



February 15, 2021

The Honorable William C. Smith, Jr., Chair
The Honorable Members of the Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Testimony in SUPPORT of SB0494, Juveniles Convicted as Adults - Sentencing - Limitations and Reduction (Juvenile Restoration Act)

Chair Smith, Vice Chair Waldstreicher, and the Honorable members of the Judicial Proceedings Committee,

I am writing today in **support** of SB0494, Juveniles Convicted as Adults - Sentencing Limitations and Reduction (Juvenile Restoration Act), which I believe is a vital step forward for Maryland in ensuring equity to those within the criminal legal system.

Qualifications and Background

I write to you as a Baltimore City resident, as the Executive Director of the Baltimore-based nonprofit, Advancing Real Change (ARC), Inc., and as a mitigation specialist with more than 15 years of experience. My work as a mitigation specialist includes conducting investigation into the life history of defendants in death penalty and juvenile cases. With respect to investigations involving youth accused of murder, I have conducted mitigation investigation at trial, resentencing, and for sentence modification cases since 2011. In the last 10 years I have worked on such cases in Connecticut, Florida, Maryland, Michigan, Washington D.C., and West Virginia.

I am a national expert on best practices of mitigation investigation, the development of sentencing evidence, and its effective presentation. I have taught defenders representing youth in Louisiana and Michigan and provided in-depth training to offices in Washington D.C. and West Virginia. I have also collaborated closely with colleagues at the National Association of Criminal Defense Lawyers, the American Civil Liberties Union, the Defender Services Office Training Division of the Administrative Offices of the United States Courts, and other professional organizations in presenting education and training programs for defense counsel, mental health professionals, and investigators in the role of mitigation in criminal cases.

I have published articles in peer reviewed journals, law reviews, and have contributed to numerous edited volumes dedicated to research on capital punishment. I have also published on topics related to mitigation evidence in felony sentencing generally.

I hold a DPhil (Ph.D.) in Law from the University of Oxford St. Hilda's College, a MSc. in Comparative Social Policy from the University of Oxford St. Antony's College, and BAs in Political Science and Philosophy from the George Washington University. I was among the inaugural recipients of the J.M.K Innovation Prize and my work was the subject of Baltimore City Council Resolution 18-0018R.

While ARC, Inc. is a local organization, I believe that it is our national experience that is most relevant to the legislature. Our organization works throughout the country to conduct mitigation investigations in cases where youths with a lack of funds are appointed counsel and are at serious risk of receiving an extreme sentence. We also work directly on sentencing modification cases such as those originating from Washington DC's Incarceration Reduction Amendment Act (IRAA) and other local legislative reforms across the country. Many of these jurisdictions have grappled with the same decisions Maryland must now face.

Mitigation in general

Mitigating factors stem from the diverse frailties of humankind¹ and are presented to judges and juries in order to take full account of the individual facing punishment. Mitigation values and respects the uniqueness of each person whose life is at stake when the potential outcome is execution or a lifetime in prison. Mitigation aims to provide decision-makers information regarding all relevant facets of a person's development and functioning to assess moral culpability. Part of that process is to take into account the potential for growth in order to engage in principled and humane sentencing.

In order to provide judges, prosecutors, victims, community members, and other stakeholders with the most accurate and comprehensive information about a defendant, the mitigation specialist undertakes an investigation into the person's life history. The investigation spans multiple generations in order to understand the patterns of behavior, functioning, community, and culture that have shaped the life of the client. Such an investigation often unearths a complex pattern of trauma, structural inequalities resulting in an inability for the provision of basic needs, and a lack of access to meaningful support or interventions. These patterns are viewed through a developmental lens.

Another way of understanding mitigation is that it often reminds people of what they already know to be true, for instance, that one's childhood matters a great deal to their successful functioning in life. If we did not believe that was a fact, we would not spend so much time making sure our own children had clean drinking water, a safe place to live, healthy food to eat, access to medical providers, good schools to attend, and all the other things we spent so much time fighting for in order to give our children the best chance in life.

We are also well aware that things over which we have no control can have the gravest impact on our children, and we respond to these circumstances accordingly. If we did not think that childhood experiences mattered, we would not seek counseling for children who experienced sexual abuse. If we did not think childhood experiences mattered, we would not

¹ *Woodson v. North Carolina*, 428 U.S. 280 (1976).

be concerned with bullying, with kids dodging bullets to go to the playground, or with many of the other damaging experiences that could forever change the trajectory of a young life.

Yet when a youth is accused of committing a crime the first question asked is not, “What happened to that child to put them in a position to think that this behavior was the best response to their situation?” but “How can we punish this child so significantly that we never have to think about them again?”

The ethos of mitigation evidence – understanding the factors that impacted the development of a person, their trajectory, and their capacity for growth – is at the heart of this bill.

