

## **Resolution on the Juvenile Death Penalty**

Through the following resolution, the Virginia Council of Churches calls for the abolition of the juvenile death penalty in the state of Virginia:

Whereas, from its first recognized execution of a juvenile offender in 1642, the United States has executed at least 366 persons for crimes committed as juveniles, nearly ten percent of which have been put to death in Virginia, and as the United States has, since 1990, executed more juvenile offenders than all other countries combined;<sup>1</sup>

Whereas, today the United States stands practically alone among the nations of the world in executing persons for crimes committed as juveniles, with all countries except the United States and Iran now forbidding such executions;<sup>2</sup>

Whereas, among all the signatories to three major international human rights treaties only the United States has reserved for itself the right to kill juvenile offenders;<sup>3</sup>

Whereas, there is a growing consensus among an increasing majority of states and jurisdictions in the United States that the death penalty should not be applied to persons for crimes committed as juveniles, with 44 states, by either law or practice, not executing any juvenile offender since reinstatement of the death penalty in 1976;<sup>4</sup>

Whereas, racial disparities in the application of the death penalty are even greater among juvenile offenders than among adult offenders;<sup>5</sup>

Whereas, within the United States the juvenile death penalty is applied almost exclusively in the South, which accounts for 84 percent of the 224 death sentences imposed on juveniles since 1973, and 95 percent of the 22 executions of juvenile offenders carried out during the same period, with Virginia (3) second only to Texas (13) in the number of juvenile executions;<sup>6</sup>

Whereas, studies have found that the majority of juveniles on death row had terrible childhoods, with backgrounds of physical or sexual abuse, “profound psychological disorders, low IQ, indigence, and/or intensive substance abuse;”<sup>7</sup>

Whereas, society has long recognized the lesser maturity of persons below 18 years of age, has by law excluded such persons from a range of activities such as voting, serving on juries or in the military, marrying, entering into contracts, purchasing alcohol and tobacco products, and executing wills, and has held that minors should not be held accountable for their actions to the same degree as adults;

Whereas, recent studies using magnetic resonance imaging (MRI) have found that adolescent brains are far less developed than previously thought; that the brain development process continues into the early 20's; that “the parts of the brain that govern judgment, reasoning and impulse control are not fully developed until the early twenties;” that due to the underdevelopment of this portion of the brain teenagers rely heavily on another part of the brain responsible for ‘gut reactions’; that this reliance continues until the early twenties, and is found more among males than females;<sup>8</sup>

Whereas, the “evolving standards of decency” cited by the U.S. Supreme Court in *Atkins v. Virginia* (2002) for prohibiting execution of mentally retarded offenders apply also to juvenile offenders — namely, considerations such as a national consensus against the practice, lesser capacity to control their impulses, and the risk of wrongful execution due to greater vulnerability “to giving false confessions and [being] less able to provide meaningful assistance to counsel”;<sup>9</sup>

Whereas, there is a growing national consensus against the juvenile death penalty, as evidenced not only by the increasing majority of states opposed to the practice, but also by strong opposition to the practice from a large number of child advocacy and educational organizations; medical and social service organizations; legal, human and civil rights groups; at least thirty-three religious and ethical organizations calling for abolition of the juvenile death penalty on the grounds of juvenile justice and regard for the sanctity of human life, and by polls indicating that two out of every three persons in the U.S. are opposed;<sup>10</sup> and,

Whereas, while juvenile offenders must be punished for wrongs committed, their lesser maturity lessens their culpability, their potential for growth provides promise for rehabilitation, the sanctity of human life calls us to never give up hope for what each child of God can become, the juvenile death penalty is at odds with the emerging consensus in the U.S. and the rest of the world, and the abolition of the juvenile death penalty in the United States is long overdue;

Now, be it therefore resolved, that the Virginia Council of Churches calls upon Governor Warner and our state legislators to quickly enact legislation abolishing the death penalty for juvenile offenders in the state of Virginia.

## Resolution on the Juvenile Death Penalty

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1. National Coalition to Abolish the Death Penalty, *Human Rights Human Wrongs. Sentencing Children to Death* (Washington, D.C., National Coalition to Abolish the Death Penalty, 2003), 2, 20 (hereafter, *HRHW*); American Bar Association (ABA), "Overview of the Juvenile Death Penalty Today," 2 of 2, <http://www.abanet.org/crimjust/ juvjus/juvdp.html> (29 October 2003); "[T]here have been thirty-four people executed for crimes committed as minors in Virginia from the colonial era to the present." Joan Jacobs Brumberg, "A Killing Tradition," *The Nation*, 277/16 (17 November 2003): 24.

2. Out of all countries that continue to use the death penalty, since 1990 the United States is one of only six countries that have executed persons for crimes committed as juveniles (the others are China, Iran, Pakistan, Yeman and Zimbabwe); since 2000 only the United States and Iran have executed persons for crimes committed as juveniles, and in 2002 only the United States carried out such executions. In 1994 Yeman and Zimbabwe enacted legislation to forbid the execution of persons for crimes committed as juveniles; China did so in 1997, and was followed by Pakistan in 2000. ABA, "Evolving Standards of Decency," 4 of 4, <http://www.abanet.org/crimjust/ juvjus/juvdp.html> (29 October 2003); *HRHW*, 20.

