

Written Testimony in Support of House Bill 409

January 21, 2021

The Juvenile Lifer Advocacy Clinic at the University of Maryland Carey School of Law respectfully submits this testimony to express our support for HB 409. We urge the General Assembly to enact HB 409 because we believe it will help to ensure that the law accurately considers the developmental differences between juveniles and adults and addresses some of the racial disparities in Maryland sentencing practices.

HB 409 Eliminates Juvenile Life Without Parole

In a series of recent cases, the Supreme Court has held that life without the possibility of parole sentences for juveniles (sometimes referred to as JLWOP sentences) constitute cruel and unusual punishment and therefore violate the Eighth Amendment for all except those rare juveniles who have committed homicide and are “permanently incorrigible” (a.k.a. “irreparably corrupt”). In these cases, the Court emphasized the need for consideration of juveniles’ characteristics, in terms of development, maturity, and life experiences. The Court observed that a life without parole sentence “is an especially harsh punishment for a juvenile” and if applied, should be applied very narrowly to juveniles who are a permanent danger to society. Given the emerging research on juvenile development and rehabilitation, however, it appears impossible for a judge to accurately determine whether a child will still pose a risk to public safety decades later.

Science confirms that children are inherently different than adults. The prefrontal cortex of the brain, which controls impulses and risk assessment, does not fully develop until around 25 years of age.¹ This is reflected in our general treatment of youth. As a country, we do not let children have a voice in the criminal justice system. We do not let them vote for judges or new policies that appear on a ballot. Nor do we allow people under the age of 18 to serve on a jury. And yet we still subject them to face the full force of prosecution and punishment. If you are too young to drink, smoke, vote, or sign a contract, you are too young to be condemned to serve the rest of your life behind bars.

HB 409 Gives Courts the Ability to Reduce Lengthy Sentences for Reformed Juvenile Offenders, and Thereby Begin to Remedy the Extreme Racial Disparity in Such Sentences.

This bill would permit juvenile offenders who have served 20 years or more to ask the court to reduce their sentences. Many of these sentences were imposed in the 1980s and 1990s, and were influenced by the now discredited “superpredator” theory. At the height of the “tough on crime” era, Black teenagers were portrayed as dangerous, remorseless, and incapable of rehabilitation. Although the “superpredator” theory has been disproven, the extreme punishments

¹ Arain, Mariam et al. “Maturation of the adolescent brain.” *Neuropsychiatric disease and treatment* vol. 9 (2013): 449-61. doi:10.2147/NDT.S39776

imposed on young people as a result of this myth remain intact. Life without parole sentences are disproportionately imposed on African-American youth compared to white youth. The per capita rate of Black youth serving life without parole in our country is ten times that of white youth.² Maryland in particular suffers from severe racial disparity in its criminal justice system. A 2019 report by the Justice Policy Institute revealed that Maryland has the largest Black prison population in the U.S., and almost 80% of individuals who have served 10 years or more are black.³ Lengthy prison sentences continue to more harshly affect the African-American community in Maryland and prevent reformed individuals from rejoining society. This bill gives courts an opportunity to fix this.

For these reasons, we respectfully urge you to issue a favorable report on HB 409.

This testimony is submitted by student attorneys Cole Abell, Elizabeth Harris and Emily Perison (under the supervision of adjunct professor Brian Saccenti) on behalf of the Juvenile Lifer Advocacy Clinic at the University of Maryland Carey School of Law, and not on behalf of the School of Law; the University of Maryland, Baltimore; or the University of Maryland System.

² Campaign for the Fair Sentencing of Youth, “About the Issue,” <https://cfsy.org/about-the-issue/>

³ JPI Report, 7

http://www.justicepolicy.org/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf