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## Testimony in Support of Senate Bill 1038 (2020)

Juveniles Convicted as Adults – Sentencing – Limitations and Reduction  
Juvenile Restoration Act  
*Before the Judicial Proceedings Committee: March 12, 2020*

Senate Bill 1038, cross-filed with House Bill 1437, would alter sentencing for juveniles convicted as adults in a few ways. First, the bill authorizes a court to impose a sentence less than the minimum term required by law—the mandatory minimum—for youth tried as adults. Second, the bill prohibits a court from imposing on a minor the sentence of life without the possibility of parole, regardless of the offense. Finally, Senate Bill 1038 creates a process through which a minor tried as an adult may seek a sentence reduction. This would only be available if the individual has been imprisoned for at least twenty years, does not pose a danger to the public, and the interests of justice will be better served by a reduced sentence.

*These provisions reflect the rehabilitative goal of our justice system, particularly as applied to juveniles for whom culpability is reduced.* Although all three elements serve that purpose, this testimony focuses on the policy issues surrounding mandatory minimum sentences for juvenile offenders in adult court.

### **Our Criminal Justice System is Designed for Adults, Yet Juvenile Culpability is Different**

Every state in our nation has laws restricting children from voting, serving on juries, purchasing alcohol, marrying, and other activities. In fact, Congress recently raised to 21 the age for access to tobacco products. These laws recognize that children do not have the mental or emotional maturity that adults have to exercise judgment or to make certain decisions.<sup>1</sup> Yet when a child commits a criminal offense and is tried in adult court, the justifications for those protective laws are overlooked. Worse, when a child tried as an adult is subject to an adult mandatory minimum sentence, those justifications are ignored entirely. Senate Bill 1038 would acknowledge those underlying justifications and protect children who engage in impulsive, criminal behavior from being subjected to mandatory minimum sentences in adult court.

Our commonsense understanding that children are different from adults is supported by scientific and social science research. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy discussed the three general differences between juveniles under the age of eighteen and adults: (1) a lack of maturity; (2) increased vulnerability to environmental influences; and (3) personality traits that are "more transitory, less fixed." Justice Kennedy relied on research by the neuropsychologist Laurence Steinberg, who adequately explained the differences in the ways adolescents and adults approach risk-taking. Steinberg's research explains that risk taking declines between adolescence and adulthood because (1) the cognitive control system located in the prefrontal cortex matures and strengthens individuals' abilities to engage in longer-term

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<sup>1</sup> Carolyn B. Lamm, *Youth Offenders Deserve a Chance for Rehabilitation*, Roll Call, 2009. Available at <https://www.rollcall.com/2009/11/11/youth-offenders-deserve-a-chance-for-rehabilitation/>. Accessed 2-22-20.

they are punished for at least a minimum term according to the statute, which has a dehumanizing effect. For crimes that carry mandatory minimums, judges are deprived of discretion, meaning that their consideration of the background of the defendant or the actual circumstances of the offense has only minimal impact on the sentence.<sup>10</sup>

The primary goal of mandatory minimum sentencing laws is to promote uniformity by limiting the possibility of irregularity of outcomes and to reduce sentencing disparities.<sup>11</sup> However, the adoption of mandatory minimums has not led to a fairer system; to some extent, it has had the opposite effect. By lumping together individuals with differing levels of culpability for the same mandatory minimum punishments, juvenile offenders received punishments disproportionate to their culpability.<sup>12</sup> Additionally, the functional transfer of sentencing authority from trial judges to prosecutors has exacerbated disparities, because prosecutors can choose what charges to bring, asserting mandatory minimum charges for some defendants and not for others. Prosecutors can use mandatory minimums to unfairly persuade defendants to plead guilty to other offenses to avoid the risk of a mandatory minimum sentence<sup>13</sup> This gives prosecutors more tools to use in their inequitable charging and negotiating practices. Moreover, the history of mandatory minimums shows that they do not reduce crime; instead, mandatory minimums too often result in arbitrary and severe punishment.<sup>14</sup> In 2020, we should acknowledge that mandatory minimums virtually eliminate judicial discretion, provide excessive power to prosecutors, and do not result in more balanced sentencing. No judge should be constrained by the failed mandatory minimum sentencing laws when determining the best approach for sentencing juveniles for whom rehabilitation is quite likely.

In *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court held that juvenile life sentences without parole are unconstitutional for all crimes including murder. Justice Kagan explained that a mandatory life sentence without parole for a person under the age of eighteen violates the 8<sup>th</sup> Amendment's prohibition on cruel and unusual punishments, finding such a sentence to be excessive.<sup>15</sup> Rather, the sentencing authority must take into account how children are different and how those differences caution against sentencing them to a lifetime in prison.<sup>16</sup> Moreover, in *Miller*, the Supreme Court mandated individualized sentencing for juveniles.<sup>17</sup> This sentencing process allows a defense attorney to present a comprehensive narrative of the juvenile's diminished culpability, as an alternative approach to mandatory minimum sentencing. Thus, the Maryland General Assembly should respond to the foundation set forth in *Miller* and

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<sup>10</sup> *Id.*

<sup>11</sup> Anjelica Cappellino and John Meringolo, *The Federal Sentencing Guidelines And The Pursuit Of Fair And Just Sentences*, 77 ALB. L. REV. 771, 816 (2014).

<sup>12</sup> See Rachel E. Barkow, *supra* note 7 at 201.

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

<sup>14</sup> Kendra Roth, *Judicial Sentencing for Sexual Assault: Why Mandatory Minimum Penalties Are Not The Answer*, 2017 LIBERTY LAW. 10 (2017).

<sup>15</sup> *Miller v. Alabama*, 567 U.S. 460, 465, 469 (2012).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

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mandatory minimums were too harsh.<sup>23</sup> Additionally, some judges have gone as far as resigning from their jobs because they felt so strongly against mandatory minimums.<sup>24</sup>

### Conclusion

Senate Bill 1038 recognized that juveniles are fundamentally different from adult offenders, and the need to give judges discretion in their ability to depart from mandatory minimums when sentencing a juvenile in adult court. Under Senate Bill 1038, juveniles who commit crimes would still be held responsible for their actions, but they would be held responsible with the understanding that they are children or adolescents who are still maturing and have the ability to be rehabilitated.

*This testimony was prepared by Brooke Kasoff, Student attorney, and is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law, the University of Maryland, Baltimore, or the University of Maryland System.*

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<sup>23</sup> Judge Mark W. Bennett, *How Mandatory Minimums Forced Me to Send More Than 1,000 Nonviolent Drug Offenders to Federal Prison*, The Nation, (2012). Available at <https://www.thenation.com/article/archive/how-mandatory-minimums-forced-me-send-more-1000-nonviolent-drug-offenders-federal-pri/>. Accessed 3-4-20.

<sup>24</sup> *A Federal Judge Says Mandatory Minimum Sentences Often Don't Fit The Crime*, NPR, 2017. Available at <https://www.npr.org/2017/06/01/531004316/a-federal-judge-says-mandatory-minimum-sentences-often-dont-fit-the-crime>. Accessed 2-22-20.