Testimony in support of House Bill 409

Submitted on January 21, 2021 by:

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I. Scope

This testimony is offered in support of MD HB 409 ("The Juvenile Restoration Act"), which abolishes sentences of life without the possibility of parole for individuals who were under the age of 18 at the time their crimes were committed. Our testimony is premised on current developmental science regarding adolescent development and trajectories of juvenile offending and desistence, and on data from our recent work showing negligible risk of re-offense for juvenile-lifers who were released following the 2016 decision of the Supreme Court of the United States (SCOTUS), Montgomery v. Alabama.

II. Professional Qualifications

Dr. Tarika Daftary-Kapur is an Associate Professor of Justice Studies at Montclair State University. In her capacity as a professor she teaches several classes in Criminal Justice and Law, including juvenile justice and delinquency, conducts scholarly research at the intersection of Psychology, Criminal Justice, and Law, mentors doctoral students, and directs the Criminal Justice minor program. Prior to coming to Montclair State University, Dr. Daftary-Kapur worked on juvenile justice reform issues at the Vera Institute of Justice. She is a member of the National Science Foundation grants review panel, and a member of the American Psychological Association's Committee on Legal Issues, where, among other obligations, she advises on APA's decisions to submit amici curiae briefs and on the content of such briefs.

Dr. Daftary-Kapur holds a Master's degree in Psychology from the University of Dayton, and a Ph.D. in Psychology from the City University of New York, Graduate Center/John Jay College of Criminal Justice (with Psychology and Law concentration). Her current research program is primarily focused on decision making in legal contexts, including prosecutorial decision making related to plea offers and other outcomes. She is author/co-author on 17 peer-reviewed publications, 6 book chapters, and over 50 conference presentations. Along with Dr. Zottoli, Dr. Daftary-Kapur is the Principal Investigator on a grant examining the re-entry experiences of juvenile lifers in Pennsylvania.

Dr. Tina Zottoli is an Assistant Professor of Psychology at Montclair State University and a licensed clinical psychologist in the state of New York. In her capacity as a professor she teaches several Psychology and Law related courses at the undergraduate and graduate levels, sits on the doctoral faculty of the Ph.D. program in Clinical Psychology, conducts scholarly research in the fields of Psychology and Law, mentors doctoral students in the Forensic emphasis of the Ph.D. program and directs the Masters training programs in Clinical Psychology. In her private practice, she provides psychological expertise across a host of criminal (e.g., risk assessment; mitigation) and civil (e.g., deportation/removal cancellation) contexts, and provides expertise on factors that may compromise decision-making (e.g., false admissions). She is also a member of the American Psychological Association's Committee on Legal Issues, where among other obligations advises on APA's decisions to submit amici curiae briefs and the content of such briefs.

Dr. Zottoli holds a Master's degree in Forensic Psychology from John Jay College of Criminal Justice and a Ph.D. in Psychology from the City University of New York, Graduate Center/John Jay College of Criminal Justice (with Forensic Psychology specialization). Her scholarly work focuses primarily on decision-making in legal contexts and she is an expert on adolescent development and legal competencies and on the psychology of guilty plea decision-making in both adult and juvenile defendants. She is author/co-author on 16 peer-reviewed publications, 12 other scholarly works (e.g., book chapters; editorials), and over 50 conference presentations. She is the recipient of 12 research grants and is currently a co-investigator, with Dr. Daftary-Kapur, on a grant examining the re-entry experiences of juvenile lifers who were released in Pennsylvania.

III. Background

In a series of cases between 2005 and 2012, SCOTUS held that the most serious of criminal sanctions, first the death penalty (Roper v. Simmons, 2004) and then mandatory sentences of life-without-the-possibility-of-parole (LWOP; Graham v. Florida, 2010; Miller v. Alabama, 2012) are unconstitutional for individuals who were under the age of 18 at the time of their offenses (hereafter, juveniles). The *Miller* Court emphasized that adolescence is marked by "transient rashness, proclivity for risk, and inability to assess consequences,[1]" and required courts to consider developmental factors when sentencing juvenile defendants. In *Montgomery v. Louisiana* (2016), the Court held that *Miller* had established a new substantive rule prohibiting the imposition of LWOP for most juvenile offenders, thereby retroactively invalidating all juvenile LWOP sentences that had been mandated by statute.

