

**Testimony in Support of
Recommendations to Eliminate Mandatory Sentences of Life Without Parole for Juveniles
and to Increase Parole Eligibility for Juveniles Sentenced to Lengthy Terms of
Imprisonment**

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Connecticut Sentencing Commission
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Justice Borden, distinguished members of the Sentencing Commission,

I am testifying today on behalf of Connecticut Voices for Children, a research-based public education and advocacy organization that works statewide to promote the well-being of Connecticut's children, youth, and families.

We urge this Commission to adopt recommendations that would bring Connecticut into compliance with the Supreme Court's decision in *Miller v. Alabama* by eliminating mandatory life without parole sentences for juveniles, as provided in SB 1062 of the 2013 legislative session, and directing judges to consider the "mitigating qualities of youth" when imposing lengthy sentences on juveniles.

We further urge this commission to adopt recommendations that would establish a "second look" at long adult sentences for juveniles after they have served a substantial portion of their time, as was provided in HB 6581 of the 2013 legislative session. This bill was approved by the Connecticut House of Representatives in the 2013 legislative session by a vote of 137-4.

Both of these bills have received the support of the Connecticut Sentencing Commission prior to the 2013 legislative session.

With the spread of magnetic resonance imaging (MRI) and exhaustive studies conducted over the last two decades, a scientific consensus has emerged that children's brains are not fully developed until far into their twenties, and that the last features to develop are those that control judgment, decision-making, and proper understanding of the consequence of actions.² This information about teenage brain development ought to have significant impact on how we view young people's culpability, competency, and potential for rehabilitation, and therefore how the courts try and sentence juveniles.

¹ Mr. Handler is a student at Yale Law School. This testimony was prepared through the Yale Law School Legislative Advocacy Clinic under the supervision of J.L. Pottenger, Jr., Nathan Baker Clinical Professor of Law, Shelley Geballe, Distinguished Senior Fellow at Connecticut Voices for Children and Clinical Visiting Lecturer at Yale Law School, and Ellen Shemitz, Executive Director at Connecticut Voices for Children. This testimony was adapted from testimony authored by Sarah Esty, Policy Fellow at Connecticut Voices for Children, which was submitted to the General Assembly's Judiciary Committee on March 11, 2013 in support of Senate Bill 1062 and House Bill 6581.

² See, for example, Kendall Powell, "Neurodevelopment: How Does the Teenage Brain Work?," *Nature* 442 (24 August 2006): 865-867, available at: <http://www.nature.com/nature/journal/v442/n7105/pdf/442865a.pdf>. See also, Jay M. Giedd, "The Teen Brain: Insights from Neuroimaging," *Journal of Adolescent Health* 42 (2008): 335-343, available at: http://brainmind.umin.jp/Jay_2.pdf and Debra Bradley Ruder, "The Teen Brain," *Harvard Magazine*, (September – October 2008) available at: <http://harvardmag.com/pdf/2008/09-pdfs/0908-8.pdf>

The US Supreme Court has recognized the importance of these scientific findings, noting “[j]uveniles’ susceptibility to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult’” in justifying their decision, in *Roper v. Simmons*, to declare the death penalty unconstitutional for juveniles.³ The Supreme Court took this decision a step further in 2010, in *Graham v. Florida*, when it declared unconstitutional life sentences for juveniles for all crimes other than homicide because “juveniles have lessened culpability [and therefore]...are less deserving of the most serious forms of punishment.” The Court stated that states were required to “impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation.”⁴ Most recently, in *Miller v. Alabama*, decided in 2012, the Supreme Court went a step further still, striking down mandatory life without parole sentences for all juveniles including those convicted of murder. The Court stated that we must treat juvenile offenders differently from adults, reasoning:

“Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys...And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.”⁵

In order to comply with *Miller*, Connecticut must reform its laws to eliminate mandatory life without parole sentences for juveniles. It must also ensure that judges incorporate consideration of youth-related factors such as family dynamics and home environment, age, trauma and abuse exposure, and the possibility of rehabilitation, when sentencing juveniles. The reforms provided by SB 1062 in last year’s session would accomplish both of these steps, which is why we urge you to support this measure again in 2014.

While the Supreme Court case did not mandate action on non-mandatory but very lengthy sentences, the factors identified by the court as youth-related mitigating elements that ought to be considered are equally relevant when applied to non-mandatory sentencing. In particular, when imposing a sentence, judges ought to take into account young people’s decreased culpability, immaturity, limited control over the immediate environment, and greater possibility for rehabilitation. We therefore also urge you to support the sentencing measures that were contained in HB 6581, which creates a process to give these young offenders a chance for a second look at their sentences after they have served a significant period and had the chance to prove increased maturity and rehabilitation.

Connecticut’s sentencing laws for juveniles are already some of the strictest in the nation.

³ *Roper v. Simmons*, 543 U.S. 551 (2005)

⁴ *Graham v. Florida*, No. 08-7412, Supreme Court of the U.S. May 17, 2010

⁵ *Miller v. Alabama*, No. 10-9646, Supreme Court of the U.S. June 25, 2012

Connecticut's sentencing laws are relatively unique in that they require that any young person aged fourteen or older who is charged with first-degree murder be transferred to adult criminal court. Criminal courts have exclusive jurisdiction over the young people who commit these crimes, and have no discretion to transfer cases back to juvenile court if they feel that adult sentencing would be inappropriate.⁶ Connecticut's penal laws also include mandatory life-without-parole sentences for any person found guilty of first-degree murder.⁷ Judges are therefore required to impose the harshest possible sentence on youthful offenders, and under current law they are given no opportunity to consider the mitigating factor of a defendant's youth.