Mitigation in youth cases

Trauma is endemic in the cases we see – our child and adult clients have survived horrendous experiences. For instance, one client witnessed a close friend being shot in the head right next to him. Our client waited for hours before the police arrived to that particular crime scene. A mother I visited from that neighborhood described how the body of our client’s friend, a boy himself, lay in the street for hours with the child’s mother screaming in agony until eventually someone from the neighborhood brought out a sheet to cover his body. Our client experienced this violent death of a friend and witnessed the lack of concern for his community waiting for hours for a coroner to arrive. Though no one said it explicitly, the actions of officials said what our client had started to internalize – his life did not matter as much as other children. In the aftermath of this experience, our client spoke with no one about how to process the event, another tacit acknowledgment that concern for his growth and development was not a priority compared to other children who lived in zip codes with greater prosperity.

Another client was raised by a mother who was so deeply gripped by addiction that she would leave her son and his siblings for days without food. These children were so hungry that they would take turns going into a bodega and taking whatever they could reach to help feed each other. This drew the attention of social services, so in order to minimize the chances that the kids would leave the house when she was gone, their mother would put our client in a cupboard without water, food, or access to a toilet. As the brother of the group the mother treated him more harshly than his sisters.

Yet another client was raped and sodomized by counselors at youth detention facility in Washington D.C., where he was sent at age 10. The counselors there would use a broom stick to rape him. Our client would run away whenever he had the chance – and each time he would be arrested and returned to his abusers who would violate and humiliate him. At no point did any adult ask why he fled this facility time and time again. Instead, this behavior marked him as unable to follow rules, a risk to others, hard to manage, and worthy of less investment than other better behaved children.

While these specific stories come from what I have learned in investigations I have conducted, they are typical of the life experiences many mitigation specialists unearth in their investigations. I do not share these stories to minimize the harm that our clients have caused,

which have been devastating for the victims and their loved ones. I share these stories to say that when we speak of the trauma our clients have suffered, we are talking about experiences that many adults would not be able to overcome without significant support and yet there is a tendency to react as though these children should somehow have been able to do more for themselves to rise above it.

As horrific as these stories are, it is important to understand that even extreme trauma can be successfully addressed with the proper support² and is not a permanent condition that makes the person destined to act out. The largest long-term study about the adverse experiences in childhood, conducted by Kaiser Permanente and the Center for Disease Control and Prevention and aptly called The Adverse Childhood Experiences Study (ACEs), bears this out.³ As the legislature weighs this bill it is important to note that risk assessments, which are often relied upon to make sentencing determinations, often fail to take trauma into account. Moreover, most risk assessments are not normed on inmate populations and can have significant biases for already marginalized groups. As such, they are poor predictors of an individual's capacity for change and for an individual's future behavior.⁴

What we have also seen time and time again is that our clients who went to prison as youth have grown into adults capable of much good. Our clients have achieved extraordinary things during their incarceration – some have written books, obtained GEDs and gone on to take college classes through correspondence courses, learned trades such as becoming talented barbers or mechanics, developed knowledge of and connection to religion, and formed meaningful healthy relationships with family, friends, and members of the prison community.

Many of our clients went to prisons that did not provide much, if any, access to educational programming, mental health treatment or counseling, or positive role models, yet each one has grown into a man committed to positive actions. As we have collaborated with our clients to create reentry plans built on a deep understanding of their life history that accounts for their unique potential and needs, we participate in the creation of the conditions for successful reentry to the community.

Our clients who have returned to the community have taken full advantage of their maturation and the second chance afforded to by changes to the law. To the person, each client has used their potential to help others. One such client started a social impact production company that trains currently and formerly incarcerated people as storytellers and advocates. Another client was featured in his local newspaper after securing a job at a restaurant that often employs formerly incarcerated people. That job permitted the client to earn a sufficient salary so he could continue to work on a business plan involving a transportation company to help families visit their incarcerated loved ones. Both men had

² Van der Kolk, B. A. (2015). *The body keeps the score: Brain, mind, and body in the healing of trauma*. Penguin Books.

³ Reavis, J. A., Looman, J., Franco, K. A., & Rojas, B. (2013). Adverse childhood experiences and adult criminality: How long must we live before we possess our own lives?. *The Permanente Journal*, 17(2), 44.

⁴ Kamorowski, J. (2019). *Anatomy of Risk: Cumulative Disadvantage and Risk Assessment Instruments* (Doctoral dissertation).

been convicted of crimes committed around the age of 16. The communities they returned to would have lost much had they been kept in prison.

Conclusion

Much of the discussion around decisions such as *Miller v. Alabama* (2012)⁵ and *Montgomery v. Louisiana* (2016)⁶ is centered around the idea that children can change. I suggest that the reality is starker than that: children *do* change, whether we acknowledge it or not. The question is whether those who have grown into adults capable of returning to our communities will be permitted to do so.

Thank you for the opportunity to provide these comments on SB0494. I hope for your favorable consideration of this bill.

Best,



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Advancing Real Change, Inc.

⁵ *Miller v. Alabama*, 567 U.S. 460 (2012).

⁶ *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016).