



The **CAMPAIGN** for the
FAIR SENTENCING
of **YOUTH**

BILL: HB 409

TITLE: Juveniles Convicted as Adults – Sentencing – Limitations and Reduction (Juvenile Restoration Act)

DATE: January 21, 2021

POSITION: SUPPORT

COMMITTEE: House Judiciary Committee

CONTACT: Preston Shipp (pshipp@fairsentencingofyouth.org)

Chair Clippinger, Vice Chair Atterbeary, and distinguished members of the Judiciary Committee:

The Campaign for the Fair Sentencing of Youth respectfully submits this testimony for the official record to express our **SUPPORT for HB 409**. We are grateful to Delegate Lewis for his leadership and to the committee members for their time and consideration. We are excited that Maryland has this opportunity to become the 25th state in the country to abolish life without the possibility of parole for people who were under the age of 18 when they committed their crimes. We urge the Committee members to vote in favor of HB 409 because it will provide opportunities for release to people who, despite their youth, became involved in the adult criminal justice system, to demonstrate rehabilitation and suitability for a second chance at life outside prison walls. This is a crucial step in upholding the constitutional and human rights of young people in Maryland and an opportunity for Maryland to join the 24 other states, plus the District of Columbia, that have all banned the practice of sentencing children to die in prison.

The Campaign for the Fair Sentencing of Youth (“CFSY”) is a national coalition and clearinghouse that coordinates, develops, and supports efforts to implement age-appropriate alternatives to the extreme sentencing of America’s youth with a focus on abolishing life-without-parole and life-equivalent sentences for all children. We collaborate with policymakers, national and community organizations, and individuals directly impacted by these policies to develop solutions that keep communities safe while providing opportunities for children to reintegrate into society after demonstrating rehabilitation.

Prior to working for the CFSY, I spent several years working as a prosecutor in the Tennessee Attorney General’s Office. Serving as a prosecutor gave me a unique perspective on the criminal justice system. I have seen things the system does well, and I have witnessed aspects where there is a great deal of room for improvement. One of the most glaring areas in need of reform is

juvenile sentencing.

Background

The United States is the only country in the world in which a child may be condemned to die in prison. In the 1980s and 1990s, tough-on-crime rhetoric was widely employed at the federal level and trickled down to the states. The term “superpredator” was coined to describe a new kind of mythical young criminal, incapable of remorse or rehabilitation. As a result of this flawed logic, which has since been debunked and repudiated by its former proponents, policies were enacted that led increasing numbers of children to be tried as adults and given extreme sentences, including life in prison without the possibility of parole. Under this framework, we betray some of our best and most cherished values, such as our belief in redemption and second chances and our concern for the well-being and positive development of all children. Rather than invest in the rehabilitation of children who caused harm, we effectively told them with these policies that it did not matter what they did over the next ten, fifteen, twenty, or thirty years. There was no hope for them. They were thrown away based on the worst moment of their young lives without regard for the great potential that young people have to make positive change.

United States Supreme Court Decisions

Fortunately, throughout the last decade, the United States Supreme Court has repeatedly concluded that children are constitutionally different from adults for the purpose of criminal sentencing, and our policies must take these fundamental differences into account. In *Roper v. Simmons* (2005), the Court struck down the death penalty for children, finding that it violated the Eighth Amendment’s prohibition against cruel and unusual punishment.¹ The Court emphasized empirical research demonstrating that children are developmentally different than adults and have a unique capacity to grow and change as they mature.² In *Graham v. Florida* (2010), the Court struck down life-without-parole sentences for non-homicide offenses, holding that states must give children a “realistic opportunity to obtain release.”³ In *Miller v. Alabama* (2012), the Court struck down life-without-parole sentences for most homicide offenses, and ruled that sentencing courts must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” any time a child faces a potential life-without-parole sentence.⁴

In 2016, the Supreme Court ruled in *Montgomery v. Louisiana* that its decision in *Miller v. Alabama* applies retroactively to individuals serving life without parole for crimes they committed while under age eighteen. As the Supreme Court explains in *Montgomery*, the *Miller* decision “did more than require a sentencer to consider a juvenile offender’s youth before imposing life without parole; it established that the penological justifications for life without

¹ *Roper v. Simmons*, 543 U.S. 551 (2005).

