

**Testimony in Support of Senate Bill 1038  
Juveniles Convicted as Adults – Sentencing – Limitations and Reduction  
(Juvenile Restoration Act)**

To: Senator William C. Smith, Jr., Chair, and Members of the Judicial Proceedings Committee

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We are student attorneys in the Youth, Education and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents children who have been excluded from school through suspension, expulsion, and other means, as well as individuals who are serving life sentences for crimes they committed when they were children (“juvenile lifers”) and who are now eligible to be considered for parole. We write in support of Senate Bill 1038, which seeks to prohibit courts from sentencing children to life without parole and allows certain individuals who were sentenced to life in prison as juveniles to file a motion to reduce their sentence.

Over the decades, many children in Maryland have been sentenced to life in adult prisons without parole.<sup>1</sup> The United States Supreme Court has since declared mandatory life without parole sentences for juveniles to be unconstitutional.<sup>2</sup> In doing so, the Supreme Court relied on brain development science, which emerged subsequent to the trials, convictions, and sentencing proceedings that involved many of the juvenile lifers who continue to be incarcerated in Maryland’s prisons today.<sup>3</sup> This science demonstrates that children are different than adults in ways that are critical to criminal sentencing, as their prefrontal cortex and limbic systems are underdeveloped, making them more impulsive and reckless than adults.<sup>4</sup> Children have “less capacity for self-regulation in emotionally charged contexts,” are more vulnerable to negative peer pressure, and “have less ability than adults to make...decisions that require future orientation,” ultimately lessening a child’s moral culpability.<sup>5</sup> Additionally, children who commit crimes are more likely to change over time, as their brain develops with age and as they mature.

Today, more than 300 juvenile lifers remain incarcerated in Maryland’s prisons, most of whom have served decades in prison and are now middle-aged. Among these individuals are our clients,

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<sup>1</sup> John Yang, *In Maryland, Many Juvenile Offenders Languish in Prison Without Parole*, PBS (December 10, 2019 at 6:30 P.M.), <https://www.pbs.org/newshour/show/in-maryland-many-juvenile-offenders-languish-in-prison-without-parole>.

<sup>2</sup> *Miller v. Alabama*, 567 U.S. 460 (2012). See *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), *as revised* (Jan. 27, 2016) (holding *Miller* to be retroactive).

<sup>3</sup> *Miller v. Alabama*, *supra* note 2.

<sup>4</sup> *Miller v. Alabama*, *supra* note 2, at 472 n.5.

<sup>5</sup> NATIONAL RESEARCH COUNCIL, *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH* (2013). [http://www.njjn.org/uploads/digital-library/Reforming\\_JuvJustice\\_NationalAcademySciences.pdf](http://www.njjn.org/uploads/digital-library/Reforming_JuvJustice_NationalAcademySciences.pdf)

each of whom have been incarcerated for nearly 30 years for crimes they committed as children. They continue to wait for a “meaningful opportunity” for parole. However, under current law, this opportunity does not exist. For our clients, as well as for so many others, parole is an unattainable dream, despite their maturation, aging, rehabilitation, and transformation over these decades in prison

Senate Bill 1038 seeks to move Maryland past the injustices of Maryland’s sentencing and parole system in two ways. First, the bill prohibits sentencing a juvenile to life without parole. Second, the bill provides juvenile lifers with an alternative means for release, thereby providing a meaningful opportunity for release.

The time is long overdue for Maryland to prohibit judges from sentencing individuals who committed their crimes as children to be sentenced to life without parole. Currently, twenty-three states and the District of Columbia have banned juvenile life without parole sentences for children.<sup>6</sup> A couple of weeks ago, Virginia abolished life without parole sentences for juveniles and, effective July 1, 2020, will ensure that they will be eligible for parole after serving 20 years.<sup>7</sup> Of the remaining states that allow children to be sentenced to life without parole, Maryland trails only Michigan, Louisiana, California, Florida and Pennsylvania with regard to the number of juvenile lifers who remain incarcerated.<sup>8</sup> However, unlike Maryland, these states have made substantial reforms, ensuring that juvenile lifers have a reasonable opportunity for release.<sup>9</sup>

As a result, children in Maryland should not be sentenced to life without parole. Even youth who commit the most serious crimes have the capacity to change because of their developmental immaturity, impetuousness, and susceptibility to negative peer influences. They have a heightened capacity for change and rehabilitation, and most adopt law-abiding lifestyles as they mature.<sup>10</sup>

In addition to eliminating juvenile without parole, this bill also seeks to fulfill the Supreme Court’s mandate for a meaningful opportunity for release for juvenile lifers by allowing them to file a court motion to reduce their sentences after they have served 20 years in prison. In this way, SB 1038 recognizes that parole is essentially a mirage for juvenile lifers in Maryland.

