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ACLU of Nevada

American Civil Liberties Union of Nevada
325 South Third Street
Las Vegas, NV 89101
775- 786-3827 (Reno contact)

MEMORANDUM

DATE: March 25, 2003
TO: Chairman Bernie Anderson
Mark Amodei, Nevada State Senate Judiciary Committee
FROM: Richard Siegel
President, ACLU of Nevada
RE: Testimony on AB 118: Public Opinion Polls on Death Penalty
for 16 and 17 year old Juveniles

Public opinion poll results are often cited in defense of the death penalty in Nevada. But the large-scale national opposition to execution of the mentally retarded helped carry that issue in the Nevada Assembly in 2003. It is evident that similar, if somewhat less majority opinion has been measured repeatedly in relation to executing 16 and 17 year olds, whether we view national polls or those from centrist and conservative states we find opposition to such executions at the level of 60-70%, or about 2:1, in polls reviewed since 2000 (with some taken in 2003). The Federal Ninth Circuit Court of Appeal already reflects the 2:1 position of public opinion on juvenile executions, making the penalty futile and potentially wasteful of millions of Nevada and federal tax dollars.

Summaries of all polls available to us are provided in the accompanying exhibits. Probably the most significant poll that you need to review is the Gallup Poll of May 2002. It found opposition to the death penalty for those under 18 to be 69%-26% nationally (5% no opinion). In the conservative state of Kentucky only 15.5% supported death penalties for juveniles (79.5% opposed it). Similar results were found in Georgia (60%-23%) in January 2003). Even in Harris County, Texas only 25% said that the death penalty for juveniles was appropriate. Only in Arizona, in a July 2000 poll, was there a close result on this issue (37% favored juvenile executions; 42% opposed, 21% gave other responses). No Nevada poll specifically on execution of 16 and 17 year olds is known to the ACLU.

Conclusion

Just as polled majorities for capital punishment itself are often cited in defense of this supreme penalty, political leaders should heed majority opinion clearly weighted against executions of juveniles.

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ASSEMBLY JUDICIARY

DATE: 3/27/03 ROOM: 3138 EXHIBIT L

SUBMITTED BY: DK Siegel

Gallup Poll — May 2002

juvenile death penalty. In *Atkins*, the Court banned executions for the mentally retarded as a violation of the Eighth Amendment, finding that "evolving standards of decency" indicate a national consensus against it. Juvenile justice advocates hope that this decision will lead to a reversal of *Stanford v. Kentucky* (1989) which, in a 4-1-4 vote, held that it was not unconstitutional to execute 17 year-old offenders. Advocates argue that the reluctance among 49 states to use the punishment, coupled with legislative developments, show that a national consensus exists.

Developments Worldwide

Juvenile executions have all but ended around the world. The International Covenant on Civil and Political Rights and the U.N. Convention on the Rights of the Child expressly prohibit the death penalty for offenders under the age of 18. The European Union, United Nations, Mexico, Sweden, France and others have condemned the use of the juvenile death penalty in the U.S. In the last 10 years, China, Pakistan and Yemen have joined the majority of nations by banning the practice.¹

In the last decade, the U.S. has executed more juvenile offenders than all other nations combined. In the last three years, the number of such nations has dropped to four: Iran, the Democratic Republic of Congo, Pakistan, and the United States.

More resources available at:
www.abanet.org/crimjust/juvjus/juvdp.html

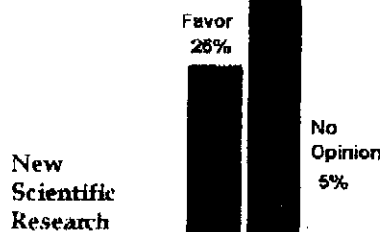
ABA Juvenile Justice Center
Phone: (202) 862-1506

Public Opinion

A May 2002 Gallup poll found that 69% of Americans oppose the death penalty for those under the age of 18. The poll found that while support for the death penalty for adults is high, support for the juvenile death penalty has remained low for more than 40 years.

"Do you favor or oppose the death penalty for juveniles?"

