

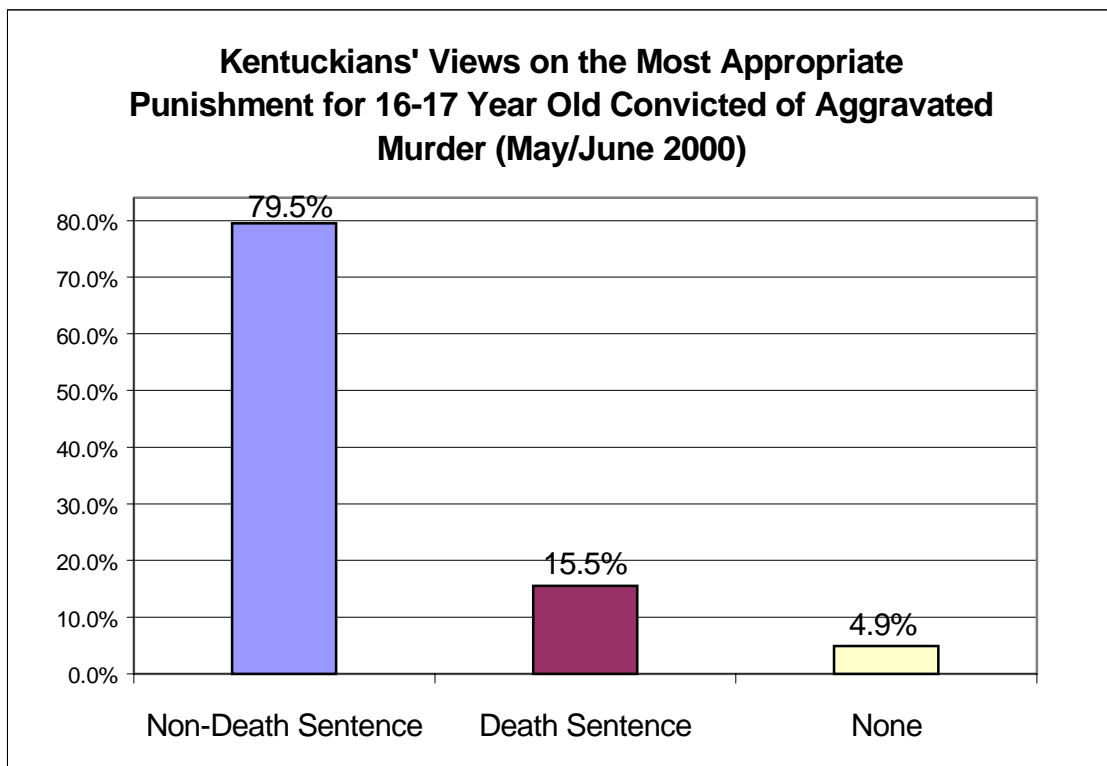
# JUVENILE DEATH PENALTY FACTS

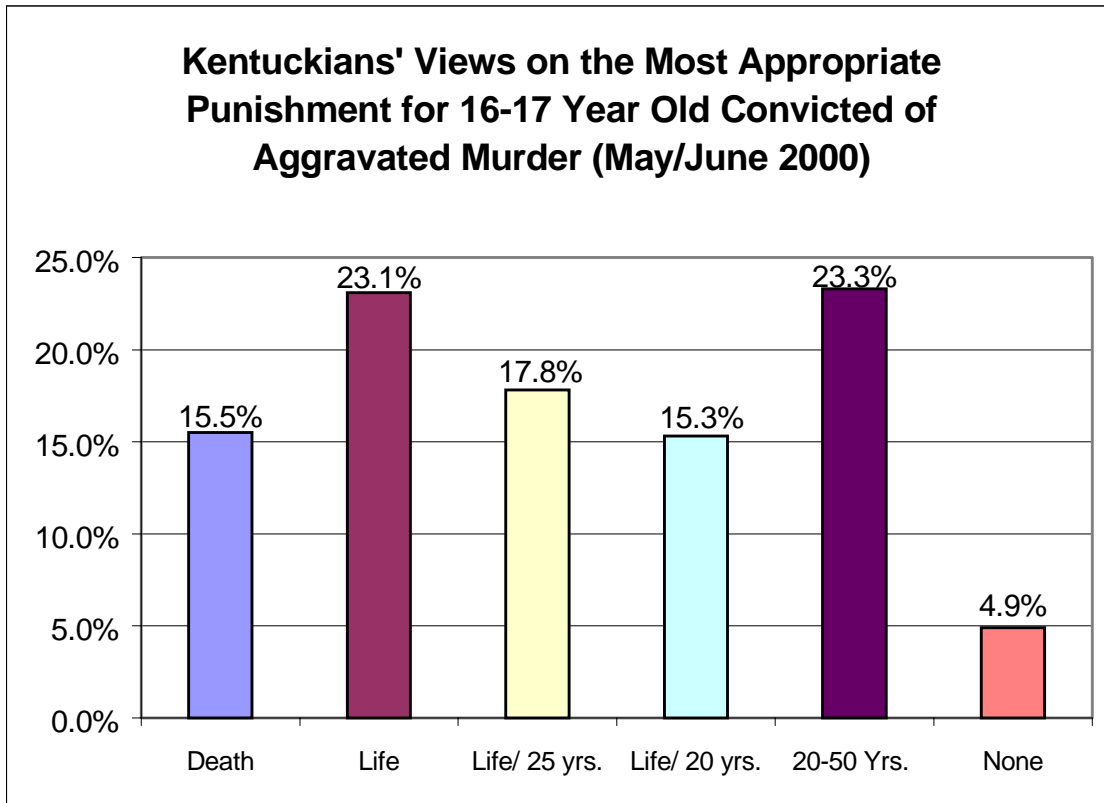
## CURRENT KENTUCKY LAW

Kentucky law now allows the death penalty and life without the possibility of parole for 25 years for children 16 to 18 years of age who are convicted of a capital crime. KRS 640.040.

## KY'S 85% PAROLE ELIGIBILITY AND LIFE WITHOUT PAROLE FOR 25 YEARS HOLDS JUVENILES RESPONSIBLE FOR THEIR CRIMES

Kentucky now holds juveniles who commit serious crimes accountable in significant ways. The 1998 General Assembly created a provision of 85% parole eligibility for a term of years for violent offenders. A juvenile is also subject to life without the possibility of parole for 25 years for capital offenses.





Question asked by the UK Survey Research Center's *Spring 2000 Kentucky Survey* of 1,070 Kentuckians 18 years of age or older from May 18 - June 26, 2000. The margin of error is  $\pm 3\%$  at the 95% confidence level. Households were selected using random-digit dialing, a procedure giving every residential telephone line in Kentucky an equal probability of being called.

## KENTUCKIANS DO NOT SUPPORT DEATH PENALTY FOR CHILDREN

An overwhelming number of Kentuckians believe that juveniles should not be executed. 79.5% of those polled in the state who gave an answer said that the most appropriate punishment for a juvenile convicted of an aggravated murder in Kentucky was a sentence other than death. Only 15.5% of Kentuckians believe that death is the most appropriate penalty for a juvenile who is convicted of an aggravated murder. There were 4.9% who responded that they didn't know. *The Spring 2000 Kentucky Survey*, which surveyed 1,070 Kentuckians 18 years of age or older from May 18 – June 26, 2000 and was conducted by the U K Survey Research Center, asked the following question and had the following answers:

If a 16 or 17 year-old is convicted of aggravated murder, which of the following punishments do you personally think is MOST appropriate:

The death penalty.....	15.5
Life in prison without the possibility of parole forever.....	23.1
Life in prison without the possibility of parole for 25 years.....	17.8
Life in prison without the possibility of parole for 20 years, or.....	15.3
20 to 50 years in prison without the possibility of parole until at least 85% of the sentence is served.....	23.3
None of the above (volunteered).....	4.9

The margin of error of the poll is approximately  $\pm 3\%$  at the 95 % confidence level. Households were selected using random-digit dialing, a procedure giving every residential telephone line in Kentucky an equal probability of being called.