² *Id.*

³ *Graham v. Florida*, 130 S. Ct. 2011 (2010).

⁴ *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

parole collapse in ‘light of the distinctive attributes of youth.’”⁵ Additionally, considering youth-related mitigating factors at the time of sentencing may be insufficient to protect against unconstitutional sentences if judges improperly evaluate an individual’s capacity for rehabilitation. The Court held that “[e]ven if a court considers a child’s age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects “unfortunate yet transient immaturity.””⁶ For the vast majority of children, therefore, life without parole is an unconstitutional sentence. The Court noted, “*Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility . . . *Miller*’s conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders raises a grave risk that many are being held in violation of the Constitution.”⁷ By preserving life-without-parole sentences for children, states expose themselves to *Miller* and *Montgomery* violations each time a child is charged with murder. Based on juvenile brain science and the demonstrated potential all children have for rehabilitation, the CFSY believes it is impossible for courts to accurately predict that a fourteen-, fifteen-, sixteen-, or seventeen-year-old child is “irreparably corrupt.”

HB 409 takes three crucial steps toward constitutional compliance for youth convicted of serious crimes by abolishing life without the possibility of parole for children, providing a meaningful opportunity for review after service of twenty years, and setting forth the factors particular to youth to be considered at the time of the review.

Adolescent Developmental Research

As the United States Supreme Court has noted, empirical research has demonstrated that adolescent brains are not fully developed. Parents and educators have long known from personal experience that the adolescent brain does not fully mature until the mid-to-late twenties. Compared to adults, youth are less capable than adults in long-term planning, regulating emotion, impulse control, and evaluating the risks and consequences of their conduct.⁸ Additionally, youth as a whole are more vulnerable, more susceptible to peer pressure, and more heavily influenced by their surrounding environment, which they rarely can control.⁹ The majority of our laws reflect adolescents’ diminished decision-making capacity. We do not permit people under the age of 18 to vote, serve on juries or in the military, get married, enter into contracts, or purchase alcohol or tobacco. Yet our criminal laws uniquely treat them as adults.

Additionally, because the adolescent brain is still developing, children possess a unique capacity¹⁰ for positive change. The majority of children who commit crimes outgrow their illicit behavior,

⁵ *Montgomery v. Louisiana*, No. 14-280, slip op. at 16 (2016), http://www.supremecourt.gov/opinions/15pdf/14-280_4h25.pdf

⁶ *Id.* at 16-17.

⁷ *Id.* at 20.

⁸ Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, Laurence Steinberg and Elizabeth Scott, *American Psychologist*, December, 2003.

⁹ *Id.*

¹⁰ *Id.*

which means long prison sentences without parole eligibility prematurely abandon hope for many youth who would likely mature into contributing members of society. A recent study found that among former juvenile-lifers who have been released pursuant to changes in the law, the rate of recidivism is a mere 1 percent.¹¹ All around the country, we see people, who were once told as children that they had no hope for the future but to die in prison, experiencing dramatic transformation and living abundant, successful lives when they are given the opportunity of a second chance. Many individuals who were sentenced to lengthy prison terms as youth currently contribute meaningfully to society by mentoring at-risk youth and helping individuals transition back to society after incarceration. CFSY's Incarcerated Children's Advocacy Network ("ICAN") was created by and is composed of formerly incarcerated youth that are living testimonies of young people's capacity for change.¹²