Gallup, May 2002



New Scientific Research

Magnetic Resonance Imaging (MRI) research by Harvard University Medical Center on adolescent brain development contradicts previously held beliefs that the brain is fully developed by age 14. These findings show that juveniles may lack the brain capacity to control impulses and make informed decisions, thereby providing scientific evidence for the argument that adolescents have a lesser degree of culpability than adults.

Such research reveals that the brain changes as one matures, that different parts change at different times, and that the frontal and pre-frontal lobes (which govern impulse control and judgment) change most dramatically between the ages of

12 and 22. Dr. Ruben C. Gur, Director of Neuropsychology at the University of Pennsylvania Health Center, writes:

Increase in white [brain] matter continues well into late adolescence, and the frontal lobes are the last to myelinate [develop]. The behavioral significance of this neuroanatomical finding is that the very brain system necessary for inhibition and goal-directed behaviour comes "on board" last and is not fully operational until early adulthood (about 18-22 years)."

Status of Recent Cases

In August 2002, Texas executed TJ Jones and Toronto Patterson. Antonio Richardson (MO), Chris Simmons (MO) and Ron Foster (MS) have received temporary stays as the constitutionality of their sentences is decided. Scott Hain (OK) has filed for certiorari, and awaits a response from the Supreme Court.

While the Supreme Court recently declined to hear the habeas petitions of Toronto Patterson and Kevin Stanford (KY), each case drew vigorous dissents. In the case of Stanford, Justice Stevens, joined by three others, wrote:

The practice of executing such offenders is a relic of the past and is inconsistent with evolving standards of decency in a civilized society. We should put an end to this shameful practice."

¹ *Children and the Death Penalty Worldwide*: Amnesty International (2000).

² Amicus brief by American Society for Adolescent Psychiatry, *Stanford v. Kentucky*, SCt. No. 01-10009.

³ *Stanford v. Kentucky*, 537 US ____ (2002).

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The Gallup Poll. Latest: May 6-9, 2002. N=1,012 adults nationwide. MoE ± 3 (total sample).

"If you could choose between the following two approaches, which do you think is the better penalty for murder: [rotate] the death penalty or life imprisonment with absolutely no possibility of parole?" Form B (N=537, MoE ± 5)

	Death Penalty	Life In Prison	No Opinion
	%	%	%
5/02	52	43	5
5/01	52	43	5

"In your opinion, is the death penalty imposed [rotate] too often, about the right amount, or not often enough?"

	Too Often	About Right	Not Enough	No Opinion
	%	%	%	%
5/02	22	24	47	7
5/01	21	34	38	7

"Do you favor or oppose the death penalty for [see below]?"

	Favor	Oppose	No Opinion
	%	%	%
Women	68	29	3
Juveniles	26	69	5
The mentally ill	19	75	6
The mentally retarded	13	82	5

"Generally speaking, do you believe the death penalty is applied fairly or unfairly in this country today?"

	Fairly	Unfairly	No Opinion
	%	%	%
5/02	53	40	7
6/00	51	41	8

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Richard Siegel

From: King, Rachel [Rking@dcacclu.org]
Sent: Friday, March 14, 2003 1:01 PM
To: Richard Siegel (E-mail)
Subject: Information on Polling - Juvenile Death Penalty

Hi Richard,

Here are some links for you around polling and cost. The cost is not really specific to the juvenile death penalty, but the polling is.

COSTS:

No studies done with specific reference to the juvenile death penalty, but general death penalty costs can be found at <<http://www.deathpenaltyinfo.org/costs2.html>>

POLLING:

see: <http://www.abanet.org/crimjust/juvjus/resources.html#Pols>

<<http://www.abanet.org/crimjust/juvjus/resources.html>> - you'll need to scroll down a bit, past the policy statements.

Gallup poll May 2002: 69% oppose the juvenile death penalty

Kentucky 2000: 15.5% say juveniles should get the death penalty

Kentucky 2002: 63% support legislation to raise the age to 18

Harris County, Texas 2001: 25% think death for juvenile is appropriate

Georgia 2003: 60% favor non-death sentences

I hope this helps - call me on the number below if you need anything else, I'll fax some of this information to you soon.

