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SENTENCING COMMISSION

NOVEMBER 8, 2012

LEGISLATION CONCERNING SENTENCE MODIFICATION FOR JUVENILES

Dear Chairman Shortall, Chairman Lawler and distinguished members of the Sentencing Commission:

We are psychologists who treat and evaluate patients in Connecticut, and/or engage in research and teaching. We testify in support of legislation to provide review of lengthy adult sentences imposed on juveniles. Review of such sentences is supported by a well-established body of research and specifically endorsed by the American Psychiatric Association ("APA").

I. Psychological and Physiological Differences between Children and Adults

In two recent cases about the constitutional limits of punishment of children, the U.S. Supreme Court has emphasized that children are both less culpable than adults, and more capable of change than adults.ⁱ In reaching these conclusions, the Court has relied heavily on an ever-growing body of research in developmental psychology and neuroscience. This research establishes critical differences between adults and children. In particular, compared to adults, adolescents are:

- less able to control their impulses;
- less capable of considering alternative courses of action and avoiding risky behaviors;
- less able to envision the future and appreciate the long-term consequences of their actions; and
- more susceptible to outside influences, including peer pressure.ⁱⁱ

Thus, adolescents are less capable of making mature judgments and decisions than adults, especially in social situations in which they are most likely to be exposed to criminal activity. Because adolescents are still maturing and changing, their crimes often reflect qualities of youth, rather than permanently bad characters. Indeed, as the Supreme Court has recognized, "[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."ⁱⁱⁱ

Recent advances in neuroscience suggest a physiological basis for the behavior of adolescents. Adolescent brains are not fully formed: the brain regions that govern impulse control, risk avoidance, planning ahead, and regulation of emotion continue to mature throughout adolescence. Significantly, different areas of the brain develop at different times. The prefrontal cortex—the part of the brain that exercises executive functions and impulse control—is one of the last regions of the brain to fully mature. However, adolescence is a period marked by rapid development in the “incentive processing system” of the brain, involving neurotransmitters such as dopamine. These brain structures are related to reward-seeking and risk-taking behavior and activities. Thus, the rapid-pubertal changes outpace the slower developing changes to the areas relating to executive function and self-control. This disjunction between these developmental processes helps explain the familiar features of observed adolescent behavior including risk-taking activities, lack of impulse control, and poor judgment.

II. The Need for Review of Long Sentences Imposed on Children

In 2011, the American Psychiatric Association published an official Position Statement on juveniles and long-term sentences.^{iv} In the statement, the APA affirmed the “undesirability of long-term mandatory sentences without possibility of parole for offenders who were younger than 18 at the time of the offense” on the ground that “[s]uch sentences fail to take account of the significant prospects of maturation and rehabilitation for most youthful offenders, even those convicted of serious offenses.” The APA urged states to “require reviews for all juvenile offenders who are sentenced to lengthy mandatory terms of imprisonment.” The review should:

- take place within a reasonable period of time after sentencing and periodically thereafter;
- include evaluations by qualified mental health professionals when an offender’s current developmental maturity or mental health status are relevant to the reviews;
- be conducted by mental health professionals trained to evaluate children and adolescents for offenders still under age 18; and
- include a thorough review of the offender’s developmental, educational, legal, social, medical, mental health, and substance abuse histories; and interviews with knowledgeable informants, including family members; and additional testing when needed.

Reviewing long sentences imposed on children is necessary because children change as they mature and grow. Because adolescent conduct is related to lack of development, it is simply not possible to determine at the time of sentencing that a juvenile is incapable of change. On the contrary, adolescents are especially likely to reform and rehabilitate because they will inevitably mature as they age. Personality traits change significantly during the developmental transition from adolescence to adulthood, leaving the process of identity-formation incomplete until at least the early twenties. The result is that adolescents’ criminal conduct often results from experimentation, not from a deep-seated moral deficiency reflective of bad character. This remains true even in the most serious of crimes, with recent studies verifying that there is no correlation between a youthful homicide offense and the basic psychological measures of persistent antisocial personality, such as cruelty to people and callous-unemotional behavior.¹

Consequently, there is simply no reliable way to determine that a juvenile's offenses are the result of an irredeemably corrupt character. This means that there is no reliable way to conclude at the time of sentencing that a juvenile—even one convicted of homicide—should be sent to prison with no chance to demonstrate rehabilitation. We cannot predict at the time of sentencing what kind of adults these children will become. For these reasons, we strongly support a “second look” at these cases after a portion of the sentence is served.

¹ See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 130 S. Ct. 2011 (2010).

² See Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 *Ann. Rev. Clinical Psychol.* 47, 55–56 (2008) (adolescents are less capable to control their impulses and less able to envision the future and apprehend the consequences of their actions); Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood*, 41 *Developmental Psychol.* 625, 626–634 (2005) (exposure to peer pressure can double the amount of risky behavior engaged in by adolescents).

³ *Roper*, 543 U.S. at 570.

⁴ American Psychiatric Association, Official Action: Position Statement on Review of Sentences for Juveniles Serving Lengthy Mandatory Terms of Imprisonment, http://www.psych.org/lib_archives/archives/ps2011_juvenilesentences.pdf (last accessed 3/7/12).

⁵ Rolf Loeber & David Farrington, *Young Homicide Offenders and Victims: Risk Factors, Prediction, and Prevention from Childhood* 158 (2011).