March 4, 2015

Testimony of Connecticut Professors in support of SB 796: "An Act Concerning 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. **For the last three years, we have written to 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."

On Friday, February 27, 2015 the Connecticut Supreme Court had its first opportunity to evaluate the effect of *Miller* on Connecticut sentencing practice. It struck down the 100-year sentence of Ackeem Riley, and remanded the case for resentencing in light of *Miller*. The Court did not yet reach Riley's specific sentencing claims, or define precisely if and when he might be eligible for parole, noting that because the question was pending before the legislative body, "staying our hand in deference to a coordinate branch of government is particularly appropriate in this case….There is every reason to believe that the legislature will take definitive action regarding these issues with all deliberate speed." The Court did note that the factors that the court should consider on remand "are consistent with those proposed by each chamber of our legislature in bills drafted to conform our sentencing law to the dictates of *Miller*." (Citing HB 5221 (2014) and HB 6581 (2013).

More cases are likely to follow. 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. A few 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 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 judiciary committee's proposal, the current bill reflects 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.

Associate Professor Sarah Russell, Quinnipiac University School of Law*

Professor Linda Meyer, Quinnipiac University School of Law*

Associate Professor and Director of Clinical Programs, Carolyn Kaas, Quinnipiac University School of Law*

Associate Professor Jennifer Herbst, Quinnipiac University School of Law*

Professor Kevin Barry, Quinnipiac University School of Law*

Professor Robert Farrell, Quinnipiac University School of Law*

Professor Alan Bruce, Sociology, Quinnipiac University*

Professor Marilyn Ford, Quinnipiac University School of Law*

Professor Melanie Abbott, Quinnipiac University School of Law*

Professor Lori Sudderth, Criminal Justice, Quinnipiac University*

Professor Neal Feigenson, Quinnipiac University School of Law*

Professor and Dean Emeritus Brad Saxton, Quinnipiac University School of Law*

Laura Mutrie, LCSW, Director of Field Education, Quinnipiac University, Social Work Department*

Assistant Professor Amber Kelly, Quinnipiac University, Social Work Department*

Professor Anne Dailey, University of Connecticut, Law*

Professor Judy Dworin, Trinity College Department of Theater and Dance*

Professor Sheila Fisher, Trinity College Department of English*

Catherine Lechowicz, Center for Prison Education, Wesleyan University*

Professor Judith Resnik, Arthur Liman Professor of Law, Yale Law School*

Professor Dennis Curtis, Clinical Professor Emeritus of Law and Professorial Lecturer in Law, Yale Law School*

Hope R. Metcalf, Executive Director, Schell Center for International Human Rights, and Lecturer, Yale Law School*

Clinical Professor of Law, James Silk, Executive Director, Orville H. Schell, Jr., Center for International Rights, Yale Law School*

Associate Professor Nicholas L. Parsons, Department of Sociology, Anthropology, & Social Work, Eastern Connecticut State University*

Professor Theresa Severance, Sociology, Department of Sociology, Anthropology, and Social Work, Eastern Connecticut State University*

Johanna Kalb, Visiting Associate Professor of Law and Director, Arthur Liman Public Interest Program, Yale Law School*

Professor James Stark, Professor of Law and Director of Mediation Clinic, University of Connecticut, Law*

*Information concerning institutional affiliation is provided for identification purposes only. We sign as individuals and we do not purport to represent the views, if any, of our respective institutions.