



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

**House Bill 409-Juveniles Convicted as Adults-Sentencing-Limitations and Reductions
(Juvenile Restoration Act)
Judiciary Committee – January 21, 2021
SUPPORT**

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2021 legislative session. WDC is one of the largest and most active Democratic Clubs in our County with hundreds of politically active women and men, including many elected officials.

WDC urges the passage of House Bill 409. We thank you for your attention to our support for this important legislation, and we thank Delegate Jazz Lewis for his leadership in sponsoring it.

Recent brain science has confirmed what most parents know: children's decision-making is less calculated, more impulsive, and more immature than that of adults. Children are also more readily swayed by the environment they find themselves in. Accordingly, in a series of cases known as the *Miller* Trilogy, the U.S. Supreme Court found that children are less culpable than adults for crimes they commit.¹ Thus, when we consider punishment for child offenders, Eighth Amendment law requires us to be less extreme in our sentencing and, except in the most limited circumstances, demands that we provide an avenue for reassessment if harsh sentences have been imposed.

Under Maryland law, both allowable sentences and avenues for reassessing harsh sentences fall well short of what is constitutionally required. HB409 does two essential things to address these failings: it ends life without parole sentences for child offenders, and it provides a process for seeking resentencing for those child offenders who have served 20 or more years. For these reasons, we ask that you SUPPORT its passage.

Applying *Miller* retroactively, the Supreme Court held in *Montgomery v. Louisiana* that sentencing a child to life without parole requires the extraordinary finding that the child who committed the crime is "the rare juvenile offender who can receive that...sentence."² In *Miller*, the Court drew a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption.³ In reality, it is virtually impossible to predict which children who have committed crimes are irreparably corrupt; their brains are still developing, and, for many of them, brain development has been inhibited or derailed by trauma.⁴ We should not invite prosecutors to seek and courts to ratify conclusions that ignore what the science tells us.

As Justice Kennedy pointed out in *Graham v. Florida*, a life sentence without parole is especially harsh for a child. Given their ages at sentencing, children receiving life sentences will serve "on average more years and a greater percentage" of their life in prison than an adult with a life sentence.⁵ Shamefully, Maryland's criminal system fails

¹ See, *Roper v. Simmons*, 543 U.S. 407 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012).

² *Montgomery v. Louisiana*, 136 S. Ct. 718,734 (2016).

³ *Miller supra* note 2, at 479.

⁴ For a discussion of brain development in children, see Cindy C. Cottle Ph.D., *Moving Forward: Advanced Concepts in Adolescent Brain Development* (Mar. 9, 2018).

⁵ *Graham v. Florida*, 560 U.S. 48, 50 (2010). As for the punishment, life without parole is "the second most severe penalty permitted by law," *Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 (2001), and is especially harsh for a juvenile offender, who will on average *Keeping Members Better Informed, Better Connected, and More Politically Effective*



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in two ways: children can still be sentenced to life without parole; and the current parole system in Maryland has resulted in a *de facto* life without parole sentence for child (and adult) offenders who demonstrably are ready to re-enter society. HB409 would assure that Maryland is following the spirit of Constitutional law by prohibiting a sentence of life without parole for children and providing an avenue for relief for children sentenced to life in a system that effectively treats the sentence as life without parole.

National statistics show that child offenders placed in adult prisons are 36 times more likely to commit suicide, five times more likely to be sexually assaulted, and 200 times more likely to be physically assaulted by incarcerated adults and prison officers. If child offenders survive incarceration and can demonstrate that they are rehabilitated, the system should acknowledge this extraordinary feat and allow them a chance to return to society.

Paul's story (not his real name) is illustrative. Paul was first considered for parole after 10 years in prison, having qualified with "good time" credits. The result of that first parole hearing was that his parole consideration was set for a new hearing – 10 years later. The only comments on this lengthy extension: two boxes checked – one for "vocational training" and one for "therapy". His record has no documentation of the next hearing, but the parole commissioners noted on the decision form for a hearing 13 years later that Paul had no infractions since the prior hearing, had participated in several work programs, and showed remorse for his crime. The Parole Commission recommended that he seek anger management and vocational programs "if and when available." The Commission failed to explain why Paul needed an anger management program even though he had committed no infractions of any kind for years. The Parole Commission set another hearing for three years later. At that hearing, they noted that Paul was "very legitimately remorseful" and had successfully completed many programs. Nevertheless, they recommended a risk assessment rather than parole.

