

# CITIZENS FOR JUVENILE JUSTICE

## On-line Update

November 2002

### Death Penalty for Juveniles

---

Citizens for Juvenile Justice (CfJJ) is devoting this online update to the important subject of death penalty for juveniles. Although Massachusetts does not currently allow for the executions of adults or youth, there are many other states that routinely sentence individuals who committed crimes as a juvenile to death. *One of our goals at CfJJ is to block all efforts to instate or uphold a death penalty for children or youth.*

This issue seems particularly timely considering the current prosecution of **John Lee Malvo**, a seventeen year old charged as the accomplice to the alleged D.C. sniper John Allen Muhammed. The media has focused a great deal of attention on the fact that Malvo will be eligible for the death penalty in both Alabama and Virginia for his alleged involvement in the serial killings, but cannot be tried for a capital offense in Maryland or the federal courts. Notably absent from these news reports, however, is the appropriateness of seeking capital punishment for a youth.

The United States is the only developed nation that permits giving the death penalty to persons under the age of eighteen. This practice is widely criticized by many, including Amnesty International and the European Union.

*Currently in the United States, 81 death row inmates were committed as juveniles.* These inmates represent 15 states, and 2.24% of the total death row population. Texas has 28 juvenile offenders on death row, 35% of the national total. Since the re-instatement of the death penalty in 1976, 21 prisoners have been executed who were sentenced to death as juveniles (Death Penalty Information Center).

Several states are reviewing their death penalty practices and have either introduced legislation to abolish the juvenile death penalty or are considering it. States considering this issue include: Alabama, Arizona, Arkansas, Florida; Kentucky, Missouri, Mississippi, Pennsylvania, South Carolina, and Texas.

**States that recently eliminated juvenile death penalty:**

Montana, October 1, 1999.

Indiana, March 26, 2002

**States that allow juvenile death penalty:**

Minimum Age 16: Alabama, Arizona, Arkansas, Delaware, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Wyoming.

Minimum Age 17: Florida, Georgia, New Hampshire, North Carolina, Texas.

**Juveniles on death row, a profile:**

Sex Male (100%)

Age at crime 16 years (21%)  
17 years (79%)

Race Black (49%)  
White (34%)  
Latino (14%)  
Asian (2%)  
Native American (1%)

(Death Penalty Information Center)

**Facts on the juvenile death penalty:**

- Since 1997, only four countries have executed individuals who committed crimes before the age of 18: the United States, Iran, Pakistan and Democratic Republic of Congo. (Coalition for Juvenile Justice - CJJ)
- Among adult Americans, 66% oppose the death penalty for offenses committed before age 18. (CJJ)
- Federal law prohibits the execution of civilian offenders, age 18 or younger, for federal crimes. (CJJ)

- Brain imaging research shows that the juvenile brain is growing and maturing dramatically. The portion of the brain that controls and suppresses impulses, and is critical to good decision-making, is not fully developed before age 18. (CJJ)

- Thomas Grisso, and Robert Schwartz, editors of Youth on Trial: A Developmental Perspective on Juvenile Justice, present information about the emotional and intellectual development of youth and question the appropriateness and fairness of both trying and punishing youth like adults. The following are some of the arguments they present, all of which can be applied to juveniles facing the death penalty:

§ Since youth generally underestimate long-term consequences and overestimate short-term consequences, they cannot adequately weigh their legal options and decide how to proceed with their case.

§ A child is naturally less mature than an adult, and makes decisions concerning criminal involvement based on his/her ability. A child, therefore, may not fully comprehend the severity of its crime.

§ The psychological development of children impairs both their understanding of constitutional rights, and their ability to participate meaningfully in their own trials.

**United States dissents from the UN Treaty on the Rights of a Child:**

Every country in the world, except for the United States and Somalia, have ratified the UN Convention on the

Rights of the Child, which includes a ban on the juvenile death penalty.

*Article 37 of the UN Treaty on the Rights of a Child:*

States Parties shall ensure that: (a) 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;

*U.S. Dissent:*

“(2) That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.

“(5) That the policy and practice of the United States are generally in compliance with and supportive of the Covenant’s provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2 (b) and 3 of article 10 and paragraph 4 of article 14.