Demographics of Youth Serving Life Without Parole

By sentencing youth under eighteen to life in prison without parole, we as a society are condemning children to die in prison. We throw them away for the rest of their lives for their worst adolescent acts rather than allowing them to demonstrate their capacity to grow and change. These children are regularly victims themselves long before becoming perpetrators of violence. Nationally, almost 80 percent of these youth witnessed violence in their homes and over half experienced violence weekly in their own neighborhoods.¹³ Half were physically abused and 20 percent were sexually abused.¹⁴

In addition to failing to protect these children before they commit crimes, the criminal justice system also fails to treat these children fairly at sentencing. Nationally, African-American youth are sentenced to life in prison without parole at a per capita rate of ten times that of their white counterparts for the same crime.¹⁵ In Maryland, the racial disparity is particularly egregious: 82 percent of the people serving juvenile life without parole are Black, the highest proportion in the nation. And 87 percent of the people who have served in excess of twenty years for crimes they committed as children, and would therefore be immediately eligible for sentencing review under HB 409, are Black.

While most expect that the harshest penalty is reserved for the most severe offenders, almost two-thirds of youth sentenced to life in prison without parole were involved in the criminal

¹¹<https://medium.com/philadelphia-justice/new-study-finds-1-recidivism-rate-among-released-philly-juvenile-lifers-607f19d6d822>

¹² Incarcerated Children's Advocacy Network, <http://fairsentencingofyouth.org/incarcerated-childrens-advocacy-network/>

¹³ Ashley Nellis, The Sentencing Project (2012). *The Lives of Juvenile Lifers*. Available at http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf

¹⁴ *Id.*

¹⁵ Human Rights Watch (2008). Submission to the Committee on the Elimination of Racial Discrimination. <http://www.hrw.org/en/reports/2008/02/06/submission-committee-elimination-racial-discrimination-0>

justice system for the first time.¹⁶ A quarter of those serving this sentence were convicted of felony murder, in which they had no intention to kill anyone.¹⁷

National and International Perspective

Sentencing children to die in prison directly violates Article 37 of the United Nations Convention on the Rights of the Child, which prohibits the use of “capital punishment and life without the possibility of release” as sentencing options for people younger than 18.¹⁸ The United States is the only country in the world that has not yet ratified this treaty.¹⁹ One of the main reasons for its refusal to do so is it still sanctions life-without-parole sentences for children.

Maryland currently has the opportunity to join the growing number of states who have banned the practice of sentencing children to die in prison and are committed to giving youth a second chance. In the last eight years, states as diverse as Texas,²⁰ West Virginia,²¹ Hawaii,²² Wyoming,²³ Delaware,²⁴ Massachusetts,²⁵ Connecticut,²⁶ Vermont,²⁷ Nevada,²⁸ Utah,²⁹ South Dakota,³⁰ Iowa,³¹ Oregon, the District of Columbia,³² Virginia,³³ and as of earlier this month, Ohio,³⁴ have eliminated the practice of sentencing children to die in prison. Maryland can look to these states as examples of how to hold youth accountable for serious crimes in age-appropriate ways, acknowledging children’s potential to make dramatic positive change.

National organizations have expressed strong opposition to life-without-parole sentences for juveniles. The American Bar Association passed a resolution calling for states to eliminate life without parole as a sentencing option for youth, both prospectively and retroactively, and to “provide youthful offenders with meaningful periodic opportunities for release based on demonstrated maturity and rehabilitation.”³⁵ The American Correctional Association, American Probation and Parole Association, and the National Association of Counties have passed similar

¹⁶ Amnesty International & Human Rights Watch (2005), *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*. Available at <http://www.hrw.org/reports/2005/us1005/TheRestofTheirLives.pdf>

¹⁷ *Id.*

¹⁸ U.N. Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁹ *Id.*

²⁰ S.B. 2, 83rd Leg., Special Sess. (Texas 2013).

²¹ HB, 4210, 81st Legislature, 1st Sess. (W. Virg. 2013).