## **JUDGMENT IS UNDEVELOPED INTO LATE ADOLESCENCE**

In an effort to seek effective and humane responses to juvenile crime, the U. S. Department of Justice, Office of Juvenile Justice Delinquency Prevention, recently issued a major report <http://www.ncjrs.org/pdffiles1/ojjdp/184748.pdf> discussing the history of the death penalty for children and sentencing and program options, *Juveniles and the Death Penalty* (November 2000).

Social and behavioral sciences inform us that adolescence is a transitional period of life where cognitive abilities, emotions, judgment, impulse control and identity are still developing. By their very nature, teenagers are less mature, less able to assess risk, make good decisions, and control anger. Teenagers are more susceptible to peer and other external influences. These traits are particularly common among the troubled youth who become embroiled in our justice systems during adolescence. Learning disabilities, behavior disorders, mental illness, abuse, neglect, and trauma often compromise these youth.

A Commission of the National Academy of Science reviewed the scientific evidence and reported in 2001 that “adolescents are not just little adults. Physical, emotional, and cognitive development continue throughout adolescence.” Recent medical research shows that the areas of the brain that regulate emotions, self-control, and judgment are still developing through the early 20’s. The prefrontal cortex, the area adults use to exercise emotional control, undergoes significant change in late adolescence. Brain imaging shows this area is very active in adults making certain social judgments, but barely involved in similar teen judgments. Because their brains are not fully mature, teens do not handle social pressure, instinctual urges, and other stresses the way adults do. They are more prone to immature, reckless and dangerous behavior.

A study of 40% of the juveniles on death row in the mid 1980’s found that all had head injuries, 9 had major neuropsychological disorders, 7 had psychotic disorders and 7 had serious psychiatric disturbances. Only 2 had IQs above 90. Only 3 had average reading abilities. 12 had been physically or sexually abused. Dorothy O. Lewis et al., "Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States," 145 *Am. J. Psychiatry* 584 (1988).

A review of the literature by the American Psychological Association (APA) has led the APA to include the state-sanctioned taking of lives, including taking the lives of juveniles, in an August, 1996 policy statement on social practices that induce violence.

### **THE DEATH PENALTY IS NOT A DETERRENT FOR CHILDREN**

- Children are often impulsive and reckless.
- Children often have little concept of death.
- Children do not thoroughly think through the consequences of their actions.

### **THE DEATH PENALTY IS SELDOM USED AGAINST CHILDREN**

- Only 2% of the persons executed in this country were children at the time of the crime.
- In Kentucky, only 3 juveniles, Todd Ice, Kevin Stanford and Larry Osborne, have been sentenced to death since 1976. In Kentucky, only one person, Kevin Stanford, who was a juvenile at the time of his crime, remains on death row.

## **CHILDREN ARE DENIED MANY RIGHTS DUE TO THEIR INABILITY TO EXERCISE MATURE AND SOUND JUDGMENT**

- 18 is the age to vote under the 26<sup>th</sup> Amendment to the United States Constitution.
- 18 is the age of majority in Kentucky. KRS 2.015.
- 21 is the age to buy and possess alcohol. KRS 244.080, .085, 087, .090.
- Children are not allowed to contract until they are 18. KRS 371.010(2).
- Children must be 18 before they are allowed to buy cigarettes. KRS 438.300.
- Persons under 18 are not permitted a driver's license if they have not graduated from high school or are not enrolled in school.
- Children must be 18 before donating their bodily organs. KRS 311.175.
- Children must be 18 generally (unless they are parents) before allowed to make a will. KRS 394.020-030.
- Children must be 18 (unless there is parental or judicial consent) to marry. KRS 402.020.