Since 2012, more than half of U.S. states have eliminated LWOP sentences for juveniles. In keeping with these trends, HB 409 recognizes adolescence as a formative developmental stage, marked by considerable biological and psychosocial change, and acknowledges that successful rehabilitation and societal re-integration is possible for the vast majority of youth who commit crimes. In the following sections we summarize the scholarly research on adolescent development and pathways to criminal behavior and desistence and present data on the outcomes for individuals sentenced to LWOP as juveniles ("juvenile lifers") and subsequently released in Philadelphia, PA. These research data form the empirical foundation for our testimony in support of HB 409.

IV. Adolescent Development and Pathways to Criminal Offending and Desistence

Adolescent Decision-Making

Adolescence is a transitional stage of human development involving considerable physical, hormonal, and behavioral change. Despite the development of relatively mature analytical reasoning by mid-adolescence (Fischoff, 1992), the judgments and decisions of adolescents often reflect a failure to consider future consequences (Steinberg & Cauffman, 1996). Among the numerous physical, social and cognitive changes that occur during this period, most adolescents will show a marked increase in novelty seeking, risk-taking and mild-to-moderate rebellion against societal/cultural norms (Steinberg & Morris, 2001); sensitivity to peer influence is also at a peak during this period of development (e.g., Gardner & Steinberg, 2005).

Adolescents, on average, are less likely than adults to attend to risk and future consequences (e.g., Steinberg & Cauffman, 1996; Steinberg et al., 2009), and less capable of countering dysregulating

[1] Miller v. Alabama 132 S. Ct. 2455 (2012), at 2465.

influences (e.g., Luna & al., 2004; Monk et al., 2003) and in exerting cognitive control over their behaviors (e.g., Crone & Van Der Molen, 2004; Van Duijvenvoorde, Jansen, Visser, & Huizenga, 2010). Adolescents are particularly vulnerable to poor decision making and engaging in risky behavior when in situations that are emotionally laden or time pressured (see Crone, 2009 for a review) or when they are in the presence of peers (e.g., Gardner & Steinberg, 2005).

Normative developmental changes in decision making are multi-determined, resulting from the complex interplay of experience, bio-and neurobiological reorganization/maturation and changes in social contexts[2]. At a neurobiological level, the vulnerability of adolescents to risky and impulsive decision-making can be explained, in part, by the protracted development of cortical systems, which contribute to the regulation of emotion in decision-making, relative to the earlier maturation of the limbic system, which mediates approach and avoidance behavior (Galvan et al., 2006). Specifically, the limbic system matures by late childhood and can be *hyper-reactive* in adolescence; in contrast, regions of the pre-frontal and anterior cingulate cortices do not reach adult maturity until age 23 or 24 (Blakemore, 2012; Giedd, 2004). Across the decade of adolescence, there is a gradual "catching up" between limbic and cortical systems and a gradual strengthening of the connectivity between them, facilitating the ability to regulate the influence of emotion on behavior (Spear, 2007). In essence, risky behavior ebbs as humans enter adulthood because we become more resistant to emotional dysregulation with age.

Thus, changes in risk-taking and novelty-seeking behavior across adolescence is normative and biologically explained; the behaviors typically reach their apex by middle adolescence and remit for most individuals by the early twenties. This transitional period of increased risk-taking is developmentally necessary because it allows adolescents to attain greater independence as they approach adulthood (Kelly, Schochet, & Landry, 2004). However, a consequence of these normative changes is an increased vulnerability for engaging in criminal behavior. (e.g., Farrington, 1986; Moffitt & Harrington, 1996). Empirical evidence for a normative increase in adolescent offending (followed by a decline in early adulthood) is robust. For example, age-crime curves showing peak offending rates between the ages of 15 and 25 with steep declines in incidence of offending thereafter are remarkably consistent across historical-era and countries (Farrington, 1986; Tremblay & Nagin, 2005).

Trajectories of juvenile offending

Of course, while most adolescents will exhibit elevations in novelty-seeking and risk-taking behaviors, the majority of teenagers will not engage in antisocial (i.e., criminal, norms-violating) behavior[3]. As with all human behavior, the emergence and remission of antisocial behavior is multi-determined. The likelihood that an adolescent will engage in a criminal act is exacerbated for youth who live in criminogenic environments (e.g., living in high crime areas; few pro-social community supports; low adult supervision; access to illegal substances), who are disengaged from school (e.g., frequent truancy; expulsions/suspensions)[4] and who have developmental and/or cognitive deficits, although antisocial behavior occurs among youth across the full range of environmental settings and demographic backgrounds (Tremblay & Nagin, 2005).

