



SANGER SWYSEN & DUNKLE

Children Given No Hope

Author:

[Robert M. Sanger](#)

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Criminal Justice

By Robert Sanger

Robert Sanger is a Certified Criminal Law Specialist and has been a criminal defense lawyer in Santa Barbara for over 36 years. He is a partner in the firm of Sanger & Swysen. Mr. Sanger is an Officer of California Attorneys for Criminal Justice (CACJ) and is now the Co-Chair of the CACJ Death Penalty Committee as well as a Director of Death Penalty Focus and a Member of the ABA Criminal Justice Sentencing Committee.

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Introduction

A child is, by definition, an immature human being. A child's frontal lobe is still developing. She or he does not have the ability to make fully rational and mature decisions. A child can benefit from guidance and education. She or he does not have fixed attitudes and behaviors which cannot be influenced.

When children make mistakes, even grievous mistakes, we treat them with some degree of understanding. We punish them sometimes. But we expect to have the ability as adults to teach them, to shape their behavior and to help them learn and mature.

That may be the way we think of our own children but it is not the way that our criminal justice system actually treats children who prosecutors decide to prosecute as adults. Guidance, education and even rehabilitation are out and sheer punishment is in. And for some of those children, the punishment involves life without the possibility of parole (LWOP). A child can be incarcerated and sentenced to die in prison..

Children Doing Life Without the Possibility of Parole

According to Amnesty International, “There are at least 2,225 child offenders serving life without parole (LWOP) sentences in U.S. prisons for crimes committed before they were age 18.” The rate of LWOP incarceration for children is going up even though the actual crime rate for LWOP eligible crimes is going down.

What kinds of crimes are giving rise to these LWOP sentences? Murder, for the most part. And certainly murder is serious. However, the study done by Human Rights Watch as to who the children are who are actually in prison without any possibility of parole, shows:

59% of the children doing LWOP were first time offenders.

Black children are sentenced to LWOP ten times more often than white children (and in California, Black children are over 22 times more likely to get LWOP than white).

Approximately 26% of the children were convicted of "felony murder", which holds that anyone involved in the commission of a serious crime during which someone is killed is also guilty of murder, means that the child could get LWOP even if he or she did not personally or directly cause the death.

There are 180 young people serving life without parole sentences in the state of California for offenses committed between the ages of 16 and 18 years. While Blacks are 22.5 times more likely to get LWOP than whites, it is likely that there is also a disproportionate number of Hispanic children doing LWOP in our state. Of the adult prison population in general in this state, Hispanics make up almost 40% (39.3% according to the latest Department of Corrections and Rehabilitation statistics).

Senate Bill 399

There is a bill pending in the California Legislature right now, Senate Bill 399, which seeks to give children who are sentenced to life without possibility of parole a chance to apply for an opportunity to be considered for release. It is a rather modest correction to a California's system of locking everyone up for as long as possible. It does not even remove the possibility that a child will actually spend her or his life in prison - it just gives some of the children the hope of the possibility of parole.

And it does not do anything about the rest of the juvenile system. It does not address the issue of direct filing of cases as adult at the whim of the prosecution. It does not address the expansive list of cases in which a child is statutorily eligible for treatment as an adult. It does not address the punishments which add years of incarceration for children (and adults) in the name of “tough on crime” which is nothing more than political self promotion for legislators and correctional officers’ unions. All it does is give the slightest hope to children who are sentenced as adults to life imprisonment without possibility of parole..

The Bill passed the Senate last year but was defeated in the Assembly. It was revived this year and is, at the time of this writing, languishing in the Assembly Appropriations Committee. There is a certain irony in that since the Bill is not expected to have any negative fiscal impact. As with all sensible bills relating to criminal justice issues, legislators are afraid to vote on anything that can be used against them in the next smear campaign. Nevertheless, there is some hope of its passage.

Deterrence

Tough on crime promoters argue that you have to have the sentence of life without the possibility of parole in order to deter these children from committing these heinous crimes. Of course, that is nonsense. Has there ever been a case where a child reflected on whether or not to commit a serious crime and thought they better not because, if they are caught, they might not get parole someday as opposed to being locked up for decades. First, children’s ability to reflect on the consequences of their acts is still developing - that is what the frontal lobe does. Children do not see well into the future and, the lack of parole, in the abstract, as opposed to life in prison with the possibility of parole is not something that they are likely to appreciate in advance. Second, adults who commit these kinds of crimes are not deterred -- even by the death penalty. Why would anyone think that the denial of the possibility of parole would have a deterrent effect on children?

But, once the punishment is imposed, and the child is sent off to prison for her or his entire life, that lack of the possibility of parole takes away any hope that that child might have then or for the decades of incarceration that she or he faces. Even when they mature and even if they learn and grow - and the frontal lobe develops -- they simply can have no hope whatsoever. This lack of hope actually interferes with the prospect of deterrence. The child in prison simply learns to be a bigger, better and tougher criminal. She or he has to learn to fight and manipulate to survive among the equally hopeless. The child, as young adult and adult is more likely to commit crimes, albeit in prison, than one who has some hope of release based on good behavior.

So Why?

There is no reason for life without possibility of parole for children. It is considered barbaric by most other civilized nations. In fact, the Convention on the Rights of the Child is a treaty sponsored by the United Nations that has been signed by 193 other nations. Every country that is a member of the United Nations has signed it, except the United States and Somalia. We have not signed it because it does not allow for confinement in prison of children for life without the possibility of parole.

The United States cannot bring itself to adopt this Convention and to repeal the laws which currently contravene it. Like so many of the criminal justice practices in this country which are out of touch with modern reality in the rest of the world - like maintaining the death penalty or using the prisons to incarcerate such a large percentage of our population - legislators are afraid to end them. They are afraid because of the political pressure of correctional officers' lobby and they are afraid because they will be labeled, fairly or unfairly, as soft on crime.

Conclusion

As Attorney General of the United States Eric Holder said recently, it is time to stop the rhetoric of being tough on crime and, instead, to get smart on crime. In California, the modest step in this direction is to support and pass Senate Bill 399. In the long run, as we have remarked in this column several times, the answer is to create a Sentencing Commission to recommend and create an intelligent plan for corrections in this state.