



**THE
SENTENCING
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

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**In support of House Bill 409, the
Juvenile Restoration Act**

**Before the House Judiciary
Committee**

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Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy and addressing unjust racial disparities and practices. We are grateful for this opportunity to submit testimony endorsing House Bill 409. We thank Delegate Lewis for his leadership on this bill, and we are especially heartened to see a prompt hearing for the bill early in the present legislative session.

We have supported prior iterations of this bill only to see each one fail in the General Assembly while state after state after state legislates the end of life without parole for people who were under 18 years of age at the time of their crime.

HB 409 provides a straightforward abolition of life without parole sentences for juveniles, aligning Maryland with national trends in juvenile sentencing, requirements of Supreme Court rulings, and current adolescent brain research. It is long overdue.

MANY STATES HAVE ELIMINATED LIFE WITHOUT PAROLE FOR JUVENILES

HB 409 would end Maryland's indefensible use of life without parole for juveniles (JLWOP).

When The Sentencing Project submitted testimony for HB 337 in February 2015 – a bill that would have offered a chance at parole after 15 years, 13 states and the District of Columbia had banned juvenile life without parole. Many of these states responded to U.S. Supreme Court's decisions in *Graham v. Florida* (2010)¹ and *Miller v. Alabama* (2012),² and *Montgomery v. Louisiana* (2015).³

Today, that total is 24 states and the District of Columbia.⁴ In four additional states, no one serving the sentence.⁵ Included in the list of 24 states that have banned JLWOP is Virginia, which banned JLWOP in 2020; the District of Columbia, which banned JWLOP in 2016 (and now does so for people under 25); West Virginia, which banned JLWOP in 2014; and Delaware, which banned JLWOP in 2013.

HB 409 would place Maryland neatly in the middle of our region's reforms. The District of Columbia and West Virginia allow a new sentence after 15 years. Virginia allows a new sentence after 20 years. Delaware requires a minimum sentence of 25 years prior to a parole request.

Moreover, in response to *Montgomery*, hundreds of people previously sentenced to life without parole in their youth have or will have their sentence reconsidered because they were issued in error. (Pennsylvania, which allows JLWOP, has resentenced hundreds of its prisoners.) Mistakes are being

¹ 130 S. Ct. 2011 (2010).

² 132 S. Ct. 2455 (2012).

³ 577 U.S. ____ (2016).

⁴ The following states, plus the District of Columbia, have banned the use of life without parole for juvenile offenders: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Nevada, New Jersey, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

⁵ Maine, New York, New Mexico, and Rhode Island. Data on file.

corrected, and Maryland finds itself an outlier in regional and national trends. Passing HB 409 will provide for sentences that provide the meaningful opportunity for release that young offenders deserve and the courts require.

PROPORTIONALITY AND JUVENILE SENTENCING

In *Graham*, the Supreme Court addressed the issue of when a juvenile could receive a state's harshest punishment – life without the possibility of parole. (Under *Roper v. Simmons*,⁶ the death penalty is unconstitutional for juveniles.) The Court specified that life without parole sentences must be limited to the most serious offenders, and that “juvenile offenders cannot with reliability be classified among the worst offenders.”⁷

Given that Maryland is among the 25 states and the District of Columbia to ban the death penalty,⁸ allowing juveniles to receive life without parole sentences means that juveniles and adults are eligible to receive identically harsh sentences. Only a total ban on life without parole for juveniles will return to Maryland the proportional penalties that undergird the recent rulings.

WHAT “ANY PARENT KNOWS” ABOUT THE TEENAGED BRAIN

Common sense and one's own life experiences demonstrate that adolescents are different from adults and, thus, ought to be treated differently under the law. Adolescence is marked by immature decision-making, poor judgment, and impulsive behavior. These are not permanent attributes; teenagers have strong capacity for change, and lifetime sentences with no opportunity for release ignore this capacity.

In *Roper*, Justice Kennedy emphasized that, “as any parent knows,” the differences between adolescents and adults limit adolescents' culpability.⁹ The extent to which adolescents are responsible for their behavior undergirds the Supreme Court's rulings on juvenile justice. For example, in *JDB v. North Carolina* (2011), the Court wrote, “Time and again, this Court has drawn these common-sense conclusions for itself ... [C]hildren characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”¹⁰

Due to these characteristics, this state's laws – like all states' laws – treat adolescents differently than adults. Children in Maryland, after all, cannot legally purchase cigarettes or alcohol. Maryland limits the right to drive a car through age 18. People under 18 cannot get married in Maryland without parental consent, nor can juveniles serve on juries. Not one juvenile voted for anyone in this

⁶ 543 U.S. 551 (2005).

