



# HUMAN RIGHTS *for* KIDS

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## TESTIMONY IN SUPPORT OF HB 409 BEFORE THE MARYLAND HOUSE JUDICIARY COMMITTEE

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*January 21, 2021*

Dear Chairman Clippinger and Members of the Maryland House Judiciary Committee:

Human Rights for Kids respectfully submits this testimony for the official record to express our support for HB 409. We are grateful to Delegate Jazz Lewis for his leadership in introducing this bill and appreciate the Maryland Legislature's willingness to address this important human rights issue concerning the extreme sentencing of Maryland's children.

Over the years too little attention has been paid to the most vulnerable casualties of mass incarceration in America — children. From the point of entry and arrest to sentencing and incarceration our treatment of children in the justice system is long overdue for re-examination and reform.

Human Rights for Kids is a Washington, D.C.-based non-profit organization dedicated to the promotion and protection of the human rights of children. We work to inform the way the nation understands Adverse Childhood Experiences (ACEs) from a human rights perspective, to better educate the public and policymaker's understanding of the relationship between early childhood trauma and negative life outcomes. We use an integrated, multi-faceted approach which consists of research & public education, coalition building & grassroots mobilization, and policy advocacy & strategic litigation to advance critical human rights on behalf of children in the United States.

Human Rights for Kids supports HB 409 because, if it is signed into law, it will end the application of mandatory minimum sentences for children sentenced as adults and grant sentencing review after 20 years to individuals who are serving life and de facto life without parole sentences in Maryland. The continuing practice of having individuals in Maryland serve these extreme sentences for crimes they committed as children is both a human rights abuse and a violation of the constitutional prohibition on cruel and unusual punishment.

### **Children Sentenced as Adults**

In the late 1980's and early 1990's states began passing laws to make it easier to transfer children into the adult criminal justice system which exposed them to harsh sentences, including the death penalty and life without parole. By the year 2000, a child as young as 10 years old could be tried as

an adult for certain offenses. And by 2010, an estimated 139,000 children were housed in adult prisons and jails across the United States.

Policymakers were driven by the now-debunked “Super-Predator Theory” which stated that a new generation of child predators were coming of age who were more violent and less remorseful than ever before. These children, the authors said, were “Godless, jobless, and fatherless” monsters and urged states to respond by treating them as adults and thereby exposing them to overly punitive mandatory minimum sentences and extreme sentences like life and de facto life without parole.

### **Adverse Childhood Experiences**

In the vast majority of cases, children who come into conflict with the law are contending with early childhood trauma and unmitigated adverse childhood experiences (ACEs), including psychological, physical, or sexual abuse; witnessing domestic violence; living with family members who are substance abusers, suffer from mental illness or are suicidal, or are formerly incarcerated. Studies have shown that approximately 90% of children in the juvenile justice system have experienced at least 2 ACEs, and 27% of boys and 45% of girls have experienced at least 5 ACEs.

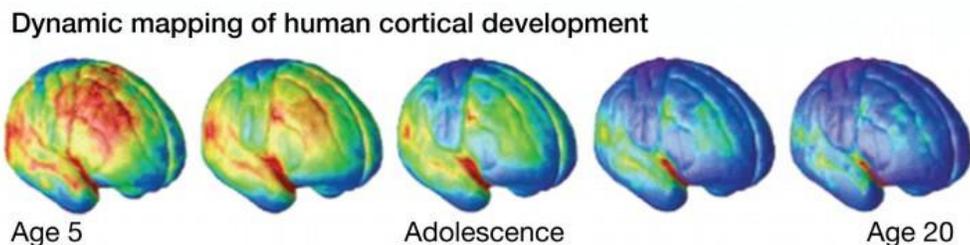
Additionally, more than 80% of kids serving life witnessed violence in their homes and neighborhoods on a regular basis. More than 50% of boys and 80% of girls were physical abused; More than 20% of boys and 77% of girls were sexually abused.

### **Juvenile Brain & Behavioral Development Science**

Studies have shown that children’s brains are not fully developed. The pre-frontal cortex, which is responsible for temporal organization of behavior, speech, and reasoning continues to develop into early adulthood. As a result, children rely on a more primitive part of the brain known as the amygdala when making decisions. The amygdala is responsible for immediate reactions including fear and aggressive behavior. This makes children less capable than adults to regulate their emotions, control their impulses, evaluate risk and reward, and engage in long-term planning. This is also what makes children more vulnerable, more susceptible to peer pressure, and being heavily influenced by their surrounding environment.

Children’s underdeveloped brains and proclivity for irrational decision-making is why society does not allow children to vote, enter into contracts, work in certain industries, get married, join the military, or use alcohol or tobacco products. These policies recognize that children are impulsive, immature, and lack solid decision-making abilities until they’ve reach adulthood.

It is also for these reasons, that the U.S. Supreme Court in a litany of cases over the past 15 years has found that the use of extreme punishments on children violate the 8<sup>th</sup> Amendment’s prohibition on cruel and unusual punishments.