3. The three treaties are the *International Covenant on Civil and Political Rights (ICCPR)*, the *American Convention on Human Rights (ACHR)*, and the *Convention on the Rights of the Child (CRC)*. The *ICCPR* was adopted by the U.N. General Assembly in 1966, came into force in 1976, and as of June 2003 had 149 states as signatories; the *ACHR* was adopted by the Organization of American States in 1969, came into force in 1978, and as of June 2003 had 24 states as signatories, the *CRC* was adopted by the U.N. General Assembly in 1989, came into force in 1990, and as of June 2003 had 192 states as signatories. The United States is a signatory to all three treaties. But it was not until 1992 that the USA ratified the *ICCPR* and in doing so made a reservation to Article 6(5), stating "[t]hat 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." Article 6(5), to which exception is taken, states that "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women." The United States has not yet ratified the *ACHR*. All countries except the United States and Somalia have ratified the *CRC*. Amnesty International, "The Exclusion of Child Offenders from the Death Penalty under General International Law," 2, [http://www.amnestyusa.org/abolish/reports/exclusion\\_child\\_offenders.html](http://www.amnestyusa.org/abolish/reports/exclusion_child_offenders.html) (29 October 2003); American Convention on Human Rights, 1 of 18, <http://www.oas.org/juridico/english/Sigs/b-32.html>

(5 November 2002); Convention on the Rights of the Child, 1 of 20, <http://www.unhchr.ch/html/menu3/b/k2crc.htm> (5 November 2003); Amnesty International, *International Bill of Human Rights* (Colombo: Amnesty International, 1978), 11, 27.

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4. Since reinstatement of the death penalty was permitted by the U.S. Supreme Court in 1976, 12 states have chosen not to reinstate the death penalty. Among the 38 states that have reinstated the death penalty, 17 do not permit the death penalty to be applied to juvenile offenders. Hence, 29 states, plus the Federal Government and U.S. Military, by law, do not allow the juvenile death penalty.

Additionally, among the 21 states which by law permit the death penalty to be applied to juvenile offenders, 15 have not executed any person for a crime committed while a juvenile. Hence, a total of 44 states, either by law or by practice, have not executed any juvenile offenders since reinstatement of the death penalty in 1976.

The Federal Government and U.S. Military set the minimum age at 18 when reinstating the death penalty in 1984. Over the past decade, six states have rejected the juvenile death penalty: Washington (1993), by State Supreme court action; Kansas (1994) and New York (1995) by setting the minimum age at 18 when reinstating the death penalty; Montana (1999) and Indiana (2002) by legislatively raising the minimum age to 18, and Missouri (2003) by State Supreme Court action. During the same period, legislation to ban the juvenile death penalty was introduced in at least 12 states, and progressed partway to adoption in 4. During this period, no state or jurisdiction having chosen not to have the juvenile death penalty has reinstated the execution of juvenile offenders. The 12 states in which legislation to abolish the juvenile death penalty has been introduced are: Arizona, Arkansas, Florida, Kentucky, Mississippi, Missouri, Nevada, Oklahoma, Pennsylvania, South Dakota, Texas and Wyoming. States in which such legislation has advanced partway to adoption are: Arkansas, Florida, South Dakota, and Texas.

ABA, "Overview . . .," 1-2 of 2; *HRHW*, 7-10; Victor L. Streib, "The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973 – September 30, 2003, 6-7, <http://www.law.onu.edu/faculty/streib/JuvDeathSept2003.htm> (4 November 2003).

5. For example, "Between 1642 and 1899, approximately 52% of persons executed for juvenile offenses were African-American. During the twentieth century that proportion rose to nearly 75%." *HRHW*, 12. Out of 224 death sentences imposed on juvenile offenders since 1976, over 60 percent have been either African American or Latino. As of June, 2003, 67 percent of the 75 persons on death row for juvenile crimes were persons of color (African American – 45%; Latino – 19%; Asian – 2%, and Native American – 1%), while only 55 percent of all offenders on death row were persons of color. Of the 22 juvenile offenders executed since 1976, 55 percent were either African American or Latino. Death Penalty Information Center, "Juvenile Offenders on Death Row," 2 of 5, <http://www.deathpenaltyinfo.org/article.php?did=204&scid=27>; National Coalition to Abolish the Death Penalty, "Fact Sheet: The Juvenile Death Penalty," 1-2 of 3, [http://www.ncadp.org/html/juvenile\\_fact\\_sheet.html](http://www.ncadp.org/html/juvenile_fact_sheet.html)

(29 October 2003); Streib, "The Juvenile Death Penalty . . . , 4.

