

BILL: HB 409

TITLE: Juvenile Restoration Act

DATE: January 21, 2021

POSITION: SUPPORT

COMMITTEE: House Judiciary Committee

CONTACT: John Ellem

Dear Chairman Clippinger, Vice-Chair Atterbeary, and Members of the House Judiciary Committee:

My name is John Ellem and I pleased to submit this testimony in support of HB 409 which deals with an issue I am very familiar with. I had the privilege to serve for seven terms, from 2001 to 2014, in the West Virginia House of Delegates. As a conservative Republican from Parkersburg and the minority chair of the Judiciary Committee, it was my honor to co-sponsor H.B. 4210 in 2014, which abolished life without parole for juveniles in West Virginia.

H.B. 4210 has been and continues to be hailed as the model bill of its kind addressing lengthy juvenile sentences, a fact that we in West Virginia are proud to claim. I encourage you, our neighbors to the east in Maryland, to adopt similar legislation.

H.B. 4210 eliminated life without parole as a sentencing option for juveniles under 18, providing release eligibility after a child serves 15 years. Additionally, for all youth in the adult criminal court, it requires the sentencing judge to consider the mitigating factors of youth as established by the U.S. Supreme Court in *Miller v. Alabama*, including childhood trauma, family and community environment, and the child's role in the offense. The judge must also consider the results of a comprehensive mental health examination. Lastly, the bill ensures that youth are provided with a meaningful opportunity for release by requiring that their diminished capacity as juveniles and their subsequent growth and increased maturity are carefully considered by the parole board.

I strongly encourage this committee to report favorably on HB 409, which has many similarities to W.Va. H.B. 4210. Under this bill, if a youthful offender is serving a sentence longer than 20 years, then she or he would be eligible to petition to have the sentence modified at that point. Critically, the bill provides for a number of factors related to youth that the court must consider when determining whether to modify the sentence. These factors, very much like in West Virginia, include the age of the offender when the offense occurred, family and home environment, intellectual capacity, immaturity and role in the offense.

West Virginia has a no-nonsense attitude toward crime, so H.B. 4210 fit into this tradition by ensuring public safety while also focusing on the potential all young people have to change. Youth do not receive a get-out-of-jail free card simply by receiving release eligibility; rather, they

must be able to effectively demonstrate that they have been truly rehabilitated. To my knowledge, H.B. 4210 did not result in any sudden, wholesale release of prisoners to parole. In fact, a Charleston Gazette-Mail article dated July 31, 2017 noted that of seven former juvenile lifers, only one was granted release.

Scientific research has shown that youth brains are not as developed as those of adults. As a parent, I understand this, and I know that children in violent or negligent home environments can make tragic mistakes. This is even more of a concern in states such as West Virginia and Maryland where the opioid epidemic has left many children being raised in dire circumstances. As a person of faith, I do believe there is an opportunity for redemption for us all, but most specifically for our children.

H.B. 4210 passed in West Virginia with widespread bipartisan support. This country has and continues to experience a wave of criminal justice reform with strong leadership from both sides of the aisle. Legislation ending life-without-parole sentences for children fits squarely into this “smart-on-crime” mentality. As a fiscal conservative, I know we are often incarcerating children long past the point when they represent a threat to public safety. We owe it to our children and our communities to return these individuals to the community as the contributing citizens they all have the potential to become. For these reasons I respectfully urge you to adopt HB 409 and bring Maryland in line with West Virginia and the 25 other states and jurisdictions that have abolished life without parole for juveniles. Thank you.

Respectfully submitted,

John N. Ellem, Esq.

304-588-1089, john@ellemlawoffice.com

Parkersburg, West Virginia