



**Connecticut  
Sentencing  
Commission**

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## **TESTIMONY IN SUPPORT OF SB 1062**

### ***AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE SENTENCING OF A CHILD CONVICTED OF A FELONY OFFENSE***

**By Hon. David M. Borden**  
Sentencing Commission Legislative Committee Chair

Good morning Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas and members of the Judiciary Committee.

I am David Borden, the Chair of the Sentencing Commission's Legislative Committee. I am here to testify on behalf of the Sentencing Commission in support of Senate Bill 1062, *AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE SENTENCING OF A CHILD CONVICTED OF A FELONY OFFENSE*.

Senate Bill 1062 is the product of a working group of three judges, the Chief State's Attorney, a member of the Criminal Defense Bar, and two law professors who were charged by the Sentencing Commission to develop a proposal to comply with the United States Supreme Court decision in Miller v. Alabama (2012). In this decision, the Court held that:

- 1) mandatory sentences of life without the possibility of parole are unconstitutional for individuals under the age of eighteen at the time of the offense; and**
- 2) when sentencing those under the age of eighteen to long, life-equivalent sentences, the unique qualities of youth must be taken into consideration.**

The working group made four recommendations which were reviewed by the Sentencing Commission's Legislative Committee and unanimously endorsed by the full Sentencing Commission. This is significant in that the Commission consists of 23 members, including judges, prosecutors, criminal defense counsel, the commissioners of the Departments of Correction, Public Safety and Mental Health and Addiction Services, the victim advocate, the executive director of the court support services division of the Judicial Branch, a municipal police chief, the chairperson of the Board of Pardons and Paroles, the undersecretary of the criminal justice policy and planning division of the Office of Policy and Management and members of the public appointed by the Governor and the leaders of the General Assembly. In short, the Sentencing Commission's membership represents a broad range of stakeholders from Connecticut's criminal justice system and we are all in agreement that the recommendations encompassed in SB 1062 are the best way to address the United States Supreme Court decision in Miller v. Alabama.

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**Recommendations:**

- 1.) The capital felony, murder with special circumstances (P.A. 12-5), and arson murder statutes—which mandate sentences of life without the possibility of release—should be amended to apply only to those who commit their crimes after they are 18 years old. This amendment is intended to be retroactive.
- 2.) Prospectively, "Miller factors" must be considered at sentencing in all cases involving felonies committed by individuals under the age of eighteen who are sentenced in adult court.
- 3.) No presentence report can be waived in any class A or B felony case involving an individual who was under eighteen years of age at the time of the offense. The presentence report in all other felony cases involving an individual who was under eighteen years of age at the time of the offense may only be waived by the individual upon approval of the court.
- 4.) The Court Support Services Division shall create a set of materials relating to adolescent psychological and brain development that specifically addresses the "Miller factors" to assist courts in sentencing individuals under eighteen years of age.

In *Miller*, the United States Supreme Court held that sentencing courts must consider youth-related mitigating factors in sentencing juveniles facing long, life-equivalent factors. Drawing upon *Miller*, S.B. 1062 provides that courts sentencing youth transferred to adult court should consider:

- (1) The age and maturity of the child at the time of the offense;
- (2) The child's history of trauma, abuse or neglect;
- (3) The child's history of mental illness or substance abuse;
- (4) The intellectual capacity and educational history of the child;
- (5) The child's family and community environment, including the child's ability to extricate himself or herself from such environment;
- (6) The child's level of participation in the offense;
- (7) The degree of peer or familial influence or pressure on the child;
- (8) The impetuosity of the child;
- (9) The ability of the child to appreciate the risks and consequences of the child's conduct;
- (10) The ability of the child to navigate the criminal justice system and participate meaningfully in his or her defense;
- (11) The scientific and psychological evidence showing the differences between a child's brain development and an adult's brain development; and

(12) The capacity for rehabilitation of such child and the opportunities for rehabilitation of such child in the community and in an adult prison environment.

Public Feedback:

The Commission, recognizing the importance of public input, held a public hearing on November 29, 2012 at which it heard testimony addressing Miller v. Alabama. At this hearing, the Commission received verbal and written testimony on the proposal. The written testimony as well as the CTN coverage is available at (<http://www.ct.gov/opm/csc>) under the "2013 Legislative Proposals" heading. To summarize the feedback the Commission received—**everyone recognized that Connecticut must amend its laws to comply with the United States Supreme Court decision in Miller v. Alabama and many were supportive of the Commission's proposal as encompassed in SB 1062.**

Conclusion:

At its December 2012 meeting, the Sentencing Commission endorsed by consensus the working group's proposal to comply with the recent United States Supreme Court decision in Miller v. Alabama. Given SB 1062 encompasses the provisions in the working group's proposal, the Sentencing Commission therefore supports SB 1062, *AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE SENTENCING OF A CHILD CONVICTED OF A FELONY OFFENSE.*