## **THERE IS A STEEP DECLINE IN VIOLENT JUVENILE CRIME**

Nationally, the FBI reports that for the 8th straight year serious crimes for juveniles and adults fell in 1999, with the national Crime Index total 20% lower than in 1990. The U.S. Department of Justice reports that violent crime rates for juveniles and adults have declined since 1994, reaching the lowest level ever recorded in 2000. Violent crime rates among those under 18 fell 8% in 1999, with a 23% decrease since 1995. Violent crime arrests for those under 18 have decreased at a greater rate than violent crime arrests among other age groups during this time period. Under juvenile Violent Crime Index figures (which dropped 36% between 1994 and 1999), even if each arrest involved a different juvenile (*i.e.*, each juvenile arrested in 1999 was only arrested once), only about one-third of 1% of juveniles ages 10-17 were arrested for a violent crime in 1999. Overall arrests for those under 18 fell 8% in 1999. Arrests of those under 18 for murder and nonnegligent manslaughter decreased 31% in 1999, with a 56% decrease since 1995. Between 1993 and 1999, the juvenile arrest rate for murder dropped 68%, reaching its lowest level in a generation.

## **COURTS REVERSE JUVENILE DEATH SENTENCES AT A HIGH RATE**

- There is a very high reversal rate for juvenile death sentences, indicating there are either many errors in these trials or that death is not an appropriate sentence for these offenders.
- Between January 1973 and December 31, 2000, there have been 200 juvenile death sentences. Of those 200, 73 are still under the sentence of death, 17 have been executed, and 110 or 54% have been reversed on appeal. Of the 200, 127 have been finally resolved as the remainder are still in litigation. Of those 127, 110 or 87% have been reversed. See Victor Streib, *The Juvenile Death Penalty Today; Death Sentences and Executioners for Juvenile Crime, January 1, 1973-December 31, 2000* (2001).
- In Kentucky, 2 of the 3 children sentenced to death since 1976 have had their convictions reversed, Todd Ice and Larry Osborne.

## **LESS THAN HALF OF THE STATES HAVE DEATH PENALTY FOR JUVENILES**

- 38 states and the federal government have the death penalty.
- Of those 39 jurisdictions with the death penalty, 16 have 18 as the minimum age for the death penalty: California, Colorado, Connecticut, Illinois, Kansas, Maryland, Montana, Nebraska, New Jersey, New Mexico, New York\*, Ohio, Oregon, Tennessee, Washington (by court decision), and U.S. Other states have either no minimum age or a minimum under 18. \*New York's law only allows the death penalty for those "more than 18."
- In 5 states, 17 year olds are eligible for death: Florida, Georgia, New Hampshire, North Carolina, Texas.
- In 18 states, 16 year olds are eligible for the death penalty: Alabama, Arizona, Arkansas, Delaware, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Wyoming.
- When the 12 states that forbid the death penalty totally are combined with the 16 that prohibit it for those under 18, 56% of the states have decided death is not appropriate for children

## **U. S. IS ISOLATED IN THE WORLD IN THE KILLING CHILDREN**

- There is nearly universal international agreement that the death penalty should be eliminated for those under 18. China and Iran have now abolished death for those under 18.
- Since 1991, only 7 countries have executed juveniles. The number of the 25 executed worldwide since 1991 are: the United States (13), Iran (6), Pakistan (2), Nigeria (1), Saudi Arabia (1), Congo (1), and Yemen (1).
- In 1976, the General Assembly of the United Nations agreed in the International Covenant on Civil and Political Rights, Article 6(5) that the "sentence of death shall not be imposed for crimes committed by persons below 18 years of age...." The U. S. signed this covenant for the U. S. in October 1977. In 1992, the Senate ratified this International Convention but only after attaching a specific reservation to Article 6(5).
- The United Nations Convention on Rights of the Child (CRC), Article 37(a), states, "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age. . . ." The U. S. signed this international agreement in 1995 with a reservation to article 37(a). The Senate has not ratified it. The U.S. and Somalia are the only 2 countries that have not ratified the CRC.

## **DEATH PENALTY IS UNCONSTITUTIONAL FOR THOSE UNDER 16**

- The U. S. Supreme Court declared in *Thompson v. Oklahoma*, 487 U.S. 815 (1988) that it is a violation of the 8<sup>th</sup> Amendment to impose death upon children below the age of 16.
- The U.S. Supreme Court rejected a challenge under the 8<sup>th</sup> Amendment to capital punishment for those who are 16 or 17 years of age. *Stanford v. Kentucky*, 492 U.S. 361 (1989).