Source: “Dynamic mapping of human cortical development during childhood through early adulthood,” Nitin Gogtay et al., Proceedings of the National Academy of Sciences, May 25, 2004; California Institute of Technology.

## The U.S. Supreme Court & Other Jurisprudence

Starting in 2005, the U.S. Supreme Court began considering the emerging juvenile brain and behavioral development science when it ruled in *Roper v. Simmons* that the Eighth Amendment forbids the imposition of the death penalty on children.<sup>1</sup> Five years later, the Court in *Graham v. Florida* struck down life without parole sentences for children convicted of non-homicide offenses, holding that the state “must impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation.”

Just a few years later in 2012, the Court addressed the issue of extreme sentences again in *Miller v. Alabama* where it struck down life without parole sentences for nearly-all children convicted of homicide offenses.<sup>2</sup> Sentencing courts must now consider “how children are different, and how those differences counsel against irrevocably sentencing them to a life in prison.”<sup>3</sup> In 2016, the Court decided *Montgomery v. Louisiana* which further expanded its decision in *Miller*, and held that the decision was meant to be applied retroactively under the standard set forth in *Teague v. Lane*.<sup>4</sup> The Court went on to state that life without the possibility of parole for a child violates the Eighth Amendment where the crime reflects unfortunate yet transient immaturity.<sup>5</sup> The *Montgomery* Court concluded that *Miller* barred life without parole for all but the “rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”<sup>6</sup>

This means that even the use of “discretionary life without parole” which is what has been used in Maryland, is constitutionally suspect under the *Montgomery* framework.

But even before *Montgomery* came down jurists in other states interpreted *Miller* as applying to “discretionary” sentencing schemes. The South Carolina Supreme Court in 2014, for example, noted in *Aiken v. Byars*, that while *Miller* applied to mandatory sentences and did not expressly extend its ruling to states “whose sentencing scheme *permits* a life without parole sentence to be imposed” on a child, it was clear that “it is the failure of a sentencing court not to consider the hallmark features of youth prior to sentencing that offends the Constitution.”<sup>7</sup> The South Carolina Supreme Court held that *Miller* does more than ban mandatory life sentencing schemes for children, it also “establishes an affirmative requirement that courts fully explore the impact of the defendant’s juvenility on the sentence rendered.”<sup>8</sup> Whether the sentence is mandatory or permissible, “any juvenile offender who receives a sentence of life without the possibility of parole *is entitled to the same constitutional protections* afforded by the Eighth Amendment’s guarantee against cruel and unusual punishment.”<sup>9</sup>

After the Court ruled in *Montgomery*, more courts in states with discretionary life without parole began interpreting how the Court’s decisions applied to them. In *Veal v. State*, the Georgia Supreme Court recognized that if the case had been appealed prior to *Montgomery*, they might have upheld the trial court’s sentence of life without parole because *Miller* did not “purport to prohibit” life without parole sentences “for juvenile murderers, so long as sentencing courts properly exercise discretion in imposing such sentences.”<sup>10</sup> However, they recognized that the “explication of *Miller* by the

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<sup>1</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>2</sup> *Miller*, 567 U.S. at 480.

<sup>3</sup> *Id.*

<sup>4</sup> *Montgomery*, 136 S. Ct. at 734.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Aiken v. Byars*, 410 S.C. 534, 576-77 (2014).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (emphasis added)

<sup>10</sup> *Veal v. State*, 298 Ga. 691, 700 (2016).

majority in *Montgomery*” demonstrated that their previous understanding “was wrong both as to the issue of procedural default and as to which juvenile murderers a court actually has discretion to sentence to serve life without parole.”<sup>11</sup> The Georgia Supreme Court overruled their prior holdings and held that a life without parole sentence imposed on any juvenile “who is not properly determined to be in the very small class of juveniles for whom such a sentence may be deemed constitutionally proportionate” is not only “erroneous but contrary to law and, as a result, void.”<sup>12</sup>

Similarly, in 2016, the Oklahoma Court of Criminal Appeals held that there is “no genuine question that the rule in *Miller* as broadened in *Montgomery* rendered a life without parole sentence constitutionally impermissible” regardless of the sentencer's discretion to impose a lesser term.<sup>13</sup> Unless the sentencer is fully aware of the constitutional “line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption” a life without parole sentence for a child is unconstitutional.<sup>14</sup> Like Maryland, Oklahoma also had used discretionary life without parole sentences on children convicted of homicide.

Recently, some state courts have found that any sentence of life without parole for a child is cruel and unusual punishment under the Eighth Amendment. In 2016, the Iowa Supreme Court categorically banned the imposition of life without parole sentences for juveniles.<sup>15</sup> The following year, the Washington Supreme Court extended the *Miller* protections to include juveniles sentenced for multiple homicides or to de facto life sentences,<sup>16</sup> before ruling that life without parole sentences for children violate the state’s prohibition on cruel and unusual punishment.