⁷ *Graham* at 2026, internal citations omitted.

⁸ Death Penalty Information Center (n.d.) States with and without the death penalty – 2020.

<http://www.deathpenaltyinfo.org/states-and-without-death-penalty>

⁹ *Roper* at 569.

¹⁰ *JDB v. North Carolina*, 131 S. Ct. 2394 at 2403.

legislature. Americans cannot join the military until they attain 18 years of age. The law asserts these limitations to protect youth from their own immaturity and society as a whole for the consequences of that immaturity.

Brain science research has buttressed our understanding of the pitfalls of adolescence. Typically, teenagers are impulsive. They are often poor decision-makers, especially in times of stress or when in the presence of other adolescents. Juveniles have weak impulse control and struggle at weighing risks. These hallmark attributes of youth are not unique to those who commit crimes, but instead derive from the way the brain develops post-puberty. Many of the attributes listed above are controlled, in adults, by the brain's pre-frontal cortex – the area behind the forehead. This is one of the last regions of the adolescent brain to fully mature. This development typically continues through age 25.

As such, it is not surprising that criminologists have found an age-crime curve that drops precipitously following late adolescence.¹¹ Lengthy sentences for juvenile offenders are unlikely to have any impact on public safety. Remarkably, 114 people over the age of 50 are presently serving life or life-equivalent sentences.¹²

A meaningful chance for release will ensure that those offenders who are not a risk to the public can rejoin society and attempt to rebuild their lives. A juvenile, even one who is convicted of a serious crime, should have the chance to understand the nature of his or her crime and to consider a better path. Not all will do so. HB 409 gives them that chance.

THE LIVES OF JUVENILE LIFERS

Under the status quo, previous legislatures have determined that a juvenile offender's personal background should have no bearing on their sentence. HB 409 remedies that mistake, requiring the court to consider not only the defendant's age, but their circumstances at the time of the offense and their progress while incarcerated. The injustice of current sentencing schemes is revealed by the racial chasm this bill would address: nearly nine of ten people (87%) eligible for relief under this bill are Black.¹³

New sentences are only available for those people who are no longer considered to be a danger to the public. This is a common-sense reform to roll back mass incarceration in Maryland.

While the backgrounds of those currently serving juvenile life sentences vary, they are typically very difficult and marked by frequent exposure to violence; they were often victims of abuse themselves. The Supreme Court made it clear that these circumstances are relevant at the time of sentencing, and HB 409 will make those circumstances relevant in Maryland.

¹¹ From Juvenile Delinquency to Young Adult Offending. (2014, March 4). Retrieved February 9, 2016, from <http://www.nij.gov/topics/crime/Pages/delinquency-to-adult-offending.aspx>

¹² Data provided by the Campaign for the Fair Sentencing of Youth.

¹³ Data provided by the Campaign for the Fair Sentencing of Youth.

Justice Kagan, in 2012's *Miller v. Alabama*, ruled that Alabama and Arkansas had erred because their mandatory sentencing structures did not "tak[e] into account the family and home environment."¹⁴ In 2012, The Sentencing Project published a survey of people sentenced to life in prison as juveniles¹⁵ and found the defendants in such cases usually faced difficult and chaotic lives prior to their crimes.

- 79% witnessed violence in their homes
- 40% had been enrolled in special education classes
- Fewer than half were attending school at the time of their offense
- 47% were physically abused
- 80% of girls reported histories of physical abuse and
- 77% of girls reported histories of sexual abuse

Under HB 409, Maryland would eliminate the hopelessness and pointlessness of life without parole sentences. Nothing in the bill requires the premature release of individuals who, in the eyes of the state, would threaten public safety.

We applaud HB 409 and are eager to see it advance in this Committee.

¹⁴ *Miller* at 2468.

¹⁵ Nellis, A. (2012). "The Lives of Juvenile Lifers: Findings from a National Survey." Available at http://sentencingproject.org/doc/publications/jj_The_Lives_of_Juvenile_Lifers.pdf