## **NATIONAL BIPARTISAN GROUPS CALL FOR REFORMS AND RECOMMENDS AGAINST DEATH PENALTY FOR CHILDREN**

There is emerging national agreement that the death penalty should be eliminated for children.

A 1988 report of the Criminal Justice Section of the ABA stated, “The spectacle of our society seeking legal vengeance through execution of a child should not be countenanced by the ABA.” The ABA approved the following resolution: “That the American Bar Association opposes, in principle, the imposition of capital punishment upon any person for any offense committed while under the age of 18.” <http://www.abanet.org/scripts/PrintView.asp> The 1997 ABA Call for a Moratorium was based in part on the fact that states continue to sentence children to death.

After a year of study, a distinguished bipartisan blue ribbon committee of The Constitution Project called for 18 reforms in the death penalty. Entitled *Mandatory Justice: Eighteen Reforms to the Death Penalty* (2001) [http://www.constitutionproject.org/dpi/Mandatory\\_Justice\\_7-05-01.PDF](http://www.constitutionproject.org/dpi/Mandatory_Justice_7-05-01.PDF), the report details recommendations that relate to various aspects of capital punishment. Among other things, the reforms call for elimination of the death penalty for those under 18 stating, “To reduce the unacceptably high risk of wrongful execution in certain categories of cases, to ensure that the death penalty is reserved for the most culpable offenders, and to effectuate the deterrent and retributive purposes of the death penalty, jurisdictions should limit the cases eligible for capital punishment to exclude those involving ... (2) persons under the age of eighteen at the time of the crimes for which they were convicted....” The Constitution Project’s 30-member death penalty initiative group has members that are supporters and opponents of the death penalty, Republicans and Democrats, conservatives and liberals.

### **FOUR OF SIX CHILDREN EXECUTED IN KY WERE BLACK**

The only person on Kentucky’s death row who committed his crime as a juvenile is Black, Kevin Stanford. Two thirds of the 361 children executed in the nation’s history were black. 100% of the 40 children executed in the U.S. for rape or attempted rape were black. Two thirds of those on death row in the United States who committed their crimes as juveniles are Black or Latino or Asian, including one individual on Kentucky’s death row. Four of six (67%) children executed in Kentucky history have been black:

<b>NAME</b>	<b>RACE</b>	<b>COUNTY</b>	<b>CRIME</b>	<b>DATE EXECUTED</b>	<b>AGE</b>
1. Silas Williams	B	Woodford	Murder	1913	16
2. Frank Carson	W	Nelson	Murder	1933	17
3. Burnett Sexton	W	Perry	Murder	1943	17
4. William Gray	B	Fayette	Murder	1943	17
5. Carl Fox	B	Campbell	Rape	1945	17
6. Arthur Jones	B	Mason	Murder	1946	16

## NATIONALLY

Currently 73 death row inmates were sentenced as juveniles, about 2% of the total death row. All 73 are male and are from 15 different states. 26 or 35% of these juveniles on death row are in Texas. 17 men have been executed for crimes committed as juveniles since 1976. Two out of 3 people on death row are minorities. The characteristics of offenders and victims in national juvenile death penalty cases as of December 31, 2000 are:

OFFENDERS		VICTIMS		
Age at Crime	Race	Age	Race	Sex
16 = 18 (26%)	A = 1 (1%)	Under 18 = 16 (18%)	A = 7 (9%)	M = 44(48%)
	B = 34 (47%)	18 to 49 = 57 (63%)	B = 11 (13%)	F = 48 (52%)
17 = 55 (75%)	L = 13 (18%)	50 & over = 18 (20%)	L = 11 (13%)	Unknown = 7
	W = 25 (34%)	unknown = 8	W = 53 (65%)	
			Unknown = 17	

From *The Juvenile Death Penalty Today; Death Sentences and Executioners for Juvenile Crime, January 1, 1973-December 31, 2000* (2001) by Victor L. Streib, Dean and Professor of Law, and found at <http://www.law.onu.edu/faculty/streib/juvdeath.htm>.