Rachel King
State Strategies Coordinator
Capital Punishment Project, ACLU
202/715-0833 - phone
202/546-0738 - fax

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Friday, October 25, 2002

**Death penalty for juveniles opposed, poll shows
Results released as Patton ponders Stanford case**

By Joseph Gerth

jgerth@courier-journal.com
The Courier-Journal

Nearly two-thirds of Kentuckians strongly or somewhat favor eliminating the death penalty for people who commit murders as juveniles, according to a poll by the University of Kentucky's Survey Research Center.

The finding comes at a time when Gov. Paul Patton is being asked to spare the life of Kevin Stanford, who is awaiting execution for a 1981 Jefferson County rape and murder that he committed when he was 17.

Denis Fleming, Patton's general counsel, said yesterday that the poll results would not affect the governor's decision whether to commute Stanford's sentence to life in prison but that Patton agrees with the poll's respondents.

"Based on the philosophical concerns he has about the application of the death penalty for juveniles, the poll reflects a concern" Patton already has expressed, Fleming said.

But state Sen. Robert Stivers, chairman of the Senate Judiciary Committee, which serves as a gateway for death-penalty legislation, said he doubts the poll results will change the minds of many legislators who support capital punishment. A bill supported by Patton to do away with the juvenile death penalty failed earlier this year.

"I don't see there will be a whole lot of movement on it this session either," said Stivers, R-Manchester. "Polls are done in a vacuum, but when people hear about the things these people have done it would be interesting to see how their opinions change."

Public advocate Ernie Lewis said that comment bothered him.

"I'm a little concerned that elected officials, when confronted with these kind of poll results, aren't a little more concerned about being out of step with the people of Kentucky. When a consistent pattern develops over time, it's up to elected officials to respond to that," he said.

The poll was conducted July 20 through Aug. 26 by UK's Survey Research Center. It asked 882 Kentuckians about various issues, including the juvenile death penalty. The poll's margin of error was plus or minus 3.3 percentage points.

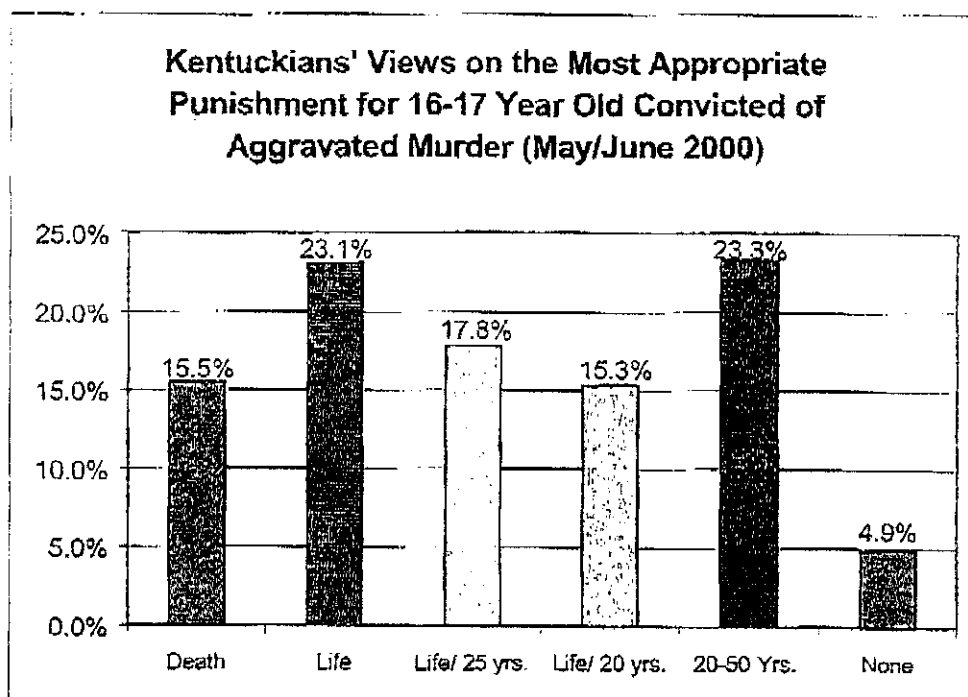
The state Department for Public Advocacy, which represents most inmates on Kentucky's death row, commissioned the juvenile death penalty question and released the results this week.

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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.

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