Normatively speaking, there are two primary developmental trajectories for anti-social behavior: one that is primarily limited to the period of adolescence and one that persists across the life-span[5]. The vast majority (more than 90%) of juveniles who commit crimes (even some who commit very serious crimes)

[2] For comprehensive reviews, see Casey, 2015; Ernst, Romeo & Anderson, 2009; Steinberg, 2007

[3] In 2018, approx. 2% of juveniles under the age of 18 were arrested for any offense (Puzzanchere, 2020)

[4] For instance, zero tolerance policies have long been criticized as contributing to what has been termed the School-to-Prison pipeline (e.g., Heitzeg, 2009).

[5] This dichotomization should not be assumed to capture the full range of trajectories of youth who offend. For example, the Pathways to Desistence project, which followed 1,300 serious juvenile offenders for seven years, described five separate trajectories (Steinberg et al., 2015); nonetheless, even in this sample of serious offenders, only about 8% of their sample exhibited a pattern of serious and persistent offending beyond their early twenties.

will desist in their criminal behaviors as they enter adulthood. Although there are exceptions, these juveniles typically exhibit normative early adjustment but may be higher than average on personality traits associated with risk-taking, which are then exacerbated by the biological and social changes of adolescence. These youth also tend to exhibit a slower, or delayed, psycho-social maturation (i.e., responsibility; future orientation; temperance; Steinberg, Cauffman, & Monahan, 2015). Whether or not youth with such developmental characteristics will engage in serious criminal acts depends on a number of factors, including the extent to which their peers are engaging in antisocial behavior, the extent to which they are engaged in school and other institutions wherein they have pro-social adult influences and the extent to which they have an active parent/guardian who monitors their behavior. Although these youth can be expected to age-out of criminal behavior, they are at increased risk for a number of problems that may have life-altering consequences (e.g., substance abuse/addiction; injury/death of self or other). Developmentally appropriate legal sanctions and/or provision of empirically supported interventions are indicated for many of these youth. On the other hand, harsh, punitive measures, such as long periods of incarceration, tend to be counter-productive and have been associated with increasing the likelihood that offending will persist beyond adolescence (Bishop & Frazier, 2000; Bishop, Frazier, Lanza-Kaduce, & Winner, 1996).

In contrast, a minority of youthful offenders will persist in serious criminal activity across their lifespan—especially if they do not receive intervention—but it is not possible to predict with any certainty which youthful offenders will continue on such a path. Risk factors for persistent offending include early adjustment problems (e.g., difficult childhood temperaments), unaddressed academic difficulties and serious familial disruption, but the vast majority of individuals with such histories will *not* engage in criminal behavior, and among those who do, most will not persist into adulthood.

Evidence in support of the rehabilitative potential of juveniles who commit serious crimes is clear from our recent research on released juvenile lifers in Philadelphia, to which we turn next.

IV. Recidivism and Cost Savings outcomes for juvenile lifers released in Philadelphia, PA

Prior to Montgomery v. Louisiana, 2016, Pennsylvania had the largest number of juveniles serving LWOP in the country (approximately 532), with the vast majority of those in Philadelphia county (approximately 325). As of September 2020, 460 juvenile lifers (88%) have been resentenced in Pennsylvania across all counties[6], and 245 have been released.

In April 2020, we released a report that examining the re-sentencing process in Philadelphia. Our full report, *Resentencing of Juvenile Lifers: The Philadelphia Experience*, is submitted with this testimony. Here we highlight findings with most relevance to the debate over House Bill 409.We also report preliminary data from our current research on the re-entry experiences of released juvenile lifers.

1. Released juvenile lifers pose negligible risk to public safety. At the time of our report (April, 2020), 174 juvenile-lifers had been released. Six (3.5%) were re-arrested. Four cases were dismissed; two cases resulted in convictions, one for Contempt for Violation of an Order of Agreement and one for Robbery, yielding a reconviction rate of 1.1%. The remaining 168 individuals (96.5%) have been living in the community since release without any known law enforcement contacts.