²² H.B. 2116, 27th Leg. (Hawaii 2014).

²³ H.B. 23, 62nd Leg., Gen. Sess. (Wy. 2013).

²⁴ S.B. 9, 147th Gen. Assemb., Reg. Sess. (Del. 2013).

²⁵ H 4307, 188th Gen. Court (Mass. 2014).

²⁶ S.B. 796, 2015 Reg. Sess. (Conn. 2015).

²⁷ H. 62, 2015 Reg. Sess. (Vt. 2015).

²⁸ A.B. 267, 78th Leg., Gen. Sess. (Nv. 2015).

²⁹ H.B. 405, 61st Leg., Gen. Sess. (Ut. 2016).

³⁰ S.B. 140, 2016 Reg. Sess. (SD. 2016).

³¹ *Iowa v. Sweet*, No. 14-0455 (Iowa May 27, 2016).

³² Comprehensive Youth Justice Amendment Act of 2016, B 21-0683; pending U.S. Congressional Review.

³³ H.B. 35, 2020 Reg. Sess. (Va. 2020)

³⁴ S.B. 256, 133rd Gen. Assemb. (Ohio 2020)

³⁵ Resolution 107C, American Bar Association (Feb. 2015). Available at <http://fairsentencingofyouth.org/resolutions-against-life-without-parole/>

resolutions.³⁶ Organizations including the American Psychological Association, the National Association of School Psychologists, the National Association of Social Workers, and the National Parent Teacher Association support ending life without parole for youth.³⁷

Costs to Society and Victims

In addition to the human rights and constitutional concerns for Maryland to enact HB 1437, the state must also consider the financial impact and loss of human capital. In the United States, it costs approximately \$2.5 million to incarcerate a child for the duration of his or her life.³⁸ In contrast, a child with a high school education who is paroled after serving ten years could potentially contribute \$218,560 in tax revenue.³⁹ With a college degree, a formerly incarcerated child can potentially contribute \$706,560 in tax revenue over his or her lifetime.⁴⁰ These estimates do not include the contributions that these individuals will make to the local economy, support for their families, and the impact they can have on future generations as role models for at-risk youth. Criminal justice reform is sound policy that protects public safety while allowing formerly incarcerated youth to tangibly repay society with positive contributions.

Finally, the CFSY has deep concern for those who bear the greatest costs of any criminal justice policy—the loved ones of victims who have died due to violence. Our hearts go out to those who have been hurt by youth, and we work closely with victims’ family members who engage in restorative justice efforts to promote healing. We recognize that in many communities, families may have both loved ones hurt by violence and loved ones incarcerated for committing violent acts. We strongly encourage that the costs saved be redirected to improve support services for victims and their families and improve violence prevention programs.

Personal Perspective

As I mentioned earlier, prior to serving as Senior Policy Counsel for the CFSY, I spent several years working as a prosecutor in the Tennessee Attorney General’s Office. In fact, I went to law school for the sole purpose of becoming a career prosecutor. Several years into my career, I was invited by one of my old university professors to teach a law class in conjunction with an innovative new college prison program. This marked my first opportunity to regularly engage, outside a courtroom, with people who were incarcerated. I was amazed at what I discovered. Several of the people in my class were serving lengthy sentences, including life without the possibility of parole, for offenses they committed when they were under the age of 18. And while each one of them was profoundly gifted and had invested in their own rehabilitation, they

³⁶ Resolution 2014-1, American Correctional Association (Aug. 2014); Resolution, National Association of Counties (July 2014); Resolution, American Probation and Parole Association (Feb. 2015). All available at <http://fairsentencingofyouth.org/resolutions-against-life-without-parole/>

³⁷ Official Supporters to the Statement of Principles for the Campaign for the Fair Sentencing of Youth. Available at <http://fairsentencingofyouth.org/about/who-we-are/>

³⁸ *The Mass Incarceration of the Elderly*, ACLU, June 2012. Available at: https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf

³⁹ *The Fiscal Consequences of Adult Educational Attainment*, National Commission on Adult Literacy. Retrieved from: <http://www.nationalcommissiononadultliteracy.org/content/fiscalimpact.pdf>

⁴⁰ *Id.*

often had no meaningful opportunity to demonstrate their transformation and suitability for a second chance. Such is the nature of life without the possibility of parole and other extreme sentences that we impose against teenagers.

