



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

CRIMINAL LAW AND PROCEDURE , YOUTH VIOLENCE

Abolish juvenile life without parole in Mass.

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The existing Massachusetts law for trying and punishing juveniles charged with murder, arguably the stiffest in the United States in terms of breadth and rigidity, was enacted amidst a climate of fear fueled by wide-ranging media hype about juvenile violence. Not only was the 1996 statute crafted in the wake of a particularly heinous juvenile murder case locally, but lawmakers around the country responded to warnings about the increasing numbers of the young and the ruthless.

As it happened, the early 1990s spike in juvenile homicide did not persist, but vanished as the new millennium approached. The 1990s drop in juvenile murder has been linked to smarter policing, crack-downs on illegal gun trafficking, increased anti-gang efforts, successful crime prevention programming, demographic trends, and especially shifting drug markets, but not to changes in the way in which juveniles were prosecuted.

It may be tempting to suggest that the 1996 statute was responsible for the diminished problem of youth homicide locally over the past decade and a half. However, as should be clear in the figure below, the welcome decline in juvenile murder started years prior to 1996. In addition, juvenile murder rates declined nationally, not just in Massachusetts with our particularly harsh approach to punishing juveniles and not just in other states that have juvenile life without parole laws on the books. The rate of juvenile murder declined in states that did not take such extreme measures.



Of course, the proof of the pudding is in the data. I have analyzed juvenile murder trends state-by-state in order to estimate the effect of the 1996 statute on juvenile homicide rates here in the Commonwealth. I can report that current law, requiring that all juveniles as young as 14 be tried as adults and sentenced to life without parole if convicted of first-degree murder, has not reduced the rate of juvenile murder whatsoever.

The statute's lack of impact reflects on two factors. First, juvenile life without parole has no greater deterrent effect than, say, a 15- or 20-year prison sentence, which was the law in Massachusetts prior to the 1996 statute. Given their relatively immature level of cognitive and emotional development, adolescents are much more influenced by present day incentives for committing crime than by future consequences should they be caught. In addition to the failure of deterrence, the dozens of juveniles currently serving life without parole in Massachusetts under existing law would still be incarcerated today had the 1996 statute never been passed. That is, a 15-year minimum penalty for juvenile murder, which was prescribed under the previous law and is included among the reforms proposed in [S. 672](#) and [H. 1346](#) (*An Act Relative to the Sentencing of Children*), currently being considered by the Joint Committee on the Judiciary, would still have these convicted murderers behind bars.

The pending legislation does not propose a return to the antiquated system in place prior to the 1990s whereby youngsters charged with murder were retained in the juvenile court unless selectively transferred for criminal prosecution. Rather, the proposed bill would have juvenile murderers incarcerated for 15 years at the very least, thereby keeping them off the streets through their violence-prone years, and even longer should the parole board consider them to be a continuing threat to public safety. But for those whose criminal history is indeed history, keeping them incarcerated for life, well past the point of dangerousness, makes little policy sense. Not only does it use up scarce prison space, but it fails to recognize that people can change and sometimes a second chance is in order.

Over the past decade, many states around the country have reconsidered their approach to punishing juveniles, repealing some the harsh approaches implemented during the 1990s hype and hysteria. Even the state of Texas abolished life without parole for juveniles. It is time for Massachusetts to do the same.

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Note; This is an expanded version of my testimony on September 20, 2011 before the Massachusetts Senate and House Joint Committee on the Judiciary.