the time of their offense, and who have over decades rebuilt their lives and moved away from violence and anger.

The "solution" we cannot accept is one that would continue to deny any realistic hope of release to people in this part of the group sentenced to life for crimes committed at age 17 or younger.

We appreciate that the legislators who have moved this bill ahead understood its moderate, balanced approach to resolving inequity and concerns for human rights of children.

The bill may well be changed or improved. By introducing this bill, its sponsor has opened a needed debate which, if kept on track, may lead to a real solution with which most people are comfortable, including those who lost people they loved and those who loved children who, for acts committed before the age of 18, were sentenced to end their lives in prison.

We urge that H.B.1695 be voted out of committee.

Respectfully submitted,

Malcolm C. Young
Executive Director
The John Howard Association of Illinois
300 W. Adams Street – Suite 324
Chicago, Illinois 60606
(312) 782-1901