

**Testimony in Support of House Bill 409**  
**Juveniles Convicted as Adults – Sentencing – Limitations and Reduction**  
**(Juvenile Restoration Act)**

To: Luke H. Clippinger, Chair, and Members of the House Judiciary Committee

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We are student attorneys in the Youth, Education and Justice Clinic (“the Clinic”) at the University of Maryland Francis King Carey School of Law. The Clinic represents children who have been excluded from school through suspension, expulsion, and other means, as well as individuals who are serving life sentences for crimes they committed when they were children (“juvenile lifers”) and who are now eligible to be considered for parole. Our juvenile lifer clients have served approximately thirty years in prison. We write in support of House Bill 409, which seeks to prohibit the sentence of life without parole for children and allow juvenile lifers to file a court motion to reduce the duration of their sentence.

Over the decades, many children in Maryland have been sentenced to life in adult prisons without parole. The United States Supreme Court has since held mandatory life without parole sentences for children to be unconstitutional, mandating that, absent a court finding that a child was beyond rehabilitation, those sentenced to life in prison must be afforded a “meaningful opportunity to obtain release.”<sup>1</sup> The Supreme Court relied on brain development science, which emerged subsequent to the trials, convictions, and sentencing proceedings that involved many of the juvenile lifers who remain incarcerated in Maryland’s prisons today.<sup>2</sup> This science demonstrates that children are different than adults in ways that are critical to culpability, sentencing, and rehabilitation. Children have “less capacity for self-regulation in emotionally charged contexts,” are more vulnerable to negative peer pressure, and “have less ability than adults to make judgements and decisions that require future orientation.”<sup>3</sup> Additionally, children who commit crimes are more likely to change over time, as their brain develops with age and maturity.

The time is long overdue for Maryland to prohibit the sentence of life without parole for children. Currently, twenty-four states and the District of Columbia have banned life without parole

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<sup>1</sup> *Miller v. Alabama*, 567 U.S. 460, 479 (2012) (quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010)). See *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016) (holding *Miller* to be retroactive).

<sup>2</sup> *Miller v. Alabama*, *supra* note 1, at 471-472 (citation omitted)

<sup>3</sup> NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 2 (2013), [http://www.njjn.org/uploads/digital-library/Reforming\\_JuvJustice\\_NationalAcademySciences.pdf](http://www.njjn.org/uploads/digital-library/Reforming_JuvJustice_NationalAcademySciences.pdf)

sentences for children.<sup>4</sup> These states understand, as does the United States Supreme Court, that even youth who commit the most serious crimes have the capacity to change.<sup>5</sup>

More than 300 juvenile lifers remain incarcerated in Maryland's prisons, most of whom have served decades in prison and are now middle-aged. Almost all are Black. Indeed, Maryland has the most racially disproportionate prison population in the United States, as over 70% of Maryland's prison population is Black, which more than doubles the percentage of Black adults and children in prisons nationally.<sup>6</sup> The racial disparity in Maryland's prisons worsens the longer individuals are incarcerated. Of those individuals who have been incarcerated for more than ten years, nearly 80% are black.<sup>7</sup>

The racial disproportionality of Maryland's prison population elevates the urgency of another aim of HB 409: fulfilling the Supreme Court's mandate to provide juvenile lifers a meaningful opportunity for release by allowing them to file a court motion to reduce the duration of their sentences after they have served at least twenty years in prison. The bill understands that juvenile lifers need an additional mechanism, along with the parole process, to truly provide a meaningful opportunity for release. Maryland's parole system is severely backlogged, resulting in long delays of parole hearings for life sentenced individuals. While we fully support the legislative effort to remove the Governor from the parole process completely – indeed, we see the Governor's removal as a critical step toward parole reform in Maryland – the backlog will remain. At present, the Maryland Parole Commission has to consider parole for the over 300 juvenile lifers as well as all of the other individuals serving sentences for all types of offenses. As a result, individuals, like our clients, often wait several months and even more than a year *after* their parole eligibility for their parole hearing. Therefore, HB 409 is necessary not only as a matter of justice, but also of efficiency. A court process for resentencing motions would allow cases to be disbursed across Maryland's various jurisdictions. Accordingly, courts will not be burdened. Also, judges are expert in analyzing and addressing the various factors set forth in the bill.

To be clear, the hill that any juvenile lifer would have to climb for a Court to grant their motion set forth in HB 409 is extremely steep. First, the individual has to serve at least twenty years to file the motion. Every individual eligible to file will be well into or close to middle-age. Second, the Court must analyze a wide range of factors when considering the motion. Notably, these factors include “any statement offered by a victim or a victim's representative” as well as “any other factor the Court deems relevant.” Third, the court process will be adversarial, with respective counsel making arguments specific to the factors. Fourth, to grant such a motion, the Court will have to ultimately conclude *both* that “the individual is not a danger to the public” and that “the interest of justice will be better served by a reduced sentence.” Thus, the Court will have to

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<sup>4</sup> On January 9, 2021, Ohio became the twenty-fourth state, in addition to the District of Columbia, to abolish life without parole sentences for children. Daniel Nichanlan, *Ohio Will No Longer Sentence Kids to Life Without Parole*, THE APPEAL, January 13, 2021, <https://theappeal.org/politicalreport/ohio-ends-juvenile-life-without-parole/>

<sup>5</sup> See *Graham v. Florida*, 560 U.S. at 68 (“Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved character’ than are the actions of adults.”) (*quoting Roper v. Simmons*, 543 U.S. 551, 570 (2005)).

<sup>6</sup> JUSTICE POLICY INSTITUTE, RETHINKING APPROACHES TO OVER INCARCERATION OF BLACK YOUNG ADULTS IN MARYLAND 7 (2019),

[www.justicepolicy.org/uploads/justicepolicy/documents/Rethinking\\_Approaches\\_to\\_Over\\_Incarceration\\_MD.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/Rethinking_Approaches_to_Over_Incarceration_MD.pdf)

<sup>7</sup>*Id.*

determine that the individual has rehabilitated, reformed, and transformed. As a result, the sentence reduction will be available only to those individuals who have earned, and therefore deserve, the relief.

Providing juvenile lifers a meaningful opportunity for release is a matter of racial justice, given the staggering racial disparities in Maryland's prison population. If enacted, HB 409 will be one vehicle for Maryland to lessen these disparities. Also, Maryland will align with the other states (as well as the District of Columbia) that have turned away from the draconian, scientifically unsound, and unjust practice of sentencing children to life without parole. For these reasons, we ask the House Judiciary Committee to issue a favorable report.

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.