Massachusetts is the only other state in the nation that combines mandatory life without parole sentences with mandatory transfer provisions for children as young as fourteen. Louisiana and Washington have similar mandatory sentencing and transfer laws for juveniles aged fifteen and sixteen, respectively.⁸

About 275 people are currently serving sentences of greater than 10 years for offenses committed as juveniles. Additionally, significant racial and ethnic disparities emerge in the lengthy sentences awarded to juveniles: 88% of individuals serving sentences of greater than 10 years for juvenile crimes are black or Hispanic. Given Connecticut's sizeable racial and ethnic disparities in poverty, our greatest-in-the-nation achievement gaps, and the documented harsher treatment of minority youth in our state's justice system,⁹ the disproportionate impact of lengthy sentences on Connecticut's youth of color becomes particularly problematic.

Many states have already amended their sentencing guidelines to comply with the *Miller* ruling, and a growing number have gone further in amending their laws to recognize youth as a mitigating factor in determining criminal guilt. In 2012, California passed the Fair Sentencing for Youth Act, which allows juveniles who are sentenced to life in prison to petition judges for reduced sentences after 15 years, 20 years, and 25 years.¹⁰ North Carolina,¹¹ Pennsylvania,¹² Wyoming,¹³ Colorado¹⁴ and Texas¹⁵ have also passed laws eliminated mandatory juvenile life without parole.

⁶ Conn. Gen. Stat. Ann. § 46b-127 (West) (automatic transfer of defendants aged fourteen and over to criminal court for felony murder)

⁷ Conn. Gen. Stat. Ann. § 53a-35a (West) (mandatory sentence of life without parole for capital felony murder)

⁸ Children's Law Center of Massachusetts, "Until They Die a Natural Death: Children Serving Life Without Parole in Massachusetts," September 2009

⁹ Even when controlling for various factors, black and Hispanic youth in Connecticut are more likely to be referred to court, placed in secure holding, and held in detention. Most importantly ***black and Hispanic youth were more likely than similarly charged youth to be transferred to adult court***, where they are therefore more likely to be subject to the lengthy sentences awarded to adults. See, Dorinda M. Richetelli, Eliot C. Hartstone, and Kerri L. Murphy. "A Second Reassessment of Disproportionate Minority Contact in Connecticut's Juvenile Justice System," *Criminal Justice Policy and Planning Division, Connecticut Office of Policy and Management* (May 15, 2009), available at:

http://www.ct.gov/opm/lib/opm/cjppd/cjjyd/jjydpublishations/final_report_dmc_study_may_2009.pdf

¹⁰ Cal. Penal Code § 1170 (West); see also Reclaiming Futures, "California Gives JLWOP Kids a Second Chance, October 4, 2012, available at: <http://www.reclaimingfutures.org/blog/ca-ends-jlwop>; National Center for Youth Law, "Gov. Jerry Brown Signs Fair Sentencing for Youth Act," Jan. 2, 2012, available at:

http://www.youthlaw.org/juvenile_justice/gov_jerry_brown_signs_fair_sentencing_for_youth_act/

¹¹ N.C. Gen. Stat. Ann. § 15A-1340.19A (West)

¹² 18 Pa. Cons. Stat. Ann. § 1102.1 (West)

¹³ Wyo. Stat. Ann. § 6-10-301 (West); see also Campaign for the Fair Sentencing for Youth, "Wyoming Abolishes Life Without Parole for Children," February 15, 2013, available at: <http://fairsentencingofyouth.org/2013/02/15/wyoming-abolishes-life-without-parole-for-children/>

A number of states have gone further in mitigating lengthy sentences for juveniles. In 2011, the Ohio state legislature overwhelmingly passed a bill that imposed wide reforms on juvenile sentencing. The law allows judges to consider lowering a young person's sentence throughout their commitment, including in cases with otherwise mandatory sentences; allows judges to consider the mitigating factor of a defendant's youth in any case in which the young person was not the main actor in a crime; reduced automatic sentences for certain categories of crimes; allows judges to exercise discretion in transferring youth charged as adults back to juvenile court; and creates an interagency task force to study the mental health needs of juveniles in the criminal justice system.¹⁶ The same year, Maine signed into a law a provision allowing judges to impose a deferred disposition on juveniles who plead guilty to certain offenses.¹⁷ In 2012, the California Supreme Court has also abolished life sentences for juveniles who are convicted of non-homicide crimes.¹⁸

The "second look" provided for in last year's HB 6581 would give Connecticut young people convicted of juvenile crimes and given very lengthy sentences a chance for parole after serving the longer of half their sentence and ten years (up to a maximum of 30 years for those with sentences greater than 60 years). It does not guarantee release, since the Parole Board would still need to decide that the applicant had truly rehabilitated and was not going to be a danger to society. It simply gives young people the opportunity to present how they have grown and come to take responsibility for their actions.

These measures would help ensure that Connecticut is treating children as children when determining their culpability, their ability to understand the consequences of their actions, the effectiveness of punishment in deterring dangerous behavior, their moral responsibility, and their ability to be rehabilitated. We have taken important steps forward in recent years in recognizing that children take until beyond 18 to mature. These bills help ensure that juvenile sentencing incorporates this scientific and legal consensus.

¹⁴ Colo. Rev. Stat. § 18-1.3-401

¹⁵ Texas Penal Code Ann. § 508.145(b).

¹⁶ Ohio H.B. 86, 129 Gen. Sess., 2011; see also Juvenile Justice Network, "Advances in Juvenile Justice Reform: Sentencing and Adjudication," 2011, available at: <http://www.njjn.org/our-work/juvenile-justice-reform-advances-adjudication-and-sentencing>

¹⁷ Me. Rev. Stat. tit. 15, § 3311A-C

¹⁸ *People v. Cabellero*, 55 Cal.4th 262 (Aug. 2012)