



1212 New York Ave. NW
Suite 900
Washington, D.C. 20005
202-525-5717

Free Markets. Real Solutions.
www.rstreet.org

Testimony from:

Emily Mooney, Policy Fellow, Criminal Justice & Civil Liberties, R Street Institute

In support of House Bill No. 409, “AN ACT concerning Juveniles Convicted as Adults-Sentencing-Limitations and Reduction (Juvenile Restoration Act).”

January 21, 2021

House Judiciary Committee

My name is Emily Mooney, and I am a resident criminal justice policy fellow at the R Street Institute, which is a nonprofit, center-right public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government. As part of this mission, our Criminal Justice and Civil Liberties team focuses on evaluating policies related to criminal justice and the juvenile justice systems as well as ways of effectively reintegrating the formerly incarcerated into society. Therefore, HB 409 is of special interest to us.

The Supreme Court has repeatedly ruled that sentencing a young person to a lifetime of imprisonment without any potential for parole, thus declaring them incorrigible and incapable of rehabilitation, flies in the face of the Constitution’s ban on cruel and unusual punishment due to the diminished culpability of a child.¹ Representing the majority opinion in *Graham v. Florida*, the late Supreme Court Associate Justice Anthony Kennedy argued that a sentence of life without parole for a nonhomicide offense is not adequately justified by any of the major penological theories—neither retribution, deterrence, incapacitation, nor rehabilitation provide a sufficient rationale.² And in *Miller v. Alabama*, Associate Justice Elena Kagan reaffirmed the unique developmental facts of childhood—namely, a young person’s proclivity to make rash decisions, dismiss risk, and fail to assess the consequences of their actions—means the same is true for youth convicted of homicide.³ Fortunately, a young person’s developmental

¹ See *Miller v. Alabama* 567 U.S. 460 (2012). <https://www.oyez.org/cases/2011/10-9646>; *Graham v. Florida* (2010). <https://www.oyez.org/cases/2009/08-7412>; and *Montgomery v. Louisiana* 136 S. Ct. 718, 735 (2016). <https://www.oyez.org/cases/2015/14-280>.

² *Graham v. Florida*, 560 U.S. 48 (2010). <https://supreme.justia.com/cases/federal/us/560/48/#tab-opinion-1963305>.

³ *Miller v. Alabama* (2012). <https://www.oyez.org/cases/2011/10-9646>.

stage also means that children have an especially large capacity for change and are better candidates for rehabilitation when compared to adults.

Yet Maryland has continued to sentence young people to life without parole. As of December 2020, thirteen individuals will spend their entire adult lives behind bars for a mistake they made as a child.⁴ And hundreds more Marylanders will in effect see the same result because of Maryland's current parole system.⁵

By ending the practice of sentencing children to life without a chance of parole and allowing those sentenced as an adult for an offense committed in their youth the opportunity to have their sentence reduced after serving 20 years and proving their rehabilitation to the court, HB 409 presents a critical opportunity to bring Maryland into adherence with Supreme Court precedent and reinstate morality into Maryland's penal system.

It also presents a chance for lawmakers to reiterate their commitment to fiscal responsibility. At an annual price tag of approximately \$46,000 per person, incarceration is not cheap.⁶ The healthcare costs associated with housing older incarcerated individuals further add to this cost.⁷ Consider that, in the fiscal year 2021 budget, the Department of Public Safety and Correctional Services claimed just under \$1.5 billion of state general and special funds.⁸ And individual correctional facilities demand tens to over a hundred million dollars of general funds each year.⁹ Allowing men and women convicted as an adult for offenses committed as a minor the opportunity to be granted parole or be given a reduced sentence, assuming the court determines they are no longer a threat to society, would allow the state to save precious resources.

But most importantly, HB 409 encourages second chances and signals that all youth are worthy of an opportunity for redemption. By mandating that the court consider an individual's behavior behind bars, their maturity and any steps they have taken to improve themselves—alongside the nature of the offense and the thoughts of a victim—this bill ensures the court weighs both the opinion of survivors of crime and the notions of parsimony and rehabilitation.

⁴ Margaret Martin Barry, "No Place for Redemption in Maryland's Criminal System," *Maryland Matters*, Dec. 30, 2020. <https://www.marylandmatters.org/2020/12/30/opinion-no-place-for-redemption-in-marylands-criminal-system>.

⁵ *Ibid.*

⁶ Margaret Martin Barry, "Governor Should Be Removed From the Parole Process," *Maryland Matters*, Dec. 31, 2020. <https://www.marylandmatters.org/2020/12/31/opinion-governor-should-be-removed-from-the-parole-process>.

⁷ Matt McKillop and Alex Boucher, "Aging Prison Populations Drive Up Costs," Pew Charitable Trusts, Feb. 20, 2018. <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>.

⁸ Larry Hogan et al., "Exhibit C: Summary of Operating Budget Appropriations," in *Fiscal Digest of the State of Maryland for the Fiscal Year 2021*, July 15, 2020, p. C. 21. <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/024600/024633/20200419e.pdf>.

⁹ *Ibid.*

Ultimately, research suggests the overwhelming majority of juvenile individuals convicted to life with or without parole can successfully return to society at some point. A study by Montclair State University found that only 1 percent of the 174 juvenile lifers released from Philadelphia during the study period were reconvicted.¹⁰ In the meantime, releasing these individuals was projected to save millions of dollars in correctional costs.¹¹

Maryland is far from a leader on this topic. Twenty-three states and the District of Columbia already ban life without parole for juveniles, and six additional states have in effect banned the practice with no individuals currently serving a sentence for juvenile life without parole.¹² The R Street Institute believes that by supporting H.B. 409—The Juvenile Restoration Act—policymakers may better promote the interests of justice, morality, rehabilitation and public safety.

Thank you for your time,

Emily Mooney
R Street Institute
emooney@rstreet.org

¹⁰ Tarika Daftary-Kapur and Tina M. Zottoli, “Resentencing of Juvenile Lifers: The Philadelphia Experience,” Montclair State University, 2020, p. 2. <https://www.msudecisionmakinglab.com/philadelphia-juvenile-lifers>.

¹¹ Ibid.

¹² “States that Ban Life without Parole for Children,” The Campaign for the Fair Sentencing of Youth, Feb. 24, 2020. <https://cfsy.org/media-resources/states-that-ban-life>.