Getting a risk assessment involved a two-year wait for a test that evaluated Paul at the time he committed the crime and tried to predict, based on biased factors in this static analysis, the likelihood he would commit a crime again at some point in the future.⁶ Such a process is confounding and alienating. Paul received little feedback and insufficient credit for his efforts to demonstrate rehabilitation. At an approximate cost of \$44,600 per year, the state has had to pay nearly \$1 million to keep Paul locked up beyond the time he was initially eligible for parole.⁷ While it may have made sense to keep Paul incarcerated for some of that time, he received little guidance as to what more he needed to do, and the system did nothing to construct a plan that would allow him to meet requirements for release. Paul's story demonstrates why it is necessary for Maryland law to create a mechanism to allow juveniles to turn to the courts for resentencing. We need a procedural mechanism for the courts to reconsider sentences so that the state provides the opportunity for parole that the Constitution anticipates but that Maryland's parole process makes virtually impossible.

Maryland's unwillingness to parole those convicted of crimes committed as juveniles serves no valid public safety purpose. A recent study of former juvenile lifers released in Philadelphia revealed that only 1.14% of the several

serve more years and a greater percentage of his life in prison than an adult offender, *see, e.g., Roper v. Simmons*, 543 U.S. 551 at 572 (2005)

⁶ A different risk assessment test is being used now, with different psychologists applying it. The test is half static and half "dynamic." With two psychologists replacing the one doing the prior test, the wait was expected to be shorter, but with COVID this has not happened. Whether such tests provide useful guidance is far from certain.

⁷ See Vera - The Price of Prisons: Prison Spending in 2015, <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> (last visited January 5, 2020).



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hundred released individuals had been re-convicted of any crime after almost two years⁸ The refusal to parole child offenders is inconsistent with their sentences, ignores their achievements, serves no public safety imperative, and as such is simply unconstitutional as applied.⁹

Most importantly, sentencing children to life sentences without parole—coupled with the difficulty of gaining parole even for those who are eligible—perpetuates one of the worst racial injustices in our criminal system. According to the Campaign for the Fair Sentencing of Youth, there are approximately 400 people in Maryland's prisons who were sentenced as children and who would be immediately eligible for an opportunity to have their sentences reviewed if HB409 is passed. 87% of these people are Black; 114 of them are over 50 years old. Among those in Maryland sentenced to life without parole while they were still children, 82% are Black - the worst racial disparity of its kind in the entire United States.¹⁰

Retaining life without parole sentences for child offenders (either as a matter of statute or as a *de facto* result of Maryland's parole system) puts Maryland out of step with the 25 states and District of Columbia that have already abolished life without parole sentences for child offenders. Maryland's retention of these life without parole sentences and our unwillingness to grant parole to child offenders is also a reason why Human Rights for Kids ranked Maryland at the very bottom (tied with Alabama, Mississippi, Georgia, Tennessee, and Wyoming) in its 2020 State Report Card of juvenile justice.¹¹

Maryland's General Assembly needs to remove this stain of injustice without delay.

WDC has made passage of the Juvenile Restoration Act one of its highest priorities this year because we believe that sentencing children to die in prison with no hope of release is unconscionable and a deep failing on our part as Marylanders. That the overwhelming majority of the children we so readily discard in this way are Black is part of the shameful history we need to address. Maryland law should codify, and the justice system should uphold, the basic principle that punishment and demonstrated rehabilitation provide a path to redemption, particularly for child offenders who are the most amenable to rehabilitation. That we do not offer such a path to our child offenders is a disgrace we have accepted for far too long.

We ask for your support for HB 409 and strongly urge a favorable Committee report.

Respectfully,

Diana Conway
President

⁸ <https://www.msuddecisionmakinglab.com/philadelphia-juvenile-lifers>

⁹ The Supreme Court has said that child offenders should have a reasonable opportunity for parole; specifically, that child offenders must be able to obtain release upon demonstrated maturity and rehabilitation, unless they are the highly unusual offender who is decid<https://cfsy.org/media-resources/facts-infographics/edly-incorrigible>. *Miller v. Alabama*, 567 U.S. 460, 567 (2012) and *Graham v. Florida*, 560 U.S. 48, 72 (2010)

¹⁰ <https://cfsy.org/media-resources/facts-infographics/>

¹¹ Human Rights for Kids, 2020 National State Ratings Report, <https://humanrightsforkids.org/national-state-ratings-report/> (last visited Jan. 10, 2021).