The main reason why parole is an illusion for the vast majority of juvenile lifers is that Maryland is one of only three states in the United States that gives the Governor exclusive authority and unfettered discretion to accept or reject parole recommendations made by the Maryland Parole Commission. In fact, since Governor Hogan took office in 2015, the Maryland Parole Commission has vetted and recommended the release of 21 juvenile lifers. Governor Hogan has disapproved 18 of these recommendations.

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<sup>6</sup> JOSH RIVNER, THE SENTENCING PROJECT, JUVENILE LIFE WITHOUT PAROLE: AN OVERVIEW (February 25, 2020), <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>. See also The Campaign for the Fair Sentencing of Youth, States that Ban Life Without Parole for Children (List updated February 24, 2020), <https://www.fairsentencingofyouth.org/media-resources/states-that-ban-life/>

<sup>7</sup> Editorial Board, *Virginia Finally Recognizes that Children Jailed for Life Deserve at Least a Chance for Parole*, WASH POST, February 27, 2020; EQUAL JUSTICE INITIATIVE, VIRGINIA ABOLISHES LIFE WITHOUT PAROLE FOR CHILDREN, February 25, 2020, <https://eji.org/news/virginia-abolishes-life-without-parole-for-children/>.

<sup>8</sup> THE SENTENCING PROJECT, *supra* note 6.

<sup>9</sup> *Id.*

<sup>10</sup> *Miller v. Alabama*, *supra* note 2, at 479-480.

SB 1038 recognizes both that the current parole process is unfair and unjust to juvenile lifers, and that even if the parole process is reformed (by removing the Governor from the parole process) alternative methods of relief are necessary. Moreover, this bill understands that courts are better equipped to assess whether or not this subset of Maryland’s prison population should have the opportunity to have their sentences reduced in ways that would allow for release from prison. Indeed, courts are uniquely positioned to analyze and weigh the various factors set forth in SB 1038 for sentence reduction..

To be clear, however, providing juvenile lifers with the opportunity to file a sentence reduction motion does not in any way negate the fact that opportunities for release will continue to be narrow. First, the individual has to serve at least 20 years to file the motion. As a result, every individual eligible to file the motion will be approaching or will be well into middle-age. Second, in considering the motion, the Court must analyze a wide range of factors, including “any statement offered by a victim or a victim’s representative” as well as “any other factor the Court deems relevant.” Third, the process will be adversarial, with respective counsel making arguments specific to these factors. Fourth, courts will then decide which of the individuals who have filed these motions have earned, and therefore deserve, a sentence reduction. To grant such a motion, the Court will have to ultimately conclude *both* that “the individual is not a danger to the public” and that “the interest of justice will be better served by a reduced sentence.” Thus, the Court will have to conclude that the individual has rehabilitated, reformed, and transformed.

Urgently, SB 1038 would also help lessen the racial injustices that plague Maryland’s prison system. The injustice of Maryland incarcerating more than 300 juvenile lifers is exacerbated by the facts that Maryland has the most racially disproportionate prison population in the United States and that the racial disparity worsens the longer individuals are incarcerated. Specifically, over 70% of Maryland’s prisoners are black<sup>11</sup> (which more than doubles the national average of 32%<sup>12</sup>) and of those individuals who have been incarcerated for more than ten years, nearly 80% are black.<sup>13</sup> In light of these shocking realities, providing a meaningful opportunity for release to juvenile lifers is a matter of racial justice. SB 1038, if enacted, would provide Maryland the opportunity to lessen these disparities.

Aside from important justice considerations, the financial costs of incarceration are significant. Housing individuals for a life sentence requires decades of public expenditures—as of 2015, Maryland spent an average of \$44,601 per inmate annually.<sup>14</sup> For instance, a 50-year sentence for a 16-year-old will cost approximately \$2.3 million. Therefore, keeping individuals incarcerated for so long, despite their rehabilitation and transformation, requires enormous financial costs.

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<sup>11</sup> JUSTICE POLICY INSTITUTE, RETHINKING APPROACHES TO OVER INCARCERATION OF BLACK YOUNG ADULTS IN MARYLAND, 8 (November 2019), [http://www.justicepolicy.org/uploads/justicepolicy/documents/Rethinking\\_Approaches\\_to\\_Over\\_Incarceration\\_MD.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf).

<sup>12</sup> *Id.* at 7

<sup>13</sup> *Id.*

<sup>14</sup> VERA INSTITUTE OF JUSTICE, PRISON SPENDING IN 2015, 8 (May, 2017) <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending>.

SB 1038 understands that children are inherently different than adults and that every child sentence to life imprisonment should have a meaningful opportunity for release. If enacted, SB 1038 would join Maryland with the other states that have turned away from the draconian, scientifically unsound, and unfair practice of sentencing children to life without parole, and would also provide juvenile lifers a meaningful opportunity for release by allowing them to file a court motion to reduce their sentences. For these reasons, we ask the Senate Judicial Proceedings Committee to issue a favorable report.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.