2. The estimated cost savings to the city Philadelphia, based on the first decade of release for the 174 juvenile lifers who had been released at the time of our report was $9.9M.

[6] The remaining 12% are in various stages of the resentencing process or have opted to delay resentencing as they pursue other legal actions (e.g., innocence claims).

3. The life circumstances of the juvenile lifers in Philadelphia is similar to that of the typical young offender populations nationwide (Thompson & Morris, 2016). The majority (80%) of the juvenile lifers in our analysis had been exposed to one or more developmental and psycho-social risk-factors for criminal behavior (e.g. family instability, exposure to drugs/alcohol, parent/sibling criminality, exposure to violence), with 42% exposed to three or more.[7] The cumulative risk model (Doan, Fuller-Rowell & Evans, 2012) posits that an accumulation of risk factors (as opposed to any one individual factor, no matter how severe), increases the risk for negative behavioral, cognitive and psychological outcomes in adolescents, including juvenile offending

4. Consistent with the rehabilitative potential of juveniles convicted of serious crimes, the juvenile lifers in our study were:
    a. Highly engaged in prison programming despite limitations in offerings available to inmates serving life sentences. During their incarceration, the majority (approx. 90%) of juvenile lifers participated in some form of rehabilitative programming. These programs included violence prevention, self-help (e.g. coping skills), drug and alcohol education, vocational training, and anger management. Additionally, 65% (n=137) completed their GEDs.
    b. Among the most well-adjusted groups in the prison population. The modal number of misconducts reported was 7 (ranging from 0 to 107) for the group under study. On average, the last incident reported was approximately 8 years prior to resentencing (ranging from 1 to 31 years), and were mostly minor, the most common being possession of contraband and refusing to obey an order.

We are continuing to study released juvenile lifers in Pennsylvania, focusing on factors that have been associated with successful reintegration, such as housing stability, employment and social support (Glaze & Palla, 2004; Travis & Lawrence, 2002). Since September 2020, 113 individuals completed surveys on their re-entry experiences. Here we highlight some preliminary findings:

1. Sixty-five percent of respondents (n=74) were employed at the time of the survey. Of the 39 (35%) who were unemployed at the time of the survey, all but five were actively seeking employment.
2. All respondents were domiciled and the majority (62%) were living in the same housing they had come home to (29%) or had only moved one time (33%).
3. Seventy-seven percent (n=87) of the respondents said that they had formed a close relationship with at least one family member (parent, aunt/uncle, sibling, spouse).

In sum, and consistent with the best developmental science, the Philadelphia data suggest that the vast majority of individuals who commit serious crimes as juveniles can be successfully rehabilitated and released into the community safely. The opportunity for parole by no means guarantees release, but allows for a release decision to be made at a point in the future after which an individual has had the benefit of developmental maturation and an opportunity to take advantage of rehabilitative services and demonstrate whether or not he or she is capable of safely re-entering society and making a meaningful contribution.

[7] These estimates are conservative; developmental history data were missing for approximately 20% of the sample, and was generally incompletely reported.

VI. Opinion in Favor of House Bill 409

House Bill 409 is precisely the kind of legislation that should follow from the current state of the science on adolescent development and pathways to criminal behavior and desistence.

- The vast majority of juvenile crime stems from transient characteristics of youth (e.g., impulsivity; risk-taking; emotional dysregulation), which may be exacerbated by criminogenic social and environmental factors.
- The vast majority of juveniles who commit crimes (even serious crimes) will age-out of criminal behavior, either on their own or through developmentally appropriate intervention.
- Juvenile-lifers who have been released in the state of Pennsylvania are reintegrating successfully into society and only a very small number have had any justice system contact since release.
- Cost savings associated with eliminating LWOP sentences for juveniles are substantial.
- In the eight years since SCOTUS held that LWOP was unconstitutional for the majority of cases involving juveniles (Miller v. Alabama, 2012), twenty-eight states have eliminated LWOP for juveniles.

Considering these facts, the societal, economic, and public safety benefits of life-time incarceration for juveniles are called into question. **It is our professional opinion that HB 409 should be passed.**

Respectfully submitted,

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Tina M. Zottoli, Ph.D.

Attachment: Works Cited

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