**Recent legal developments**

- In 2002, the United States Supreme Court ruled (*Atkins v. Virginia*) that executing the mentally retarded constitutes “cruel and unusual punishment” in violation of the U.S. Constitution, because of “disabilities in areas of reasoning, judgment, and

control of their impulses.” Many believe that this ruling similarly calls into question the constitutionality of executing anyone who committed crimes before the age of 18.

- Two federal judges have ruled that the death penalty is unconstitutional in separate cases this year. U.S. District Judge Jed Rakoff called capital punishment “state-sponsored punishment of human beings,” and U.S. District Judge William Sessions felt it violated the Fifth and Sixth Amendments. (Reuters, Metro, Sep. 25, '02)
- Last month (October 2002) Supreme Court Judges Ginsburg, Stevens, and Breyer strongly urged the Court to reconsider the issue of the juvenile death penalty. Although the Court has previously upheld the execution of juveniles in *Stanford v. Kentucky* (1989), these justices believe it is time to re-evaluate this decision. Writing in a dissent from the Court’s denial to hear the juvenile death penalty case *In re: Stanford*, No. 01-10009, Justice Stevens wrote that “Given the apparent consensus that exists among the states and in the international community against the execution of a capital sentence imposed on a juvenile offender, I think it would be appropriate for the court to revisit this issue at the earliest opportunity.”
- In his dissent, Justice Stevens also recognized the important developmental difference of youth from adults: “[L]ike the mentally retarded, adolescents lack the impulse control of adults, and are thus neither deterred by the threat of death nor fully morally culpable for their actions.”

## Interesting Websites

- “Indecent and Internationally Illegal: The Death Penalty Against Child Offenders,” an extensive 79 page Amnesty International Report from Sep. 2002:  
<http://web.amnesty.org/ai.nsf/recent/amr511442002>
- “International Civil Liberties Report: Update on Death Penalty Cases Using International Human Rights Laws,” an update on juvenile death penalty cases, can be found at: [www.aclu.org/library/iclr/2001/iclr2001\\_8.pdf](http://www.aclu.org/library/iclr/2001/iclr2001_8.pdf)
- A comprehensive website containing recent death penalty news, published reports, statistics and links: [www.deathpenaltyinfo.org/juvchar.html](http://www.deathpenaltyinfo.org/juvchar.html)
- “The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973 – September 30, 2002,” frequently updated by a leading spokesperson against the juvenile death penalty, Professor Victor L. Streib, can be found at: [www.law.onu.edu/faculty/streib/juvdeath.htm](http://www.law.onu.edu/faculty/streib/juvdeath.htm)
- For information on the juvenile death penalty provided by the American Bar Association, including the ABA Policy on the Juvenile Death Penalty look under:  
[www.abanet.org/crimjust/juvjus/jdpolicy.html](http://www.abanet.org/crimjust/juvjus/jdpolicy.html)
- To review arguments made by pro-death penalty advocates, see: [www.prodeathpenalty.com](http://www.prodeathpenalty.com)
- “Coordinating Council on Juvenile Justice and Delinquency Prevention: Juveniles and the Death Penalty” can be found at: [www.ncjrs.org/html/ojjdp/coordcouncil/](http://www.ncjrs.org/html/ojjdp/coordcouncil/)

- The National Coalition Against the Death Penalty provides handy and concise fact sheets on the death penalty and the juvenile death penalty: [www.ncadp.org](http://www.ncadp.org)

## CfJJ NEWS

CfJJ welcomes two new interns this Fall: **Deana Carr-Davis**, a senior at Boston University and **Phil Telfeyan**, a sophomore at Harvard College. CfJJ wishes to give special thanks to Deanna for drafting this online update.

\*\*\*\*\*

## CfJJ's UPCOMING ANNUAL BREAKFAST MEETING

\*\*\*\*\*

Please mark your calendars for CfJJ's upcoming Annual Breakfast Meeting to be held on **Thursday, December 12, 2002, from 9:30 – 11:00 a.m.** This year we are honored to have **Department of Social Services Commissioner Harry Spence** as our guest speaker. The event will be hosted by the Criminal Justice Institute at Harvard Law School. Announcements will be sent out shortly with directions. We hope that you will join us!