

Human Rights Watch

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August 1, 2002

Gerald Garrett
Chairman
Texas Board of Pardons and Paroles
209 West Fourteenth Street, Suite 500
Austin, Texas 78701

Dear Mr. Garrett:

Human Rights Watch urges the Board of Pardons and Paroles to recommend commutation of the death sentences of T.J. Jones and Toronto Patterson. Mr. Jones is scheduled to be put to death on August 8, and Mr. Patterson is scheduled for execution on August 28. Each of these individuals was seventeen years old at the time of the crime for which he was convicted.

Death is an inhumane punishment, particularly for a juvenile offender. Children are different from adults. They lack the experience, judgment, maturity, and restraint of an adult. With help, even the most errant can be rehabilitated. As the Supreme Court recognized in 1988 when it struck down the death penalty for fifteen-year-old offenders in *Thompson v. Oklahoma*, "The reasons why juveniles are not entrusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of any adult."

Texas, which executes far more juvenile offenders than any other state, is out of step with the rest of the nation on this issue. Of the nineteen juvenile offenders put to death nationwide since 1976, when executions resumed after a three-year moratorium, eleven have been from Texas. Most recently, the state put Napoleon Beazley to death the same week in May that the state of Missouri commuted the death sentence of another juvenile offender in response to growing doubts about the constitutionality of the practice. In doing so, Texas ignored an unprecedented plea for clemency by the judge who presided over Mr. Beazley's trial.

Just six other states have executed juvenile offenders in the past twenty-six years, and of those states, only Virginia has executed more than one juvenile offender. Virginia has put three juvenile offenders to death, two in 2000 and one in 1998.

Around the country, jurisdictions are moving to eliminate or restrict the death penalty for juvenile offenders. Indiana abolished the death penalty for juvenile offenders this year. Montana did the same in 1999. Similar measures are being considered in at least nine other states: Alabama, Arizona, Arkansas, Florida, Kentucky, Mississippi, Missouri, Pennsylvania, and South Carolina. New York

reenacted the death penalty statute in 1995 but set “more than” eighteen as the minimum age to receive a sentence of death. The federal government continued to bar the death penalty for juvenile offenders convicted of federal offenses when it substantially expanded the federal death penalty in 1994 and 1996. And in 1999 the Florida Supreme Court found the execution of sixteen-year-old offenders unconstitutional under the state constitution.

In Texas itself, lawmakers are having second thoughts about allowing juvenile offenders to be put to death. In the last legislative session, a measure that would have raised the minimum age for capital punishment to eighteen passed the Texas House of Representatives.

The U.S. Supreme Court’s decision in *Atkins v. Virginia*, decided in June, raises serious doubts about the constitutionality of the death penalty for juvenile offenders. In *Atkins*, the Court found that the execution of offenders with mental retardation was unconstitutional, reasoning that a national consensus had developed against it. The Court noted that eighteen states and the federal government prohibited such executions.

Sixteen states and the federal government now set eighteen as the minimum age for the death penalty. Another twelve states do not permit capital punishment under any circumstances.

The rising number of states that bar the execution of juvenile offenders, the growing trend toward age eighteen as the minimum age for death sentences, and the rarity of such executions in states that do permit them make it likely that the Court will address the issue in the near future.

In fact, U.S. Supreme Court Justice John Paul Stevens told a gathering of federal judges in July that the execution of juvenile offenders could be the next major capital punishment issue decided by the Court. Justice Stevens was the author of the Court’s ruling on the execution of persons with mental retardation.

Elsewhere in the world, only Congo and Iran are known to have executed juvenile offenders in the last three years. Each now explicitly repudiates the practice, making the United States the only country that continues to claim the legal authority to execute juvenile offenders.

The International Covenant on Civil and Political Rights, to which the United States is a party, expressly forbids capital punishment for offenders who were under the age of eighteen at the time of the offenses for which they were convicted. Although the United States ratified the covenant with the reservation that it would not accept restrictions on the juvenile death penalty, the U.N. Human Rights Committee, the body charged with monitoring compliance with the treaty, has concluded that the reservation is void because it violates the treaty’s object and purpose.

The prohibition on the execution of juvenile offenders is so widely observed that it has attained the status of a peremptory norm of international law, meaning that it is a binding obligation superior to other law.

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For these reasons, the State of Texas should refrain from executing T.J. Jones and Toronto Patterson. We urge the Board to uphold a basic principle of justice and morality by recommending the commutation of their death sentences.

Sincerely,

Michael Bochenek
Counsel
Children's Rights Division