

March 3, 2014

Testimony of Connecticut Professors in support of HB 5221: “An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding Lengthy Sentences for Crimes Committed by a Child or Youth and the Sentencing of a Child or Youth Convicted of Certain Felony Offenses.”

Members of the Judiciary Committee:

We are professors in Connecticut who have taught or researched in the areas of criminal law, juvenile law, child development, international human rights, or constitutional law, or who have been involved in teaching in or analyzing the prison system. **We support legislation that would allow a parole board to take a “second look” at long adult sentences imposed on those convicted for crimes they committed as children, after a significant portion of the sentence is served.**

The United States Supreme Court, in *Graham v. Florida* (2010), recognized that children under 18 are categorically less culpable than adults and more capable of rehabilitation. As a result, the Court struck down life-without-parole sentences for children convicted of non-homicide crimes as unconstitutional “cruel and unusual” punishment. Locking a child away for life without a “meaningful chance of release,” the Court said, was unjustified, because at the time of sentencing, the child’s brain and character were still maturing. Relying on its earlier decision in *Roper v. Simmons*, the Court said: “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.”

In 2012, the Supreme Court in *Miller v. Alabama* (2012) held that mandatory life-without-parole sentences are unconstitutional, even for children convicted of homicide crimes. Instead, courts must take into account the “distinctive character of youth:”

“[N]one of what *Graham* said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. Those features are evident in the same way, and to the same degree, when (as in both cases here) a botched robbery turns into a killing. So *Graham*’s reasoning implicates any life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to non-homicide offenses. . . . Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. . . . By removing youth from the balance—by subjecting a juvenile to the same life-without-parole sentence applicable to an adult—these laws

prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes Graham's (and also Roper's) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."

Connecticut currently has 250-300 people serving sentences of more than 10 years for crimes they committed as children. About 50 people are serving sentences of 50 years or more for crimes they committed as children, most without the opportunity for parole. Four are serving mandatory life without parole – a sentence that is, after *Miller*, clearly unconstitutional. The over-representation of African-American and Latino prisoners in these populations is greater than in the prison system as a whole, and increases by length of sentence. 92% of those serving sentences of 50 years or more are African-American or Hispanic.

Most of these sentences are the result of policy choices made in the late 1990s, when academics predicted a juvenile crime wave and legislatures responded by treating kids as adults. Despite the demographic "teen boom," however, the juvenile crime rate fell, and it fell at roughly the same rate both in jurisdictions that adopted tougher sentencing policies and those that did not. In short, the predictions were wrong, and as a result, many children grew up behind bars, often hopeless and suicidal. Now we have the advantage of hindsight and better brain science, and we know that juvenile impulsivity, peer-sensitivity, and lack of judgment can disappear with maturity. We should take a second look at those sentences, just as we are taking a second look at the science that generated them.

Allowing a very limited opportunity for someone with a long sentence for a juvenile crime to make the case to a parole board that she has matured and reformed, as the Connecticut Sentencing Commission recommends, is a fair and sensible approach. Under that proposal, there is no guarantee that an offender will receive any reduction in her sentence, and there is no endless appeal process. There is, however, a "meaningful opportunity" at a second chance. While some of us would advocate for an earlier opportunity for parole than allowed under the Sentencing Commission's proposal, the Connecticut Sentencing Commission, a bipartisan body of experts, has reached a compromise that will likely satisfy the courts and more accurately reflect the current "best practices" of penal policy and brain science, rather than the discredited ones of twenty years ago.

We sign as individuals, and institutional affiliation is provided only for identification purposes. We do not represent the views or interests of our respective institutions.

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