Over the past fourteen years, I have taught several more times in the prison program. One of the most basic, but life-changing lessons that has consistently been brought home to me is that people are more than their worst mistake. Young people in particular have profound rehabilitative potential. Because their brains are still developing, they can experience dramatic positive transformation, move beyond their worst moment, and live healthy, productive lives. I never imagined when I started my career as a prosecutor that I would one day be an advocate for juvenile sentencing reforms such as HB 409. But I have come to understand that for justice to be done, when we recognize that a person has been rehabilitated, especially a person who was sentenced as a child, we must provide them with a meaningful opportunity to demonstrate their suitability for release.

As someone who has prosecuted hundreds of cases, I continue to place great value on public safety and concern for the rights and healing of victims. But justice is not a zero-sum game in which we are able to only concern ourselves with one side of the equation. These priorities must be balanced with other cherished values, such as our beliefs in redemption and second chances and our concern for the well-being and positive development of all children. The need for age-appropriate sentencing does not offend our commitments to victims and public safety, given how many of these young offenders were themselves victims of violence and the overwhelming success they enjoy when they receive a second chance.

I have seen the importance of hope and the value of a chance at redemption both in the students in the college prison program and in the members of the CFSY's Incarcerated Children's Advocacy Network. My friends and colleagues Eddie Ellis, Eric Alexander, Xavier McElrath-Bey, Catherine Jones, Marshan Allen, Ashlee Sellars, Sarah Bryant, and so many other formerly incarcerated individuals serve as shining examples of how children, even those who have committed or been involved in violent crimes, can transcend their darkest moments and go on to make beautiful contributions to society by mentoring at-risk youth, helping individuals transition back to society after incarceration, serving as schoolteachers and substance abuse counselors, leading restorative justice initiatives, and raising loving families. These fine people, once regarded as deserving nothing more than a prison cell based on the harm they caused, are living testimonies of young people's capacity for change. We need juvenile sentencing policies like those set forth in HB 409 that do not consign a child to permanent punishment, but instead leave room for their promise.

I am grateful for the opportunity to represent the Campaign for the Fair Sentencing of Youth in supporting HB 409. Maryland can look to states such as Arkansas, Ohio, West Virginia and Wyoming as examples of how to hold youth accountable for serious crimes in age-appropriate ways, acknowledging their potential to make dramatic positive change. HB 409 balances the needs to protect the community from safety threats, to ensure justice for victims, and to rehabilitate incarcerated individuals to rejoin society as productive contributors. I have learned that no act as a teenager should destine a person to die in prison with no meaningful opportunity

for review of who the person goes on to become and whether the person has experienced rehabilitation.

Closing

HB 409 is about hope. It is rooted in the beliefs that no child is born bad, all children, without exception, are deserving of our compassion and concern, and no child should ever be told that they have no hope but to die in prison. While recognizing that children are the most vulnerable members of our society and simultaneously our most valuable resource for building a bright future, and must therefore be held accountable in age-appropriate ways that focus on rehabilitation, HB 409 also ensures that the rights and well-being of victims are respected and the community is protected from safety threats. We are all of us more than our worst moment, so we must have in place sentencing policies, particularly for children, that create opportunities for redemption. We ask you to support HB 409 and give these youth the opportunity to demonstrate that they can change for the better.

Thank you,

Preston Shipp
Senior Policy Counsel
The Campaign for the Fair Sentencing of Youth