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6. ABA, “Factsheet: The Juvenile Death . . . ,” 2 of 2; *HRHW*, 6-7, 29.
  7. ABA, “Adolescent Brain Development and Legal Culpability,” 3-4 of 4, <http://www.abanet.org/crimjust/juvjus/ juvdp/html> (29 October 2003).
  8. ABA, “Factsheet . . . ,” 1 of 2. The reference is to studies by Harvard Medical School, the National Institute of Mental health, and UCLA’s Department of Neuroscience. These studies have found that the part of the brain in the frontal lobe that provides us with our advanced level of consciousness – enabling us to “prioritize thoughts, imagine, think in the abstract, anticipate consequences, plan, and control impulses” – undergoes the most change in adolescence and is the last part of the brain to develop. ABA, “Adolescent Brain Development . . . ,” 3-4 of 4. MIR scans have shown that due to the underdevelopment of this part of the frontal lobe, teenagers rely heavily upon the amygdala, another part of the brain that is responsible for ‘gut reactions’, that this reliance continues until early adulthood (early 20’s), and is found more among males than females as the frontal lobe develops more slowly in males than in females. It has also been found that the rate of brain maturation “can be severely retarded by abuse and neglect — conditions that affect most juvenile offenders on death row,” and that “abuse and traumas during childhood and adolescence may permanently alter one’s brain structure . . . [and] physically damage brain tissue.” ABA, “Adolescent Brain . . . ,” 2 of 4; *HRHW*, 14-15; NCADP, “Factsheet . . . ,” 3 of 3.
  9. ABA, “Overview . . . ,” 2 of 2; NCADP, “Factsheet . . . ,” 3 of 3. When last considering the juvenile death penalty issue in *Stanford v. Kentucky* (1989), the U.S. Supreme Court held that state legislation did not indicate a consensus against the practice. However, as indicated in note 4 above, since then six additional states have rejected the execution of juvenile offenders, thereby bringing the total number of states which by law have rejected the juvenile death penalty to 29 — which is very close to the 30 states prohibiting execution of the mentally retarded at the time of the *Atkins* decision (2002). Moreover, as indicated in note 4 above, 15 additional states which by law permit the death penalty to be applied to juvenile offenders have not since 1973 executed any person for offenses committed while a juvenile. This means that 44 states, either by law or in practice, have not executed any juvenile offender since reinstatement of the death penalty in 1976. This strongly suggests that there is now a widespread consensus that the death penalty should not be applied to juvenile offenders. ABA, “Evolving Standards of Decency,” 1 of 4, <http://www.abanet.org/crimjust/juvjus/juvdp.html> (29 October 2003).
  10. These organizations include:
    - Child Advocacy and Educational Organizations* – Children’s Defense Fund, Child Welfare League of America, Coalition for Juvenile Justice, National Association for Children’s Behavioral Health, National Education Association, and Youth Advocate International;
    - Medical and Social Service Organizations* – American Academy of Child & Adolescent Psychiatry, American Academy of Pediatrics, American Medical Association, American Society for Adolescent Psychiatry, American Psychiatric Association, American Psychological Association, National Association of Social Workers, National Alliance for the Mentally Ill, National Mental Health Association, and Physicians for Human Rights;

*Legal, Human and Civil Rights groups:* American Bar Association, American Civil Liberties Union, Amnesty International USA, Constitution Project, Human Rights Watch, International Human Rights Law Group, National Association for the Advancement of Colored People, National Bar Association, National Council on Crime and Delinquency, National Legal Aid and Defender Association, and World Organization Against Torture, USA;

*Religious and Ethical Organizations* — American Baptist Churches in the U.S.A., American Ethical Union, American Friends Service Committee, American Humane Association, American Humanist Association, American Jewish Committee, Bruderhof Communities, Central Conference of American Rabbis, Christian Church (Disciples of Christ), Church of the Brethren, Church Women United, Episcopal Church, Evangelical Lutheran Church of America, Fellowship of Reconciliation, Friends Committee on National Legislation, Friends United Meeting, General Conference of General Baptists, General Conference Mennonite Church, Mennonite Central Committee, Murder Victims' Families for Reconciliation, Mennonite Church, Moravian Church in America, Mormons for Equality and Social Justice, National Board YMCA of the U.S.A., National Council of Churches of Christ, Orthodox Church in America, Presbyterian Church (U.S.A.), Rabbinical Assembly, Reformed Church in America, Reorganized Church of Jesus Christ of Latter Day Saints, Union of American Hebrew Congregations, Unitarian Universalist Association, United Church of Christ, United Methodist Church, and the U.S. Catholic Conference.

ABA, "National Organizations that Oppose the Juvenile Death Penalty," 1 of 1, <http://abanet.org/crimjust/ juvjus/juvdp.html> (6 November 2003); Religious Organizing Against the Death Penalty, "Statements of Opposition to Capital Punishment from Faith Groups," [www.deathpenaltyreligious.org/education.html](http://www.deathpenaltyreligious.org/education.html)

(6 November 2003).

A May 2002 Gallup Poll found 69 percent of Americans opposed to the death penalty for juvenile offenders. ABA, "Overview . . .," 2 of 2.

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