

Testimony in SUPPORT OF HB 409 – Juvenile Restoration Act

Submitted by

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The **Re-Entry Clinic at the American University Washington College of Law** represents child offenders serving life sentences in Maryland prisons. Through its work, the Clinic is acutely familiar with the harsh sentences child offenders face, verging on *de facto* life without parole, and the impact that such sentences have on clients and their families. Thus, the Clinic strongly SUPPORTS passage of HB 409.

In Maryland, children convicted of first-degree murder face a mandatory sentence of life imprisonment, and the potential of life without the possibility of parole. Even those who receive life sentences *with* the possibility of parole, however, confront a dire reality—given the operation of Maryland’s parole process, the likelihood of being granted parole, even after decades of incarceration, is slim.

Re-Entry Clinic clients fall victim to this reality. Upon their first meeting of the semester, one such client, “David” (not his real name), offered advice to the student attorneys who would take the lead in preparing him for his *fifth* parole hearing: “remember to have patience.” David has been incarcerated for nearly four decades and satisfies many of the criteria needed to receive parole—he has family support, earned a GED and a college degree, and has demonstrated over the years that his remorse is sincere. As David awaits yet another decision on his parole application, he is required to have faith in a system that is unpredictable, opaque, and unjustifiably slow. Despite his record, this system is also disinterested in the fact that he is immune compromised and has contracted the COVID-19 virus.

According to the Campaign for the Fair Sentencing of Youth, there are approximately 400 people in Maryland’s prisons who were sentenced as children who would be immediately eligible for an opportunity to have their sentences reviewed if HB 409 is passed. Shamefully, 87% of them are Black; 114 of them are over 50 years old. Among those in Maryland sentenced to life without

parole while they were still children, 82% are Black—the worst racial disparity of its kind in the entire U.S.

Maryland’s harsh treatment of child offenders is out of step with and functionally contrary to what we know about child culpability and what constitutional law has recognized in this regard. The Supreme Court acknowledged the effect of children’s brain development with regard to culpability in the landmark cases of *Roper v. Simmons*,¹ *Graham v. Florida*,² and *Miller v. Alabama*.³ *Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, “they are less deserving of the most severe punishments.”⁴ In *Miller*, the Court acknowledged that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”—for example, in “parts of the brain involved in behavior control.”⁵

In each of these cases, the Court relied on the Eighth Amendment of the United States Constitution, which prohibits the infliction of cruel and unusual punishment. Our Eighth Amendment rights stem from the “basic ‘precept of justice that punishment for crime should be graduated and proportioned’ to *both the offender and the offense*.”⁶ (emphasis added). The concept of proportional justice, as explained by the Court, is not to be viewed through a stagnant, historical

¹ *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that the death penalty cannot be imposed upon juvenile offenders).

² *Graham v. Florida*, 560 U.S. 48 (2010) (holding that sentencing a juvenile to life imprisonment without parole for a nonhomicide offense constituted cruel and unusual punishment).

³ *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that mandatory sentencing schemes requiring life imprisonment without the possibility of parole for juveniles convicted of murder violate the Eighth Amendment).

⁴ *Graham*, 560 U.S. at 49-50 (describing the “limited culpability” of child offenders).

⁵ *Miller*, 567 U.S. at 471-72 (highlighting that children possess lessened “moral culpability” and the enhanced prospect that as neurological development occurs, rehabilitation is possible).

⁶ *Id.* at 469 (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)).

prism, rather according to “the evolving standards of decency that mark the progress of a maturing society.”⁷

Maryland must respond to the indisputable data before it. The science not only makes clear that a child’s cognitive abilities are profoundly shaped during the early years of life, but also that, as time progresses, the adolescent brain is highly vulnerable to risky decision making, especially in an aroused emotional state.⁸ Experts now consider the adolescent brain period to extend well beyond the years of physical maturing—up to a decade or more after the onset age of puberty, which is twelve years old in the United States.⁹

Furthermore, the child who experiences trauma is all the more likely to exhibit the risky behaviors and poor decision making that other children exhibit. Recent research indicates that the first five years of life are acutely important for the development of a child’s brain, and even more so, the first three years fundamentally shape a child’s brain construction.¹⁰ When a child experiences trauma early in life, “grave psychosocial, medical, and public policy problem[s]” result.¹¹ It is predictable then, that up to ninety percent of justice-involved youth report exposure to some type of trauma during childhood.¹²

⁷ *Trop v. Dulles*, 356 U.S. 86, 100-01(1958).

⁸ Ronald Dahl, *Adolescent Brain Development: A Period of Vulnerabilities and Opportunities*, Ann. N.Y. Acad. Sci., 1021(2004)
<https://nyaspubs.onlinelibrary.wiley.com/doi/10.1196/annals.1308.001>.

⁹ *Id.*

¹⁰ *Child Development and Early Learning*, UNICEF <https://www.unicef.org/ffl/03/>.

¹¹ Michael D. De Bellis & Abigail Zisk, *The Biological Effects of Childhood Trauma*, Child Adolesc Psychiatr Clin N Am. 2014 Apr; 23(2): 185–222
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3968319/>.

¹² Carly B. Dierkhising et al., *Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network*, Eur J Psychotraumatol. 2013; 4
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3714673/> (“ . . . justice-involved youth report

The purposes of punishment—retribution, deterrence, and rehabilitation—are not adequately served when we lock children up and throw away the key. Because child offenders commit crimes before full brain development occurs, their likelihood of rehabilitation is unique, and their chances of recidivism are low. A 2020 study found a recidivism rate of just over one percent among people who were sentenced as juveniles in Philadelphia to life without the possibility of parole and then later released.¹³ This one percent recidivism rate reiterates what the science has consistently told us—people age out of criminal behaviors and exacting sentences fail to deter crime.¹⁴

As society matures, so must our laws. Sentencing children under a “mandatory maximum” theory not only defies scientific reality, but also reflects antiquated and unenlightened thinking contrary to the “progress” repeatedly called for by the Supreme Court. The state of Maryland can and should do better—to both protect the community and ensure allegiance to the basic precepts of justice. We should take what we know about their culpability into account in sentencing children, and we need to resentence those child offenders serving sentences well beyond what is just. For these reasons, we urge you to pass HB 409.

high rates of trauma exposure and . . . this trauma typically begins early in life, is often in multiple contexts, and persists over time.”).

¹³ [New Study Finds 1% Recidivism Rate Among Released Philly Juvenile Lifers](https://www.montclair.edu/newscenter/2020/04/30/new-study-finds-1-recidivism-rate-among-released-philly-juvenile-lifers/), MONTCLAIR STATE U. <https://www.montclair.edu/newscenter/2020/04/30/new-study-finds-1-recidivism-rate-among-released-philly-juvenile-lifers/>.

¹⁴ *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (“The need for incapacitation is lessened, too, because ordinary adolescent development diminishes the likelihood that a juvenile offender ‘forever will be a danger to society.’”) (quoting *Graham*, 560 U.S. at 72); *Miller*, 567 U.S. at 472 (finding that the deterrence rationale likewise does not suffice, since “the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment”).