In the past year, Virginia and Ohio became the latest states to ban the inhumane sentence of life and de facto life without parole by allowing children convicted of serious crimes to have their sentences reviewed.

Today, only 5 states out of 50, including MARYLAND, have failed to meaningfully implement the Court’s decisions in *Miller* and *Montgomery*. FORTY-FIVE other states in the Union, have either passed legislation, begun re-sentencing children sentenced to life without parole, or have no children serving such sentences. Maryland is a shameful national outlier on this issue.

### **Human Rights Violations**

Because of the way children are treated in the criminal justice system, we designated Maryland one of the “Worst Human Rights Offenders” in the nation in our 2020 National State Ratings Report. Maryland was penalized 3 points in our assessment for not having laws in place that (1) allow judges to deviate from mandatory minimum sentences for children, (2) allow people sentenced as children to lengthy prison terms to have their sentences reviewed, and (3) prohibit the use of life without parole sentences for children.

For context, neighboring Virginia received credit for all 3 of these categories and West Virginia received credit for 2 of them. The states with the highest cumulative score in our assessment included California, North Dakota, and Arkansas which have all banned life and de facto life sentences for children, respectively.

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<sup>11</sup> *Id.* at 700-01.

<sup>12</sup> *Id.* at 701 quoting *Montgomery* at 731.

<sup>13</sup> *Luna v. State*, 387 P.3d 956, 961 (Okla. Crim. App. 2016).

<sup>14</sup> *Id.*

<sup>15</sup> *State v. Sweet*, 879 N.W.2d 811, 839 (Iowa 2016).

<sup>16</sup> *State v. Ramos*, 187 Wash. 2d 420, 438-39(2017).

We would ask this Committee and the General Assembly to treat children in Maryland's justice system at least as well as children are treated in conservative-leaning states like West Virginia, Virginia, North Dakota and Arkansas.

In the appendix after this testimony, you will find a copy of our National State Ratings Report and National Map which shows how Maryland stacks up compared to other states.

### **Redemption for Maryland**

Nelson Mandela once said, "*There is no keener revelation of a society's soul than the way in which it treats its children.*" What does it say about our soul then if we allow children to be sentenced to lengthy mandatory minimums without regard for their child status or worse yet, to die in prison without hope of a second chance?

Children can and do commit serious crimes. While they must be held responsible, our response must not be focused on retribution. Instead, it must be measured and assure age-appropriate accountability that focuses on the unique capacity of children to grow, change and be rehabilitated. Maryland's current policies have firmly established the state as one of the worst human rights abusers in the nation when it comes to children in the justice system. But with the passage of HB 409, Maryland can find redemption by joining the rest of the nation in recognizing that kids are different and should be treated differently.

For these reasons, we strongly urge this committee to vote favorably upon HB 409 and end the human rights abuse and constitutional violation of sentencing children the same way adults are sentenced. Thank you for your consideration.



James. L. Dold  
CEO & Founder  
Human Rights for Kids



# Category Descriptions



## DUE PROCESS

Require children to consult with their parents or legal counsel before waiving their Miranda Rights or being subject to a custodial interrogation.



## MANDATORY MINIMUM SENTENCES

Authorize judges or juries to depart from all mandatory minimum sentences when sentencing children in adult criminal court.



## SOLITARY CONFINEMENT

Prohibit the use of solitary confinement, room isolation, seclusion, or administrative segregation on incarcerated children.



## 10+ MINIMUM COURT AGE

Prohibit all children less than 10 years of age from being adjudicated delinquent in the juvenile court system.



## FELONY-MURDER RULE

Eliminate the felony murder rule for children who do not kill or intend to kill anyone during the commission of a felony offense.



## INCARCERATION

Prohibit detaining or incarcerating children less than 18 years of age in adult correctional facilities, including local jails, lock-ups, and prisons.



## 17- MAXIMUM COURT AGE

Do not exclude children less than 18 years of age from being adjudicated in the juvenile court system.



## LIFE WITHOUT PAROLE

Ban life without parole sentences from being imposed on all children less than 18 years of age.



## POST-RELEASE SUPERVISION

Allow formerly incarcerated children to be discharged from lengthy parole or community supervision at a reasonable point after their release.



## ADULT COURTS

Prohibit prosecuting kids under 14 as adults AND require a child status hearings for all kids 14+ before allowing transfer to adult criminal court.



## RELEASE SAFETY VALVE

Allow the parole board or judge to review all sentences previously imposed on child offenders after no more than 30 calendar years (end de facto life without parole).



## VOTING RIGHTS

Allow formerly incarcerated children to have their voting rights restored.

## Working to End Children's Rights Abuses

We founded **Human Rights for Kids** because we believe every child deserves hope and love. What started as an idea, is now a growing movement making a difference in every U.S. state and beyond. Learn more about our mission, our vision and what our team values most.

VISIT US

