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To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Carrie J. Williams
Office of the Attorney General

Re: SB494– Juveniles Convicted as Adults – Sentencing – Limitations and Reduction
(Juvenile Restoration Act) –**Support with Amendments**

The Office of the Attorney General urges the Judicial Proceedings Committee to add two perfecting amendments and then favorably report SB 494. The first amendment would permit the State to introduce evidence at the hearing on a motion to reduce the duration of a sentence. The second amendment would require victim notification, or, at minimum, evidence that attempts were made to notify the victim or his or her survivors.

Senate Bill 494 is a good faith attempt to take cognizance of recent Supreme Court jurisprudence establishing that under the U.S. Constitution children are different than adults and that, except for rare cases, it constitutes cruel and unusual punishment under the Eighth Amendment to impose life without the possibility of parole on a child.¹ These cases rest upon an emerging scientific consensus that children have both diminished culpability and a heightened capacity for rehabilitation. Relying heavily on Supreme Court guidance, SB 494 gives people sentenced for crimes committed as juveniles a second and third chance to demonstrate rehabilitation, and acceptance of responsibility through a newly-created motion for reduction of

¹ See e.g. *Tatum v. Arizona*, --- U.S. ---, 137 S.Ct. 11 (2016) (granting, vacating, and remanding in several cases where Arizona courts failed to consider individual circumstances of juveniles sentenced to life without parole); *Montgomery v. Louisiana*, 577 U.S. ---, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) (holding that *Miller v. Alabama* holding that Eighth Amendment mandatory life sentences without parole for juvenile offenders is a new substantive constitutional rule that was retroactive on state collateral review); *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) (mandatory life without parole for juvenile offenders is unconstitutional); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (Eighth Amendment prohibits imposition of life without parole sentence on a juvenile offender who did not commit homicide, and State must give juvenile nonhomicide offender sentenced to life without parole a meaningful opportunity to obtain release); and *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (prohibiting death sentences for those who committed their crimes before age 18).

sentence. Juveniles sentenced as adults would only be permitted to file such a motion after serving 20 years of their sentences. Even then, prior to reducing the sentence, a court would have to find that the individual is not a danger to the public, and that the interests of justice will be better served by a reduced sentence.

Senate Bill 494 also provides reviewing courts with factors to consider when determining whether to reduce a sentence. These factors include: (1) the individual's age at the time of the offense; (2) the nature of the offense and the history and characteristics of the individual; (3) whether the individual has substantially complied with the rules of the institution at which the individual is confined; (4) whether the individual has completed any educational, vocational, or other program; (5) whether the individual has demonstrated maturity, rehabilitation, and fitness to reenter society sufficient to justify a sentence reduction; (6) any victim impact statements offered; (7) reports of any physical or behavioral examinations by health professionals; (8) the individual's family and community circumstances at the time of the offense, including any history of trauma, abuse, or involvement in the child welfare system; (9) the extent of the individual's role in the offense; (10) *the diminished culpability of a juvenile as compared to an adult, including an inability to fully appreciate risks and consequences*; and (11) any other factor the court deems relevant.

If the court denies the first motion to reduce the duration of the sentence, the individual may file a second motion after at least three years. Thereafter, if the court denies the second motion, the individual may file a third and final motion to reduce sentence but by that time, the individual will have served *at least 26* years in prison.

Subject to the Committee's adoption of the below amendments, the Office of Attorney General urges a favorable report on SB 494, as amended.

Amendments:

- (1) Insert the following on page 2, line 21, “(5) THE STATE MAY INTRODUCE EVIDENCE IN SUPPORT OF, OR OPPOSITION TO, THE MOTION AT THE HEARING.”
- (2) Strike “AND” on page 2, line 28, and immediately thereafter insert “(II) THE VICTIM, OR THE VICTIM’S SURVIVORS, WERE NOTIFIED OF THE HEARING AND OFFERED AN OPPORTUNITY TO MAKE A STATEMENT; AND” thereafter making conforming changes to section (B)(2)(II).

cc: Committee Members