## OTHER FACTS

- 7 children were executed prior to 1800.
- 97 children were executed prior to 1900.
- The youngest child to be executed in this country was 10.
- The American Law Institute Model Penal Code recommends no death penalty for juveniles.
- Of 20,000 legal executions in American history since 1642, 361 of them were children.
- Kentucky has not executed a juvenile in 55 years.

## KY CURRENTLY HAS ONE PERSON ON DEATH ROW WHOSE CRIME WAS COMMITTED WHILE A JUVENILE

Since 1976, three children under 18 have been sentenced to death in Kentucky. One of these three was black. The Kentucky Supreme Court reversed two of these. *Ice v. Commonwealth, Ky.*, 667 S.W.2d 671 (1984) and *Osborne v. Commonwealth, Ky.*, 43 S.W.3d 234 (2001). Osborne faces retrial for death. The Kentucky Supreme Court and the United States Court of Appeals for the Sixth Circuit have affirmed Kevin Stanford's case. Kevin Stanford was a 17 year old black juvenile at the time he was convicted of murder, robbery, sodomy and theft in 1981 in Louisville. His co-defendants, Troy Johnson and David Buchanan, were 17 and 16 years old respectively. Johnson, the oldest of the three, received 9 months in juvenile detention. Buchanan received a life sentence plus two 20-year sentences for rape and robbery. Kevin was tested in the 5<sup>th</sup> grade and again in 1978 with an IQ of 70. Since being sentenced to death, he has been diagnosed by psychologists as suffering from post-traumatic stress disorder from the repeated sexual assaults and emotional neglect that pervaded his childhood. When arrested, Kevin was bombarded with racial slurs and epithets by police officers. His victim was a white woman. The jurors who sentenced him to die were all white. Louisville was saturated with prejudicial publicity about the crime. Kevin had no defense to the crime presented for him despite the availability of a substantial defense. In contrast, the co-defendant's attorney presented evidence on his client's prior juvenile treatment and mental health problems.

## **FAITH GROUPS CALLING FOR ABOLITION OF THE DEATH PENALTY FOR CHILDREN**

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• American Baptist Churches in the USA</li><li>• American Ethical Union</li><li>• American Friends Service Committee</li><li>• American Jewish Committee</li><li>• Christian Churches (Disciples of Christ)</li><li>• Christian Reformed Church in North America</li><li>• Church of the Brethren</li><li>• Church Women United</li><li>• Episcopal Church</li><li>• Fellowship of Reconciliation</li><li>• Friends Committee on National Legislation</li><li>• Friends United Meeting</li><li>• General Association of Baptists</li></ul> | <ul style="list-style-type: none"><li>• General Conference Mennonite Church</li><li>• Lutheran Church in America</li><li>• Mennonite Central Committee U.S.</li><li>• Mennonite Church</li><li>• Moravian Church</li><li>• National Council of Churches of Christ in the USA</li><li>• Presbyterian (USA)</li><li>• Reformed Church in America</li><li>• Unitarian Universalist Association</li><li>• United Church of Christ</li><li>• United Methodist Church</li><li>• United States Catholic Conference</li></ul> |
|--|---|

## **ENDORSEMENTS OF A BILL TO ELIMINATE DEATH FOR PERSONS UNDER 18**

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• KY Domestic Violence Association</li><li>• Mental Health Association of KY</li><li>• KY Psychological Association</li><li>• KY Psychiatric Association</li><li>• Children's Alliance</li><li>• KY Council of Churches</li><li>• Murder Victim's Families for Reconciliation</li><li>• KY Youth Advocates</li><li>• Catholic Conference of KY</li><li>• Presbyterian Child Welfare Agency</li><li>• The Juvenile Justice Advisory Committee of KY</li><li>• KY Academy of Child and Adolescent Psychiatry</li></ul> | <ul style="list-style-type: none"><li>• National Association for the Advancement of Colored People, Louisville Branch</li><li>• Justice Resource Center</li><li>• Fellowship of Reconciliation</li><li>• American Civil Liberties Union of KY</li><li>• Amnesty International</li><li>• KY Association of Criminal Defense Lawyers</li><li>• KY Coalition to Abolish the Death Penalty</li></ul> |
|--|--|